

RUSSIAN ARBITRATION LAW REFORM

February 17, 2017

Dear Mesdames and Sirs,

Hereby we inform you that Russia significantly revised its arbitration laws by adopting two Federal Laws (hereinafter referred to as "**Arbitration Laws**")¹, which came into effect on September 01, 2016. The main aim of the arbitration reform in Russia was elimination of so-called "pocket" arbitration institutions and improvement of overall quality of arbitration process in Russia. Among the innovations brought by the Arbitration Laws are elimination of uncertainty over arbitrability of corporate disputes and requirement for obtaining permits by permanent arbitration institutions. Pursuant to the reform, it is now possible to enter into arbitration agreement in respect to corporate disputes starting from February 01, 2017.

Disputes that could be referred to the international commercial arbitration

The following disputes could be considered in the international arbitration tribunals ("IAT"):

(A) The civil disputes arisen in connection with international economic relations between parties if:

- place of business of one party is located outside the Russian Federation;
- place, where a substantial part of the obligations is to be performed, is abroad;
- the subject-matter of the dispute is most closely connected with a foreign state.

(B) Disputes related to international investments in Russia or Russian investments abroad.

According to the new legislation, the arbitration agreement could be concluded by exchange of letters, telegrams, telexes, telefaxes and other documents including electronic documents or by exchange of the procedural documents.

Arbitrability of corporate disputes

The Arbitration Laws clarify the uncertainty over arbitrability of various types of corporate disputes, which has existed for several years, and introduce new set of rules (albeit still being vague in some matters).

The Arbitration Laws distinguish the following categories of corporate disputes (Article 225.1 of the Arbitrazh Procedure Code of the Russian Federation):

(A) Non-arbitrable corporate disputes. These are the disputes, which relate to:

- convening general shareholders' meetings;
- notaries' activities on certification of agreement on disposal of shares (participating interests) in limited liability companies;
- "strategic" legal entities as defined by Russian law (which include companies having licenses for subsoil use of federal importance) except for those disputes which relate to ownership of shares in "strategic" legal entities provided that the underlying transactions do not require governmental approval;
- buy-back and compulsory buy-out of shares by a joint-stock company, voluntary, mandatory, and competitive offers and buy-out of shares by shareholders;
- exclusion of shareholders (participants) from limited liability companies.

(B) Corporate disputes if administrated by permanent arbitration institution seated in Russia under the arbitration rules for corporate disputes and provided that the company, all its shareholders and other parties to the dispute concluded an arbitration agreement. These are the disputes, which relate to:

- establishment, reorganisation and liquidation of legal entities;
- claims of shareholders for recovery of damages caused to a legal entity, invalidation of the transactions;
- appointment/election and removal of directors and their liability;
- agreements between shareholders concerning management of the company, including disputes arising from shareholders' agreements;
- invalidation of the decisions of governing bodies of a legal entity;
- issuance of securities.

(C) Corporate disputes if administrated by permanent arbitration institution (in accordance with normal arbitral rules and not necessary in Russia), connected to:

- ownership over shares in charter capital / share capital, including disputes arising from SPAs;

¹ Federal law dd. 29.12.2015 No. 382-FZ "On Arbitration (Arbitral Proceedings) in the Russian Federation" and Federal law dd. 29.12.2015 No. 409-FZ "On Amending the Associated Legislative Acts of the Russian Federation and Annulment of Article 6 (1)(3) of the Federal Law on Self-Regulating Organizations in connection with the Adoption of the Federal Law "On Arbitration (Arbitral Proceedings) in the Russian Federation"

- establishment of encumbrances over shares and its enforcement.

The Arbitration Laws contain a broad definition of this category of disputes as set in paras. (C) which will likely be interpreted as encompassing all transactions the subject of which will be shares in Russian companies (SPAs).

Arbitration agreements providing for settlement by arbitration of corporate disputes as set in paras. (B) and (C) above may be concluded starting from February 01, 2017. If concluded before that date, such clauses will be deemed unenforceable.

Obtaining permits by permanent arbitration institutions

In order to be recognised as a permanent arbitration institution in Russia an arbitration institution shall be established by not-for-profit organisations, which should obtain a permit (license) from the Russian Government. Russian Government grants a permit under recommendation of the Council for Development of Arbitration, which has been formed by the Russian Ministry of Justice. Exceptions are granted to the International Commercial Arbitration Court (“**ICAC**”) and Maritime Arbitration Commission (“**MAC**”) at the Russian Federation Chamber of Commerce and Industry, which are not required to obtain a permit by operation of law. In addition, recently the ICAC has adopted new rules for corporate disputes, effective from February 01, 2017, thus, at the moment, the ICAC is the only Russian arbitration institution capable of resolving corporate disputes as set in para. (B) and (C) above.

The Arbitration Laws also establish that foreign arbitration institutions will be allowed to operate in Russia only if they obtain a permit from the Russian Government, otherwise, arbitral awards administered by a foreign arbitration institution and rendered in the territory of Russia are deemed to be *ad hoc* awards. The only one requirement for foreign institutions (as compared to domestic arbitration institutions) for getting this permit is “widely acknowledged international reputation” of them. To our knowledge, foreign arbitration institutions have not applied for a permit for the time being.

It is also not clear what happens if a foreign arbitration institution administers the corporate dispute, which falls within the third category of corporate disputes as set in para (C) above, in the absence of a permit and with a seat abroad. The Arbitration Laws do not contain explicit answer to this question and, thus, there is a substantial risk that Russian courts will refuse to enforce such awards, if the enforcement is sought in Russia.

Challenging and enforcement of arbitral awards

Kew amendments introduced by the Arbitration Laws are as follows:

- (A) Arbitration Laws allows the parties to agree that the award is final and, thus, to waive their right to challenge the award (but only in permanent arbitration institution).
- (B) The timeframe for considering application on enforcement and recognition of the award by the state court is reduced to one month.
- (C) Arbitration Laws provide regulation for parallel proceedings. If both applications (one for enforcement of and another for setting aside an award) are filed with, the court shall stay without consideration more recent application pending the outcome of the earlier application (or the application to set aside an award if both applications are filed with on the same day).
- (D) Arbitration Laws have changed the rules for recognition of declaratory awards. Now they are recognised without enforcement proceedings, however, any interested person may object to the recognition of such an award.

Hope that the information provided herein would be useful for you.

If you have any questions, please, do not hesitate to contact Senior Partner, Head of Dispute Resolution practice [Vassily Rudomino](mailto:VRudomino@alrud.com) (VRudomino@alrud.com) or the Partner, Head of Corporate and M&A practices [Alexander Zharskiy](mailto:a.zharskiy@alrud.com) (a.zharskiy@alrud.com).

Kind regards,

ALRUD Law Firm

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