PRACTICAL LAW COMPANY®

Russian Federation

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GENERAL

1. How is commercial arbitration used in your jurisdiction? What are the recent trends? What are the general advantages and disadvantages of arbitration compared to court litigation in your jurisdiction?

In Soviet Russia, commercial arbitration was not commonly used, mainly because of the state monopoly on foreign trade. However, since the dissolution of the Soviet Union the situation has changed significantly. Commercial arbitration is becoming increasingly popular as a method of commercial dispute resolution in Russia. There are very limited statistics related to arbitration, partly because of the confidential nature of arbitral proceedings. For the said historical reasons the number of cases settled through arbitration is still very small in comparison with cases brought before state courts (the disputes heard by arbitration tribunals amount to less than 1% of those heard by state courts).

As in other countries, in Russia commercial arbitration courts (local arbitration tribunals) (*see Question 2*) have a number of advantages in comparison to the system of the state courts. For example:

- Cases are referred to commercial arbitration courts on the basis of the parties' agreement.
- Arbitrators are appointed by the parties themselves and therefore the parties can choose the persons they consider most experienced and appropriate for the case. Therefore, the quality of the awards issued by arbitration courts is usually good. (Sometimes it is even better than the quality of the judgments issued by state courts.)
- Cases are dealt with more quickly, as there are no ladder-type systems of commercial arbitration courts. In addition, state courts are particularly overloaded following the current economic crisis. (However, the decisions of state courts do not require any special procedure to be enforced, apart from applying to the bailiff service.)
- Arbitration proceedings are confidential.
- Arbitral awards are final. They cannot be appealed and must be executed immediately. If the respondent does not comply with the award, it can be enforced by a court.
- Arbitral awards can be recognised and enforced abroad.
- Arbitration is most commonly used in contracts of sale (about half of the disputes resolved by the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC) concern services and works, in particular construction, and loans).

The main disadvantage of arbitration is that debtors often fail to execute arbitral awards voluntarily and, therefore, creditors must apply to state courts for the enforcement of the awards. The state courts have little experience in this area, which results in various difficulties. However, the situation is improving, mainly due to the increasing number of cases concerning enforcement of arbitral awards brought before courts.

Some recent trends are for the High Arbitrazh Court (the highest court in the system of state commercial courts) to:

- Approve assisting of international arbitrations even taking place abroad, in particular, by granting interim measures at the party's request.
- Provide more favourable conditions for recognition and enforcement of foreign awards made by institutional arbitration courts than to awards made by Russian arbitration courts established by commercial companies.
- Deny the opportunity of challenging an international arbitral award where the parties expressly agreed on its finality.
- Avoid application of a public policy clause except in extraordinary situations.

Also, the Ministry of Economic Development of the Russian Federation has recently proposed amendments to the Federal Law on the International Commercial Arbitration of 1 July 1993 No. 5338-1 (ICA Law). The amendments reflect the 2006 amendments to the UNCITRAL Model Law on International Commercial Arbitration which was the basis for the ICA Law. In particular, the Ministry's draft proposes the following changes:

- Ensuring that observance of good faith and generally recognised principles of law are also considered when interpreting foreign law.
- Allowing conclusion of arbitration agreements in various forms, including through email exchange.
- More detailed provisions on granting interim measures by international arbitral tribunals.
- Enabling parties to agree about finality of the arbitral award, without the option of challenging it in court (by analogy to the provision of the Federal Law on Arbitration Courts in the Russian Federation of 24 July 2002 No. 102-FZ (AC Law)).

The proposed amendments indicate the business' need for efficient resolution of international disputes. In the light of this, they should no doubt be welcomed. However, these amendments fall short of completely reaching this goal. For example, the

provisions on enforcement of the interim relief granted by an arbitral tribunal contained in the UNCITRAL Model Law were not included in the draft provisions of the law.

2. Which arbitration organisations are commonly used to resolve large commercial disputes in your jurisdiction?

There are currently more than 500 permanent arbitration courts in Russia (according to the data provided by *Arbitration Court*, the leading Russian periodical on ADR). These courts deal with any disputes of an economic nature arising out of commercial relationships. Most of them are competent to hear commercial disputes, but only a few actually hear cases on a regular basis. These courts do not form part of the Russian judicial system and are equivalent to arbitration tribunals.

The most well-known commercial arbitration institution in Russia is the ICAC. The ICAC considers disputes arising out of international commercial contracts, mainly between Russian and non-Russian parties. In 2010, 299 claims were filed at ICAC by companies from 30 countries. The list of the court's arbitrators includes renowned Russian and foreign legal practitioners, scholars and professors of law. Since 1999, the ICAC is a member of the International Federation of Commercial Arbitration Institutions (IFCAI).

Another well-known arbitration body is the Maritime Arbitration Commission (MAC) founded in 1930. The MAC hears disputes arising out of various maritime relationships. The MAC is also a member of the IFCAI since 1999.

The Arbitration Court for Resolution of Economic Disputes at the Chamber of Commerce and Industry of the Russian Federation is the leading arbitration institution intended for the resolution of domestic economic disputes. This court deals with commercial disputes arising between Russian parties, and does not consider any disputes of international nature.

(*See box, Main arbitration organisations.*)

3. What legislation applies to arbitration in your jurisdiction? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

In Russia domestic arbitration (that is, where no foreign element is involved) and international arbitration are governed by separate laws.

The main legislative act governing domestic arbitration is the AC Law. The AC Law expressly provides that it applies only to domestic economic disputes settled through arbitration (*Article 1(3)*). This law contains provisions regulating all the aspects of arbitral proceedings, in particular:

- Standards of validity of arbitral awards.
- Composition and competence of arbitral tribunals.
- Conduct of arbitral proceedings.
- Making of arbitral awards.
- Challenging and enforcing arbitral awards.

International commercial arbitration seated in Russia is regulated by the ICA Law. The ICA Law applies only to economic disputes of an international nature. The ICA Law is based on the UNCITRAL Model Law and includes all of the main principles set out in the UNCITRAL Model Law. However, there are some minor differences (for example, the ICA Law does not enable arbitrators to resolve disputes *ex aequo et bono* (that is, on the basis of equity, rather than under national law)). See *Question 1* for proposed amendments.

In addition, the Arbitrazh (Commercial) Procedure Code of the Russian Federation 2002 (APC) as well as the Civil Procedure Code of the Russian Federation 2002 (CPC) contain several provisions in relation to commercial arbitration which apply both to domestic and international arbitration. In particular, the APC and the CPC contain special chapters on the enforcement of arbitral awards.

4. Are there any mandatory legislative provisions? What is their effect?

There are certain mandatory legislative provisions concerning arbitrability in the APC. The following types of disputes fall under the exclusive jurisdiction of the state *arbitrazh* (commercial) courts:

- Disputes on the title to real property located in the Russian territory.
- Disputes relating to the registration of intellectual property rights.
- Public law disputes.

In addition, after the start of a bankruptcy procedure, any claim against the debtor entity can be filed and heard only within the bankruptcy procedure and is no longer arbitrable.

If the arbitral tribunal hears an unarbitrable dispute, its award is unenforceable by the state court.

The Russian legislation also contains some mandatory provisions relating to the removal of arbitrators (*see Question 11*). Their non-observance can result in unenforceability of the arbitral award.

5. Does the law of limitation apply to arbitration proceedings?

Neither the AC Law nor the ICA Law regulates limitation periods in arbitration proceedings. Therefore, Chapter 12 of the Civil Code of the Russian Federation (Civil Code) applies.

The general limitation period is three years. The limitation is triggered on the day when the person learned or should have learnt about the violation of his right (for example, when the creditor's right to present the claim for the execution of the obligation arose). However, the Civil Code and other laws establish certain exceptions to this rule. For example, a voidable transaction can be challenged within a year of the day when the person learned or should have learnt about the facts establishing grounds to find the transaction void.

Under the Civil Code, a limitation period is deemed interrupted if a claim is duly filed (*Article 203*). It is generally recognised that filing a claim with an arbitration tribunal interrupts the limitation

period. After the interruption, the limitation period starts again. However, if the claim is dismissed, the interrupted limitation period continues to run from the moment of interruption (*Article 204, Civil Code*).

Arbitration rules contain provisions relating to limitation period for granting an award. For example, under the Rules of the ICAC the limitation period for issuing the final award is 180 days from the moment of formation of the arbitral tribunal (*Rule 24*). However, the ICAC's Presidium can extend this period at the parties' request or on its own initiative.

ARBITRATION AGREEMENTS

6. For an arbitration agreement to be enforceable:

- **What substantive and/or formal requirements must be satisfied?**
- **Is a separate arbitration agreement required or is a clause in the main contract sufficient?**

An arbitration agreement must provide that the parties submit to arbitration all or certain disputes which have arisen or which may arise between them and must define the legal relationship, whether contractual or not, in respect of which such disputes arise.

The law sets out the following formal requirements in relation to arbitration agreements:

- **AC Law.** An arbitration agreement must be made in writing, which includes entering into an arbitration agreement by (*Article 7*):
  - correspondence, teletype or telegraphic messages; or
  - any other way providing an opportunity to fix conclusion of the agreement.

  Non-compliance renders the arbitration agreement void.
- **ICA Law.** This is similar to the provision in the AC Law. In addition, the parties can enter into an arbitration agreement by exchange of the statement of claim and the statement of defence, whereby one party states that an arbitration agreement exists, and the other party does not express any objections to that (*Article 7*).

The parties can include an arbitration agreement in the main contract or conclude a separate arbitration agreement. In addition, a reference to a document containing an arbitration clause constitutes an arbitration agreement, provided that the main contract is in writing and the reference is such as to make that clause part of the contract (*Article 7(1), AC Law; Article 7(2), ICA Law*).

7. Does the applicable legislation recognise the separability of arbitration agreements?

Russian legislation recognises the concept of separability. Any arbitration clause must be deemed independent of all other provisions in the underlying contract. Therefore, invalidity of the underlying contract containing the arbitration clause does not, by itself, invalidate the arbitration clause.

8. In what circumstances can a third party be joined to an arbitration, or otherwise be bound by an arbitration award?

The AC Law and the ICA Law are silent on the joinder of third parties. However, the applicable provisions can be found in the institutional arbitral rules. For example, under the Rules of the ICAC, a third party can only join the arbitral proceedings with the consent of the parties in dispute (*Rule 28*). Invitation of a third party to participate in the arbitration requires the third party's consent, in addition to the consent of the arbitrating parties. A third party is bound by an arbitration award only in these circumstances.

ARBITRATORS

9. Are there any default provisions in the legislation relating to the number and qualifications/characteristics of arbitrators?

The contents of arbitration agreements must comply with the AC Law or ICA Law, as applicable. For example, in the absence of party agreement, three arbitrators must be appointed (*Article 10, ICA Law; Article 9, AC Law*). Under the AC Law, parties can only agree on an odd number of arbitrators (*Article 9*).

In addition, the AC Law provides that a prospective arbitrator must have completed university education. Further requirements or restrictions can be agreed by the parties or set by the arbitral rules. The ICA Law only provides that the appointing authority must consider all parties' preferences in relation to the qualification of arbitrators.

10. Are there any requirements relating to independence and/or impartiality of arbitrators?

Independence and impartiality of arbitrators are two of the main principles of arbitration under the AC Law (*Article 18*). The ICA Law contains a similar provision. A potential arbitrator must disclose to the parties all circumstances that may give rise to reasonable doubts concerning the arbitrator's impartiality and independence (*Article 12*). After being appointed the arbitrator must inform the parties about any relevant circumstances, if he failed to do that before.

An arbitrator can be challenged if there are circumstances that give rise to reasonable doubts concerning his impartiality and independence. However, a party can challenge the arbitrator whom it appointed itself only if it found out about the relevant circumstances after the arbitrator's appointment.

On 27 August 2010, the President of the Russian Chamber of Commerce and Industry approved Rules on Impartiality and Independence of Arbitrators (Rules on Impartiality). The Rules on Impartiality are designed to serve as guidance for arbitrators and bodies administering arbitrations and competent to decide on termination of the arbitrators' mandate.

The Rules on Impartiality specify the circumstances in which the arbitrator must withdraw from his office or at least notify the parties. Otherwise, he may be challenged by a party. In addition, the Rules on Impartiality elaborate on the communication between the arbitrators and the parties or their attorneys and specify the procedure for challenging an arbitrator by a party to an arbitration.

The Rules on Impartiality have been approved and recommended for application by the Presidium of the ICAC and by the Management Board of the Russian Centre for Assistance to Arbitration (an NGO established in 2001 by Russian and Moscow Chambers of Commerce and Industry and by leading universities).

11. Does the applicable legislation contain default provisions relating to the appointment and/or removal of arbitrators?

The AC Law and the ICA Law both provide rules relating to these matters.

AC Law

If the dispute is to be considered by three arbitrators, each party must appoint one arbitrator, and the two arbitrators appointed must appoint the third arbitrator (*Article 10*). If any party fails to appoint an arbitrator within 15 days from receiving the relevant request from the other party or if the two arbitrators fail to appoint the third arbitrator within 15 days from the moment of their appointment, the arbitration must be terminated, and the dispute can be referred to the competent state court.

If the dispute is to be considered by a sole arbitrator, the parties must appoint the sole arbitrator within 15 days from the day of one party receiving the other party's suggestion to appoint the sole arbitrator. If the sole arbitrator is not appointed within the specified time, the arbitration must be terminated, and the dispute can be referred to the competent state court. State courts cannot assist with the appointment of arbitrators.

ICA Law

If the dispute is to be considered by three arbitrators, each party must appoint one arbitrator, and the two appointed arbitrators must appoint the third arbitrator (*Article 11(3)*). If any party fails to appoint an arbitrator within 30 days from receiving the relevant request from the other party or if the two arbitrators fail to appoint the third arbitrator within 15 days from the moment of their appointment, the appointment must be made by the Presidium of the ICAC. The Presidium of the ICAC must also appoint the sole arbitrator if the parties fail to agree on this.

PROCEDURE

12. Does the applicable legislation provide default rules governing the commencement of arbitral proceedings?

The AC Law contains no provisions relating to the commencement of the arbitration proceedings.

Under the ICA Law, the arbitration proceedings start when the respondent receives a copy of the request of arbitration (*Article 21*).

13. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply? Does the legislation provide any default rules governing procedure?

Domestic arbitrations

If a dispute is referred to a permanent arbitration institution, the rules of this arbitration institution are deemed an integral part of the underlying contract, unless otherwise agreed by the parties (*Article 7(3), AC Law*). If a dispute is to be considered by an ad hoc arbitral tribunal, the tribunal must follow the rules agreed by the parties. If the parties fail to reach agreement, the arbitral tribunal can conduct the proceedings in a manner considered appropriate.

International arbitrations

The parties can agree on the applicable procedural rules (*Article 19, ICA Law*). In the absence of this agreement, the arbitral tribunal can conduct the proceedings in a manner considered appropriate.

14. What procedural powers does the arbitrator have? If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

An arbitrator can request disclosure of certain documents or attendance of witnesses, if it is necessary to issue a well reasoned arbitration award. If a party fails to comply with the arbitrator's request, the tribunal can issue an award based on the available evidence. In addition, an arbitral tribunal can ask a state court for assistance in obtaining the necessary evidence.

In addition, an arbitrator can order interim measures in relation to the subject matter of the dispute.

EVIDENCE

15. What documents must the parties disclose to the other parties and/or the arbitrator(s)? Can the parties determine the rules on disclosure? How, in practice, does the scope of disclosure compare with disclosure in litigation?

The parties cannot determine the rules on disclosure, as it is set out in the legislation (*see below*). The scope of disclosure can be compared to disclosure in litigation. However, unlike in litigation, a party's failure to provide evidence entitles the tribunal to issue an award based on the available evidence.

In domestic arbitrations, each party must prove the circumstances to which it refers in its claim or defence (*Article 26, AC Law*). Therefore, the parties must disclose to each other and to the arbitrator(s) all of the documents that can serve as evidence.

In international arbitration, the parties can submit any documents they consider relevant to the case together with their written statements (*Article 23(1), ICA Law*). These documents must also serve as evidence.

CONFIDENTIALITY

16. Is arbitration confidential?

AC Law

Confidentiality is one of the key principles of arbitration (*Article 18*). Therefore, the parties and the arbitral tribunal must comply with the requirement of confidentiality during the proceedings. An arbitrator cannot:

- Disclose any information obtained during arbitration proceedings without approval of the parties or their successors (*Article 22(1)*).
- Be interrogated as a witness in relation to the information obtained during arbitration proceedings (*Article 22(2)*).

In addition, the hearings are closed to the public, unless otherwise agreed by the parties (*Article 27(4)*).

ICA Law and arbitration rules

The ICA Law is silent in relation to confidentiality of arbitration proceedings. However, the rules of the permanent arbitration institutions usually provide for confidentiality of the arbitration proceedings. For example, the Rules of the ICAC provide that the arbitrators, reporters, experts appointed by the arbitral tribunal, the ICAC and its staff, and the Chamber of Commerce and Industry of the Russian Federation and its staff must refrain from disclosing the information about disputes settled by the ICAC, which they become aware of and which may impair the parties' legitimate interests (*Rule 25*).

COURTS AND ARBITRATION

17. Will the local courts intervene to assist arbitration proceedings?

AC Law

A local state court can enforce interim measures awarded by arbitral tribunals (*Article 25*). The arbitral tribunal must first decide on the interim measures, and then the decision of the arbitral tribunal is submitted to a state court with a request to enforce these interim measures.

ICA Law

A tribunal or the parties can request a state court to:

- Award interim measures in relation to a dispute considered by an arbitral tribunal (*Article 9*).
- Assist with obtaining the evidence (*Article 27*).

18. What is the risk of a local court intervening to frustrate the arbitration? Can a party delay proceedings by frequent court applications?

The court cannot intervene on its own initiative. There are two ways for a party to frustrate the arbitration proceedings by applying to a state court:

- To file a request with a competent state court to hold the arbitration agreement null and void. If a court satisfies the request, the arbitral tribunal must terminate the proceedings.
- To appeal against the decree issued by the arbitral tribunal relating to its jurisdiction. A request for setting aside the decree can be filed with the competent court within one month from the day of receiving the notification of the decree. The court must make its final decision in relation to jurisdiction of the arbitral tribunal within one month from the day when the request for setting aside was filed. The decision of the court is final and cannot be appealed.

However, a party cannot delay arbitration proceedings by frequent court applications as the court must not hear the same application twice and the grounds to apply at court are limited.

19. What remedies are available where a party starts court proceedings in breach of an arbitration agreement, or initiates arbitration in breach of a valid jurisdiction clause?

If a party starts court proceedings in breach of an arbitration agreement, a court must dismiss a claim if the respondent objects to the consideration of the merits of the case by the court not later than the first hearing of the case (*Article 148(2), APC; Article 222, CPC*).

If a party initiates arbitration in breach of a valid jurisdiction clause, the arbitral tribunal must also dismiss the action, as the tribunal lacks jurisdiction. The tribunal's jurisdiction is one of the essential matters to be proved (*AC Law; ICA Law*).

20. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

Russian courts cannot intervene in any way in foreign judicial proceedings. This results mainly from the principle of sovereignty of nations, one of the main principles under international law.

However, Russian courts are not likely to recognise and enforce a foreign judicial decision if it was made in breach of an arbitration agreement on the ground that the recognition and enforcement of these decisions violates Russian public policy (*Article 244(7), APC; Article 412(5), CPC*).

21. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

Russian legislation recognises the concept of kompetenz-kompetenz. An arbitral tribunal can decide on its jurisdiction, including any objections relating to the existence or validity of the arbitration agreement (*Article 17(1), AC Law; Article 16(1), ICA Law*). In addition, an arbitrator or arbitral tribunal has the power to issue a separate decree in relation to its competence. Either party can appeal this decree before a competent court.

If a party denies that the arbitral tribunal has jurisdiction, it must make a statement during the arbitration proceedings. The arbitral tribunal must consider this statement and if the tribunal finds that it does not have jurisdiction, it cannot consider the dispute on its merits.

If the arbitral tribunal finds that it has jurisdiction and any party believes otherwise, the objecting party can apply to the competent state court with a request to decide on the jurisdiction of the arbitral tribunal (*Article 16(3), ICA Law*). These decisions are final and cannot be appealed. While the request is pending, the arbitral tribunal can proceed and issue an award.

REMEDIES

22. What interim remedies are available from the tribunal? Can the tribunal award:

- **Security for costs?**
- **Security or other interim measures?**

On a party's request, an arbitral tribunal can award interim measures it considers appropriate. These can include:

- Seizure of bank accounts or other assets.
- Injunctions.

The arbitral tribunal may require the requesting party to provide an appropriate security in relation to the interim measures.

23. What final remedies are available from the tribunal?

The arbitral tribunal can award any remedy requested by a party, including:

- Damages.
- Costs.
- Interest.
- Declarations.

The type of remedy depends on the requesting party's preferences. An arbitral tribunal cannot award an injunction as a final remedy but subject to this, remedies granted by arbitral tribunals do not differ significantly from the remedies awarded by state courts.

APPEALS

24. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties effectively exclude any rights of appeal?

Arbitration awards cannot be appealed but can be challenged in state courts (either in the courts of general jurisdiction or *arbitrazh* courts).

A domestic arbitration award can be set aside on the following grounds:

- The arbitration agreement was held void.
- The dispute was not arbitrable under Russian law (*see Question 4*).
- A party was not duly informed of the appointment of arbitrators or of the hearings, or could not present its submission due to a justifiable reason.
- The arbitral tribunal making the award went beyond the scope of the arbitration agreement. (If the arbitration award went only partly beyond the scope of the arbitration agreement, a Russian court can hold the award only partly invalid.)
- The arbitral tribunal or the proceedings did not comply with the parties' agreement or the AC Law.
- The arbitral award was contrary to the fundamental principles of Russian law.

An international commercial arbitration award rendered in Russia can be set aside by the competent state court if either:

- The requesting party proves that:
  - one of the parties to the arbitration agreement is incapable, or the arbitration agreement does not correspond to the applicable legislation;
  - the requesting party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings, or was otherwise unable to present his case;
  - the arbitral tribunal issued an award in respect of a dispute that is beyond the scope of the arbitration agreement of the parties. However, if only a part of the dispute does not fall within the scope of the arbitration agreement, only that part of the award can be set aside;
  - the composition of the arbitral tribunal or the proceedings did not comply with the arbitration agreement of the parties or with the ICA Law.
- The competent court holds that:
  - the subject matter of the dispute is not arbitrable under the Russian law;
  - the award is contrary to the Russian public policy.

A request for setting aside an arbitral award must be filed within three months of receiving a copy of the award. Both parties are invited by the court to attend the hearing and present their objections or comments.

The parties can exclude the rights of challenge of a domestic arbitration award by providing in their agreement on the finality of the award.

COSTS

25. What legal fee structures can be used? Are fees fixed by law?

Lawyers' and arbitrators' fees are not fixed by law. Both hourly rates and task-based billing can be used. Contingency fees are not expressly prohibited by law but their enforcement is very problematic. The Russian Constitutional Court held in 2007 that contingency fees were against the fundamental principles of Russian law. State *Arbitrazh* courts have also held that the contingency fee arrangements are unenforceable.

26. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Under the AC Law, the arbitral tribunal distributes the expenses connected with arbitral proceedings according to the agreement of the parties. In the absence of agreement, the costs are divided in proportion to the satisfied and rejected claims.

The ICA Law is silent on the matter of costs. In practice, the unsuccessful party usually must pay the successful party's costs in proportion to the amount of the satisfied claim.

Permanent arbitration courts establish their own fee schedules, which form the basis of the calculation of the fees by the arbitral tribunal. The fee must take into account:

- The amount of the claim.
- The complexity of the dispute.
- Time spent by the arbitrators.
- Other relevant circumstances.

The parties in an ad hoc arbitration can agree on the fees in their agreement. In the absence of agreement, the tribunal determines the fees on the basis of the above criteria.

ENFORCEMENT

27. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

An arbitration award issued in Russia is enforceable in the local state courts in its entirety. The procedure of enforcement of domestic arbitral awards is governed by the CPC and APC, depending on the court that has jurisdiction to decide on this matter:

- If an arbitration award is to be enforced by a court of general jurisdiction, the procedure is regulated by Chapter 47 of the CPC. The winning party must file a request for the enforcement with the competent court within three years of the day when the award becomes effective. A request must be accompanied by:
  - the original award and the original arbitration agreement; or
  - duly certified copies of those documents.

  Both parties are invited by the court to attend the hearing and present their objections or comments. If the court finds that the award can be enforced, it issues the writ of execution to the winning party.
- If an arbitration award is to be enforced by an *arbitrazh* court, the procedure is regulated by Chapter 30 of the APC. In practice, the procedure for considering a request for enforcement is the same as for the courts of general jurisdiction (*see above*). The time limit for the request for recognition and enforcement of an arbitral award is three years from the date when the award becomes effective. If the request is successful, a writ of execution is issued to the enforcing party.

MAIN ARBITRATION ORGANISATIONS

International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC)

Main activities. The ICAC resolves disputes arising out of contractual or other civil law relationships connected with foreign trade and other kinds of international business if either:

- The place of business of at least one of the parties is located abroad.
- The dispute is between:
  - enterprises with a foreign interest, and international associations and organisations, established in the Russian territory, or between their members; or
  - these enterprises and other subjects of Russian law.

W *www.tpprf-mkac.ru/indexeng.php*

Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation (MAC)

Main activities. The MAC is involved in resolution of merchant shipping disputes arising from contractual and other civil law relations irrespective of whether the parties include both Russian and foreign entities, or whether the parties are only Russian or only foreign entities. The issues that can be addressed to the MAC include:

- Navigation of seagoing vessels.
- Inland vessels on international rivers.
- Disputes relating to the international shipping by inland vessels.

W *www.tpprf-arb.ru/eng/mak_index.php*

28. To what extent is an arbitration award made in your jurisdiction enforceable in other jurisdictions? Is your jurisdiction party to international treaties relating to this issue such as the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Russia is party to the New York Convention. Therefore, an arbitration award made in Russia can be recognised and enforced in other signatories to the New York Convention under the provisions of the Convention. As many countries are parties to the New York Convention, there are usually no substantial problems with the recognition and enforcement of arbitration awards made in Russia.

Apart from that, Russia is party to a number of bilateral international treaties containing certain provisions on enforcement of arbitral awards, which are different from the New York Convention, for example, the Convention concerning Exchange of Goods and Payments of 1940 with Sweden.

29. To what extent is a foreign arbitration award enforceable in your jurisdiction?

A foreign arbitration award can be recognised and enforced in Russia in its entirety by a court of general jurisdiction or an *arbitrazh* court, if such opportunity is provided in an international treaty to which Russia is party or in a federal law. A request for recognition and enforcement of a foreign arbitration award can be filed by the successful party with the competent court within three years from the day when the award became effective. A duly formalised translation of all submitted documents into Russian, including the arbitration agreement and arbitration award, is mandatory in all cases.

The procedure for the recognition and enforcement of a foreign arbitral award is similar to the procedure for the enforcement of domestic awards (*see Question 27*). If the court finds that a foreign arbitration award can be recognised and enforced in Russia, it issues a writ of execution to the successful party.

30. How long do enforcement proceedings in the local court take? Is there any expedited procedure?

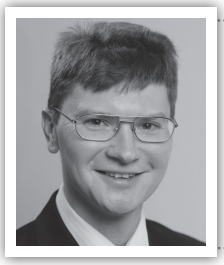
Under the CPC, the court must make the final decision in relation to the enforcement of an arbitration award within:

- One month from the day when a request for enforcement is filed under the CPC.
- Three months from the day when a request for enforcement is filed under the APC.

This applies both to domestic and international commercial arbitration. However, the period of proceedings may be extended due to the Russian courts' current overload (*see Question 1*). In addition, the court can postpone hearing of the case for submission of additional evidence (such as a legal opinion on relevant issues of the applicable foreign law) by the parties. Therefore, enforcement proceedings can take between three and six months starting from the admittance of the application by the court.

There is no expedited procedure.

CONTRIBUTOR DETAILS



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Recent transactions

- Representing subsidiaries of a major Russian energy company in actions on recognition and enforcement of foreign arbitral awards in Russia in conjunction with European and US counsel to co-ordinate parallel actions.
- Providing legal opinions on matters relating to Russian civil law and procedure for submission to English and US courts and to a major German bank.

Muranov, Chernyakov & Partners

KEY VANTAGE POINT

WE CAPTURE THE CLIENT'S VISION

TO IDENTIFY THE OBJECTIVES.

WE APPLY A LAWYER'S VISION

TO FIND THE BEST SOLUTION.

WE EMPLOY AN ENEMY'S VISION

TO MINIMIZE THE RISKS.

WE OFFER THE RELIABILITY OF A PARTNER

YOU CAN ALWAYS CONFIDE IN.

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