

ICC DISPUTE RESOLUTION BULLETIN

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its chairman to act independently of the institution's founding bodies and their representatives had not been dispelled. The Supreme Court noted the following:

- > In the past the partners of the law firm that represented the respondent played a decisive role in appointing and dismissing the chairman of the institution.
- > Former chairmen of the institution were members of that law firm.
- > That law firm and the institution had closely entwined relations with each other.

The Supreme Court concluded that in these circumstances the law firm played a decisive role in the life of the institution and neither the institution nor its chairman could be considered an impartial and independent appointing authority.

In an obiter dictum, the Supreme Court also noted that, when evaluating independence and impartiality, it was free to apply criteria other than those listed in the IBA Guidelines on Conflicts of Interest in International Arbitration, which are simply recommendations and do not establish an exhaustive list of situations creating conflicts of interest.

EUROPE



Russia

Arbitral Institutions Now Required to be State-Registered

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Russia has introduced new legislation intended, among other things, to curb the chaotic and uncontrolled proliferation of arbitration centres in the country. Institutions must be approved by government authorities and demonstrate that they have the required credibility and resources.

Background

On 1 September 2016, new legislation on commercial arbitration entered into force in Russia. It has amended the 1993 Law on International Commercial Arbitration and created a new Law on Arbitration to regulate domestic arbitration. The changes introduced by the new legislation are aimed at improving various aspects of arbitration in Russia. They cover, among other things, the form, interpretation and validity of arbitration agreements; the power of state courts to appoint and dismiss arbitrators at the request of a party in the event that the other party does not act, and to obtain evidence; and the arbitrability of corporate disputes. Another, particularly notable change is the introduction of new regulations concerning permanent arbitration institutions.

Previously, Russian law laid down very liberal conditions for creating arbitral institutions. To acquire the status of a permanent arbitral institution, it was sufficient to adopt arbitration rules and deposit them with the local state commercial court. This led to a proliferation of arbitration institutions in Russia, which quickly numbered more than 1,000, and to the emergence

of so-called 'pocket arbitration courts', which offered fast and claimant-oriented dispute resolution services. Some of these bodies adopted misleading names – such as 'Supreme Domestic Arbitration Court', 'Arbitration Court of the Region ___', 'Arbitration Court of the Central City District ___' – which gave users the impression they were referring their cases to the state courts.

The new legislation is designed to put an end to such practices by setting out specific requirements for the authorisation/registration and operation of permanent arbitral institutions.

The new regime

Arbitral institutions may now be established only by non-commercial entities and in the form of non-profit-making bodies. This requirement is intended to ensure that arbitral institutions are economically independent and remain free of conflicts relating to financial interests.

All permanent arbitral institutions other than the well-established International Commercial Arbitration

Court and Maritime Arbitration Court of the Russian Chamber of Commerce and Industry are required to undergo state registration, which is a two-step process. The institution must submit an application, which is reviewed by the Council for the Development of Arbitration. This is a body set up under the auspices of the Ministry of Justice and is composed of around 40 individuals including government staff, representatives of the legal, academic and business communities, and chambers of commerce. A third of its members are replaced on a rotating basis every three years. The Council makes recommendations to the Government of the Russian Federation on whether to approve or reject applications from permanent arbitration institutions. The recommendation must be approved by at least two thirds of the Council's members. The Government of the Russian Federation then decides whether or not to register the institution. Its decision can be appealed in a state court.

Foreign arbitration institutions wishing to administer disputes seated in Russia are required to follow this registration process, too. However, the new legislation provides a simplified procedure for 'well-known' foreign arbitration centres, which just need to file a statement to the effect that they have an internationally recognised reputation. If a foreign arbitration centre does not register in Russia, the cases it administers that are seated in Russia will be treated as ad hoc arbitrations, which will deprive the tribunals and parties of the benefits of institutional arbitration. In such a situation, the parties would have to agree with a permanent arbitration institution that has been duly registered in Russia to keep the case materials for five

years following the close of the arbitration proceedings. At the time of writing no foreign arbitration institutions have yet applied for registration under the new legislation.

A permanent arbitration institution seeking state registration must:

- > prove that the information about the arbitration institution and its founders is true and correct;
- > demonstrate that the organisation has a sufficiently good reputation and financial standing to act as an arbitration institution, and that it is involved in the development of arbitration at large;
- > adopt arbitration rules that are in compliance with the arbitration law; and
- > compile a list of at least 30 recommended arbitrators, half of whom should have more than ten years' experience of acting as arbitrators or federal judges, and not less than a third of whom should have a Russian postgraduate research degree in named legal disciplines (e.g. civil, commercial, corporate, environmental law, civil procedure).

Concluding remark

It may be expected that the registration requirement will lead to a significant decrease in the number of domestic arbitration centres and to an improvement in their quality. It is still unclear whether foreign arbitration institutions will wish to register in Russia.