

Kluwer Arbitration Blog

New Rules of the Game for Arbitral Institutions in Russia: Two Recent Governmental Authorizations

Elena Burova (Arbitration Center at the Institute of Modern Arbitration) · Tuesday, May 23rd, 2017

One of the most significant changes that the new Russian Arbitration Law introduced, which has been in force for past eight months, relates to the requirement of Governmental authorization for establishing an arbitral institution (more discussion on this can be found in some of previous KAB posts available [here](#), [here](#), [here](#)).

In particular, the Russian Arbitration Law now provides that only non-profit organizations can establish a permanent arbitral institution (PAI), i.e. a subdivision of a non-profit organization performing the functions of administering arbitration on a permanent basis, as opposed to *ad hoc* arbitration. Such non-profit organizations shall obtain authorization from the Russian Government that is granted based on the recommendation from the Council of Development of Arbitration by the Ministry of Justice (Council).

There are several requirements for an arbitral institution that need to be met, and which are thereby investigated and confirmed by the Council. These are, *inter alia*:

- compliance of arbitration rules and recommended list of arbitrators with criteria set by the new Law,
- reputation of a non-profit organization (this includes, in particular, the reputation of the organization's founders, as well as ensuring that the activity is aimed at the promotion of arbitration and providing a high standard arbitration services).

It is also worth mentioning that the two oldest Russian arbitral institutions – the International Commercial Arbitration Court (ICAC or MKAS) and the Maritime Arbitration Commission (MAC) at the Russian Chamber of Commerce and Industry – are exempted from the requirement to apply for the governmental authorization.

Russian Government Recently Granted Its First Authorization

On May 3, 2017, the Government of the Russian Federation released [its first decision, dated April 27, 2017](#), granting authorization to act as a permanent arbitral institution, which has significant implications for arbitration practice in the country. The Russian Government authorized two Moscow-based non-profit organizations to perform the functions of a PAI: the Russian Union of Industrialists and Entrepreneurs (RSPP) and the Institute of Modern Arbitration. The RSPP was established as a non-political organization shortly before the collapse of the USSR “to protect the

interest of industry at the time of fast and large-scale transformations in the state's politics and economy."

The [Arbitration Center at the Institute of Modern Arbitration](#) was established in August 2016, at the initiative of the Federal Bar of Attorneys of Russia and Saint-Petersburg International Legal Forum. One of the main goals of the Arbitration Center is to facilitate professional, efficient and impartial resolution of disputes of any complexity in strict compliance with the new Russian arbitration procedure. Its rules are available in English and Russian. The Arbitration Center is also actively involved in promoting arbitration in Russia via organizing and holding educational and practical conferences and seminars.

Practical Implications of Governmental Authorizations on Arbitral Proceedings

As the new Law presupposes that certain procedural features of arbitration are available exclusively in an arbitral proceeding administered by a PAI, obtaining governmental authorization implies considerable advantages of PAIs over ad hoc arbitration. Some of them are listed here:

Arbitration of Corporate Disputes

Only a PAI can administer corporate disputes that are now considered arbitrable, as a result of the arbitration reform. The new Law also requires that the PAI administers this type of arbitration according to special rules for corporate disputes. Some arbitral institutions have already developed and adopted arbitration rules for corporate disputes. For example, the ICAC has separate set of rules for corporate disputes, and the Arbitration Center at the Institute of Modern Arbitration [has the rules for corporate disputes](#) as a part of its 2017 Arbitration Rules (Chapter 8).

Waiver of the Right to Annul an Arbitral Award

Another change that the new Law implements is the parties' option to exclude the possibility to annul an arbitral award before national courts. Before the reform, this was expressly allowed only in domestic arbitration. Now this option has become available in any arbitral proceedings (both domestic and international) administered by a PAI – the parties may conclude an express agreement regarding legal remedies available to the parties against an arbitral award.

Judicial Assistance of State Courts

Parties to arbitration can apply to state courts for judicial assistance in certain procedural issues, such as taking evidence. For example, courts may be asked to order the production of documents, as arbitrators often miss coercive power to do so. Only parties to arbitration administered by a PAI can make use of this mechanism, according to the new Law.

Concluding Remarks

Looking at this development from a general perspective, it is a huge step forward towards building a professional and efficient arbitration framework in Russia. Before the arbitration reform, the establishment of an arbitral institution in Russia was unrestricted, which led to abuses and fraudulent practices. For example, according to the statistics of the Moscow Commercial Court, only in Moscow there were almost 330 arbitral institutions registered. The new arbitration law imposed the authorization requirement to eliminate the opportunities for misuse of arbitration proceedings in so-called "*pocket*" arbitrations. These were institutional arbitrations involving

corporations as parties, and these very same corporations were at the same time the founders of institutions administering the respective proceedings. Hence, the arbitral tribunals formed under those institutions often lacked independence and/or impartiality, and for that reason national courts raised the conflict of interests issues (*e.g.*, *LUKOIL-Energosefti* case decided by the former Supreme Commercial Court).

While the authorization requirement is aimed at obviating those unfair business practices, there is still a certain risk that some parties may resort to *ad hoc* arbitration or nonreliable arbitration centers seated outside Russia to circumvent authorization. One of recent examples that illustrates this practice is the case of an arbitral tribunal deciding under the auspices of the Russian-Singapore Arbitration Court, whose award was not in the end recognized in Russia. The restrictions imposed on *ad hoc* arbitral proceedings, as compared with authorized institutional arbitration, intent to neutralize this.

Overall, the road is long and further effort is expected from arbitral institutions, but also from national courts and arbitration community in general. Hopefully, other Russian arbitral institutions will follow the lead of pioneer arbitration centers and continue to contribute to forming a comfortable and independent dispute resolution environment in the country.

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