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The International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry: New Developments and a Short Comment on the Rumor Mill

Alexander Muranov (Muranov, Chernyakov and Partners) · Friday, July 23rd, 2010

Last month a number of noteworthy arbitration-related developments took place in Moscow.

Firstly, the international conference “Commercial Arbitration in Russia, Sweden and the UK: New Business Opportunities”, was held on 9-10 June at the Congress Center of the Russian Chamber of Commerce and Industry. The conference was jointly organized by the Center of Arbitration and Mediation at the Russian Chamber of Commerce and Industry in cooperation with the Stockholm Chamber of Commerce, CIA and BE Capital. More than 100 lawyers from Russia and abroad attended the conference with a wide range of interesting topics. In conjunction with this event, a meeting of the newly elected SCC Secretary General Annette Magnusson and Kaj Hobér with members of the Russian Young Arbitration Lawyers Group, MAF40 was held to discuss arbitration in Sweden in general, and activities of the SCC in particular (<https://www.sccinstitute.com/?id=23696&newsid=34412>).

Secondly, on June 23, 2010, the Russian Chamber of Commerce and Industry took some initiatives with regard to the International Commercial Arbitration Court (ICAC), which is acting under the auspices of that Chamber. To this, a new list of arbitrators of the ICAC was approved by the Russian Chamber of Commerce and Industry. The list currently includes 179 Russian and foreign practitioners. The previous list that was approved in 2005 with later amendments included 176 Russian and foreign arbitrators. The current list, taken into account the number of deceased arbitrators and those who were not included in the list, there are 30 newly listed arbitrators, among them 10 are foreigners.

The list is not mandatory for the parties to choose from in disputes to be considered by the ICAC; however, the Chairman of the arbitral tribunal (in case there are three arbitrators) shall be appointed by the Presidium of the ICAC only from that list. Should the Presidium of the ICAC decide that the dispute should not be resolved by a panel, a sole arbitrator shall also be appointed by the Presidium of the ICAC only from that list.

In addition, the Russian Chamber of Commerce and Industry has also introduced several important amendments to the ICAC Rules (the “Rules”).

The position of the First Deputy- Chairman of the ICAC has been created. The person in that position is intended to replace the Chairman of the ICAC in case of a need. Subject to the ICAC

previous Rules, there were two Deputy- Chairmen with the same legal status.

Furthermore, the amendments increased the number of the members of the Presidium of the ICAC, who are elected during the general meeting of the ICAC arbitrators every 5 years, from five to seven. Furthermore, the Rules of the quorum of the Presidium of the ICAC (important body in everyday activities of the ICAC) were also amended.

In addition, a new provision was added in relation to the number of copies of all documents that need to be submitted to the ICAC (one extra copy is to be provided); the additional copy is to be provided to the Rapporteur in an ICAC case. The involvement of a Rapporteur is a special procedural feature of every ICAC case: a Rapporteur is a knowledgeable person appointed by the secretary of the ICAC (subject to the proposal of the Chairman of the arbitral tribunal or the sole arbitrator) to help the arbitral tribunal or the sole arbitrator with the file. In the ICAC, there is a list of rapporteurs. A Rapporteur whose name is not included in the list of Rapporteurs can still be appointed subject to the prior approval of the ICAC Chairman.

Moreover, two major amendments were introduced to the Rules in order to promote transparency and efficiency. Firstly, the Rules provides that party in a dispute can request to submit its oral arguments via a video conference. This request is considered by the arbitral tribunal or the sole arbitrator subject to the circumstances of the case, opinion of the other party(s) and technical availabilities. Secondly, the Rules state that a person can hold a position of an ICAC Chairman for two terms only (not more than 10 years).

On June 28, 2010, the General Meeting of Arbitrators of the ICAC was held. Professor Alexey A. Kostin was elected as the Chairman of the ICAC, while Professor Ivan S. Zykin was elected as the First Deputy-Chairman of the ICAC, and Professor Evgeniy A. Sukhanov was elected as the Deputy-Chairman of the ICAC.

Professor Alexey A. Kostin, supported by 80 % votes of the ICAC arbitrators replaced Professor Aleksandr S. Komarov, who held that position for 17 years (since 1993). The following persons were elected members of the Presidium of ICAC for a five-year term: professor Nina G. Vilkova, professor Alexey N. Zhiltsov, professor Aleksandr S. Komarov, professor Sergei N. Lebedev, professor Aleksandr L. Makovskiy, professor Mikhail G. Rozenberg, professor Oleg N. Sadikov.

I believe that all amendments are positive with real intention to make the ICAC more transparent and more competitive.

Just to mention one last thing that I found is interesting, thus worth noting. A few mass-media in Russia broadcasted a rumors on the potential relation between the new elections and the cases heard by ICAC arbitrators almost four years ago (<https://www.kommersant.ru/doc.aspx?fromsearch=32838547-ebbf-4c10-bab5-a749b20307c6&docid=1405322>). among the cases were Yukos Capital s.a.r.l. (Luxembourg) v. OJSC Yuganskneftegaz (former subsidiary of Yukos Oil Company, which was held insolvent by Russian courts due to huge tax liabilities because of its involvement in tax scams. OJSC Yuganskneftegaz was finally acquired by the Russian state oil company Rosneft). The claimant sought to enforce four loan agreements. In the four similar cases, the ICAC Arbitral Tribunal found in favor of the claimant. Later on, the debtor successfully challenged the awards before the Russian Commercial (Arbitrazh) Court, which set the awards aside for a number of procedural violations. Then Yukos Capital s.a.r.l. applied to Dutch courts to enforce the awards. The Court of the First Instance

rejected enforcement while the Appellate Court found in favor of Yukos Capital s.a.r.l.

On June 25, 2010, three days before the ICAC Meeting, the Dutch Supreme Court denied Rosneft the right to appeal in that case on enforcement. That decision of the Dutch Supreme Court provided a good ground for rumors. It was rumored that the ICAC Chairman was replaced for political reasons, i.e. perhaps due to his influence on the outcome of the said arbitral cases in 2006 or for failing to prevent granting the awards by the ICAC Tribunals in favor of Yukos Capital s.a.r.l. In my opinion, such rumors are mere gossip by people who are not aware of the ICAC procedures taken to resolve the cases and the amount of preparation needed, or that they have an intent to distort the ICAC procedures. You may believe everything you read in the newspapers or hear in the media unless you were a witness to an event. I was.

Alexander Muranov


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