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The Rise of Russia's Far East Is Likely to Prompt Changes in Arbitration Geography

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Introduction and background

Vladivostok is often perceived as the 'capital' of Russia's Far East. It is also often portrayed, however, as Moscow's backward colonial outpost, with few cars on the streets and where the supermarkets' half-empty shelves offer nothing but Bulgarian pickles and stale bread. This perception is misguided.

Russia's Far East encompasses 36% of Russia's entire territory: that is, 6.2 million square kilometres, or about 8,700 times the size of Singapore or 5,600 times that of Hong Kong. The region produces over 60% of Russia's gold, 90% of its diamonds, 65% of its fish products, 30% of its timber, and an increasing share of Russia's oil and gas. The region is fortunate to enjoy proximity to the resource-hungry Asia-Pacific economies, where it has a ready market for its products. Vladivostok is about 6,437 kilometres from Moscow but just 1,335 kilometres from Beijing and 1,062 from Tokyo. It shares a 3,600 kilometre frontier with China, while it is loosely linked to Moscow through the Trans-Siberian Railway, on which transport tariffs are high but the quality of service is low. The region is naturally gravitating towards Asia, and this is driving an increasing number of large-scale commercial operations in the region. Given this level of trade and investment activity, disputes involving Russia's Far East are inevitable.

In addition, Russia's Far East is strategically situated in the north Pacific at the intersection of the interests of several major powers. This has generated a number of border delimitation disputes of major political sensitivity. These include Russia's long-running territorial dispute with Japan over four South Kuril islands, now exacerbated by Japanese sanctions, and Russia's dispute with China over several islands on the Amur and Ussuri rivers.

Implications for dispute resolution

Despite its significant presence in the Asia-Pacific – including in terms of disputes – little attention is paid to the region's arbitration laws and to how its numerous disputes are being resolved. There are many reasons for such neglect. The region's resource wealth and its proximity to the Asian export markets have traditionally been superseded by the fact that the region was previously locked into a colonial relationship with Moscow. Until recently, Russia's Far East relied on investment policies generated by Russia's federal treasury. It functioned under constraints imposed by Moscow to meet Russia's national economic and geopolitical goals. With Russia's shift towards

Asian markets, now accelerated by sanctions, however, this is about to change.

In 2009, presidents Dmitry Medvedev and Hu Jintao signed an agreement to link the development of Manchuria to that of Russia's Far Eastern provinces. The agreement foresees large-scale cross-border investment projects, such as mineral resource extraction.

In December 2013, Russia's President Putin announced that the Government was contemplating the establishment of a special economic zone in Russia's Far East. He said:

“I propose setting up a network of special advanced economic development zones in the Far East and East Siberia, offering preferential terms for setting up manufacturing and processing productions aimed, among other things, at export markets.”

On 18 August 2014, the Government passed a decree by virtue of which Vladivostok and its surroundings would become a Russian special economic zone. The zone was created within the framework of Russia's Federal Law on Special Economic Zones. The zone is scheduled to commence operations on 1 January 2016. Potential investors will be granted tax exemptions and will benefit from reduced administrative barriers to the pursuit of their activities within the zone's borders. Vladivostok is likely to permit foreigners to obtain visas on arrival (whereas they must currently obtain visas at least one month before the date of travel). A simplified customs regime is being introduced. Many other benefits are also anticipated.

At the time of writing, Russia's Ministry of Foreign Affairs has listed on its website no less than 23 foreign investment projects in the Primorsky Region of Russia's Far East. These projects include construction of LNG plants, oil and gas processing facilities, large-scale agricultural projects, casinos and tourist resorts.

Disputes are an inevitable side effect of economic development. While most Russian-Asian commercial disputes have traditionally been resolved through negotiation and mediation, and often in local courts, larger disputes have often been resolved through arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce or in other European arbitration centres. This trend appears to be changing. For disputes emanating from Russia's Far East, Stockholm seems like a remote and foreign forum, plagued by sanctions and associated uncertainty and suspicion.

Arbitrating those disputes in Russia and in particular in the International Commercial Arbitration Court in Moscow enjoyed some success. This option has become less popular, however, because Russia's legal environment is perceived as unstable. In May 2015, Russia's government submitted to the State Duma a new set of laws aimed at amending Russia's arbitration legislation. A lengthy document envisages amendments to the Codes of Arbitral Procedure, Civil Procedure and Criminal Procedure, as well as to the Federal Law on International Commercial Arbitration. The proposed amendments are vast. They include (inter alia) redefining what is arbitrable in Russia, clarifying the courts' supervisory role, and introducing criminal liability for arbitrators for “improper” decisions. The new amendments attempt to render ad hoc arbitration clauses in Russia unenforceable, much as in China. If adopted, the amendments are likely to enter into force on 1 September 2015.

The remaining option is to arbitrate Russian Far East disputes in Asia. The China International Economic and Trade Arbitration Commission is currently administering a number of Russia-related disputes. The Hong Kong International Arbitration Centre has registered a number of Russian-Asian disputes; a number of other disputes have found their way to the Singapore International Arbitration Centre.

Prompted by the opening up of Russia's Far East, Asian arbitration centres are likely to experience an influx of disputes emanating from that region.


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