Kluwer Arbitration Blog

The 2017 ICAC International Arbitration Rules Released

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Arbitration has become a preferred method for the resolution of international commercial disputes in Russia, mostly thanks to the activities of the Moscow-based International Commercial Arbitration Court ("**ICAC**", the Russian acronym "**MKAS**") at the RF Chamber of Commerce and Industry. Established in 1932 as the Foreign Trade Arbitration Commission placed under the USSR National Chamber of Commerce, the ICAC handled 22 cases in 1939, including 7 disputes involving English companies.

In 2014-2015, the ICAC caseload reached 495 international arbitration case filings, including 40 disputes involving companies from Germany, 26 from China, 15 from the United States, and 13 from the United Kingdom (*A.N. Zhiltsov*, Review of ICAC Practice for 2014-2015 (in Russian), in: International Commercial Arbitration Review, 2016, Issue 2). These numbers established the position of the ICAC as the largest international arbitration service provider in Eastern Europe.

The revision of the 2005 ICAC Rules was inevitable to bring them in line with mandatory rules set out by the reformed Russian arbitration law. In competitive markets, arbitration rules should regularly be updated to accommodate demands of institutional arbitration users. For example, since 2005, other renowned arbitral institutions (e.g., in New York, London, and Paris) reviewed their rules, and some of these institutions reviewed them even more than once (in Hong Kong, Stockholm, Vienna, and Singapore). A healthy ambition to reflect the best of modern arbitration practices became a driving factor for the reconsideration of the ICAC Rules as well.

Under auspices of this ambition, the ICAC recently published the revised ICAC International Commercial Arbitration Rules ("2017 ICAC Rules") (see the Russian version here), which came into force on 27 January 2017 (the date of their filing with the Russian Ministry of Justice).

This post offers an overview of the 2017 ICAC rules. Some of the key features of revised arbitration procedure are reflected in provisions on the commencement of arbitration, formation and challenge of a tribunal, legal representatives, organization of proceedings, expedited procedure, and complex arbitrations. As the 2017 ICAC Rules are a part of a broader regulatory reform at the ICAC, before presenting these key features, a brief overview of the overall changes in the ICAC regulations is provided:

A Brief Overview of the Changes in the ICAC Regulations

The ICAC legal status is governed by the statutory ICAC Regulations, attached to the Russian International Arbitration Act. The 2017 ICAC Organizational Principles Regulations complements

these statutory regulations by governing the status of arbitrators, the organization of ICAC bodies, and other general issues.

Due to the ICAC merger with the Arbitration Court and the Sports Arbitration Court, two further specialized sets of rules were approved – the 2017 ICAC Domestic Arbitration Rules and the 2017 ICAC Sports Arbitration Rules.

When considering arbitration in Russia, it is also necessary to notice a particular approach to corporate arbitration, discussed already at the Kluwer Blog (see more here and here). As a consequence of this newly developed approach, the ICAC adopted the 2017 ICAC Corporate Law Disputes Arbitration Rules.

Furthermore, the ICAC introduced short rules governing the administration of *ad hoc* arbitrations, which might apply to those cases that fall under the 2010 or 1976 UNCITRAL Arbitration Rules. Apart from the appointment and removal of arbitrators, the ICAC's organizational support in *ad hoc* arbitrations may include the circulation of submissions, tribunal secretary service, arrangement of oral hearings, arrangement of hearing and meeting rooms, administration of the payment of fees to arbitrators, certification of arbitrators' signatures on awards, and similar.

Finally, the ICAC Schedule of Arbitration Costs was updated and the ICAC Regulations for the Payment of Arbitrator's Fees and Arbitration Administration Fees were adopted.

Key Changes of the 2017 ICAC Rules

The Commencement of Arbitration

As under the previous regime, arbitration proceedings before the ICAC are commenced upon:

1. the delivery of a full-framed statement of claim, and
2. the payment of a non-refundable registration fee of $1,000.

Those actions shall suspend the running of a limitation statute period and the applicable version of the ICAC Rules will be determined accordingly. To be precise, the applicable version will be the version in effect at the time of the commencement of arbitration. Any defects of a statement of claim should be remedied upon the Executive Secretary' request within a 15-day time limit.

The Appointment of a Tribunal

As a default rule, the 2017 ICAC Rules provide for a three-member tribunal, unless the aggregate claim amount in dispute falls below $50,000. In that case, the dispute will be decided by a sole arbitrator (cca. 30% of ICAC cases).

To follow-up on the Dutco case, it is envisaged that when there are more than two parties and the dispute is referred to three arbitrators, the group of claimants and the group of respondents shall each designate an arbitrator. In the event of any failure to designate an arbitrator by one of the groups, the arbitrator shall be appointed by the Appointment Committee, which, simultaneously, may at its sole discretion appoint an arbitrator for the counter-party as well.

The Challenge of Arbitrators

Either party may challenge an arbitrator if circumstances exist that give rise to justifiable doubts as

to the arbitrator's impartiality or independence, or if an arbitrator lacks qualifications set out by the parties' agreement or applicable law.

A 15-day time limit for challenging an arbitrator may be prolonged by the Appointment Committee when there is a valid excuse for the omission of the time limit, or depending on the nature of a challenge ground. Namely, some challenge grounds, comparable to Non-Waivable Red List grounds, can be invoked at any stage. These grounds are included into Clause 5 of the Rules for Arbitrators' Impartiality and Independence ?f 27.08.2010 No. 39, and they are modeled according to the 2004 IBA Guidelines on Conflicts of Interest in International Arbitration.

Legal Representatives

Following the trend set by Article 18 of the 2014 London Court of International Arbitration Rules, each party shall ensure that its representative is acting in compliance with the ICAC Rules. When authorizing its representative, the party shall thereby confirm that the legal representative has agreed to such compliance. Non-compliance may result in a negative allocation of arbitration costs, an issuance of a written reprimand, or in an offer to the party to substitute its representative.

Any party should provide information on any intended change in regard to its legal representation, and such changes are prohibited after the tribunal's formation if such a change could give rise to the grounds for the challenge of an arbitrator, or it could lead to the annulment of an award.

The Organization of Arbitration Proceedings

A tribunal's chair may, upon consultation with co-arbitrators, establish a procedural timetable setting out procedure and time limits for filing of additional pleadings and evidences, and he/ she may arrange a case management conference.

Interestingly, keeping the records of hearings is not compulsory anymore. Only where the tribunal considers it expedient, the records will be prepared. In practice, this document may serve in annulment proceedings as evidence for an (im)properly held arbitral hearing. Thus, the parties are advised to early apply for completing the records and to consent to audio recording to ensure that the proper summary of the progress of a hearing is kept.

Expedited Arbitration Procedure

A time limit for issuing an award amounts to 180 days from the formation of tribunal. An expedited procedure should decrease this limit to 120 days. A fast-track procedure will automatically be employed where the aggregate claim amount does not exceed $50,000. Its key features are as follows:

- a dispute is decided by a sole arbitrator,
- only one round of pleadings is held, and
- an oral hearing is held only upon a party's special request, or based on the arbitrator's decision.

Multi-Contract and Multi-Party Arbitration

By designating the 2017 ICAC Rules, parties agree to apply its new provisions on single arbitration under multiple contracts, consolidation of arbitrations, joinder of additional parties (co-claimants and co-respondents), and intervention of non-parties (intervenors).

For example, claims arising out of multiple contracts or directed against several parties may be made in a single statement of claim even where the claims are covered by different arbitration agreements provided that the arbitration agreements “are compatible in content and are linked from the standpoint of substantive law”.

Upon the request of a party, the ICAC Presidium may consolidate pending arbitration where

(i) all parties agree;

(ii) all claims are made under the same arbitration agreement and there are no other obstacles for consolidation; or

(iii) the claims are covered by different arbitration agreements provided that the arbitration agreements “are compatible in content and are linked from standpoint of substantive law”.

Some other factors, such as at which stage are the proceedings at the moment of consolidation, a risk for approval of contradictory awards, and efficiency of the proceedings, should be given attention when deciding whether to consolidate cases or not. Consolidation shall be deemed impossible without the parties’ consent when different arbitrators have already been appointed for the pending arbitrations.

Author’s Remarks

The adoption of the 2017 Rules shows the ICAC’s commitment to nurturing its status of the largest arbitration service provider in this part of Europe. These rules implement some of the best international practices and, consequently, it is expected that they will serve well the further promotion of arbitration in Russia.

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