



# Commercial Dispute Resolution in Russia

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There is a common perception that commercial disputes should, whenever possible, be resolved outside of Russia. In certain cases, this perception is well grounded, but in other cases, it may be better to resolve disputes in Russia. This article discusses what options are available for dispute resolution, under what circumstances dispute resolution should take place in Russia and how foreign courts' or arbitration tribunals' awards are enforced in Russia.

## Dispute Resolution in Russia

In Russia, commercial disputes can be resolved by the state tribunal (Arbitrazh Court) or arbitration. Each venue handles disputes quite differently, so parties should carefully consider what court is best for them in their particular circumstances before submitting a claim.

### State Tribunals (Arbitrazh Courts)

Russia's state court tribunal, known as the Arbitrazh court, is a court of commercial claims. Historically, the Arbitrazh court settled economic disputes between state organizations, but today, all commercial claims in Russia are resolved in this court, including disputes between both Russian and foreign companies.

A disadvantage to filing a commercial claim in Arbitrazh courts is that Russian law does not officially recognize precedents, making it difficult to predict the outcome of a claim. However, some principal higher arbitrazh court decisions have become widely accepted guidance for the lower courts, so it is now increasingly possible to predict the outcome of certain types of disputes. Moreover, parties to an Arbitrazh claim have several opportunities to appeal a judgment if

they are unhappy with the outcome.

Despite the common prejudice against the Russian court system, there are numerous examples of high-profile litigation in Russia where claims filed by local governmental authorities have been successfully defended.

For example, there was an interesting case involving a Chadbourne client which turned out to be a multi-million dollar case with numerous plaintiffs and legal issues. The case involved litigation in different regions because the plaintiffs attempted to procure a favorable judgment over the same issue in a different court in order to use it in the original case as an already established judicial fact. To top that, the claimants arrested the assets and bank accounts of our client; there was a certain degree of, let's say, a not altogether reasonable attitude from the local government.

Even with all these factors stacked against us, we were able to get all of the claims against our client dismissed with prejudice and settled all issues to the complete satisfaction of our client. Moreover, certain changes to Russian legislation were prompted by the case.

Another interesting case to mention is one where our client was being "bombarded" by a series of lawsuits, including one from the local government seeking to force a gold mining company to return to its shareholders, or their purported assignors, one of which was the local government, the amount of contributions made by them to the company on the basis that the original shares were not properly registered. In total, the claimants sought to recover approximately US \$107 million from the company, which included the amount paid for the shares and a penalty. In addition, the claimants tried to paralyze the company by demanding the arrest

of the company's assets and bank accounts.

Notwithstanding all these negative factors, our team of lawyers lifted the arrest by successfully arguing that the claim was groundless. The court dismissed with prejudice the case brought by the local government, acting under assignment from one of the shareholders of the company. We demonstrated that the issuances of the company's shares were subsequently registered after their original issuance with all the appropriate authorities on two occasions and that all shareholders were aware of the issues and participated in the meetings and voted their shares.

The successful outcome of these cases demonstrates that the option of litigating in a Russian court should not be automatically dismissed, since it is possible to get a fair judgment, and while these cases took just over a year to resolve, many similar cases in international courts have been known to drag on for years and at a great expense.

### Arbitration

Arbitration in Russia is conducted by one of the best-organized and most respected Russian bodies for dispute resolution in international trade, the International Commercial Arbitration Court of the Russian Federation Chamber of Commerce and Industry ("ICAC"). ICAC hears disputes in Russian, but may hold hearings in other languages, using interpreters, when the parties so agree. ICAC also accepts documents in English without translation.

ICAC hears cases when parties to a contract have agreed in the arbitration clause to arbitration in ICAC. However, a state arbitrazh court has the right to hear commercial disputes initiated in such court (in spite of an existing arbitration clause) if there are no objections to the court's jurisdiction nor

moves to enforce an arbitration clause prior to addressing the merits of the case. Alternatively, a court may assert jurisdiction if it finds an arbitration clause invalid or unenforceable. In both cases, the court's claim of jurisdiction should be supported by Article VI of the European Convention on International Trade Arbitration (Geneva, 1961) and Article II of the New York Convention.

In Russia, as in most countries, ICAC awards on the merits of a dispute are final and, therefore, generally cannot be reconsidered. Certain limited exceptions to the finality of an arbitrator's award include the following circumstances: i) if an arbitration clause is invalid; ii) if the proceedings violate a major requirement of the law, such as denial of a party's right to present its explanation; or iii) if the subject-matter of a dispute may not be subject to arbitration under Russian law; or iv) if the arbitral award contradicts a public order of the Russian Federation. When these circumstances arise, the party wishing to set aside an award must file a motion with an arbitrazh court within three months from the declaration of the award. It is important to note that ICAC cannot enforce its own awards. In Russia, arbitration awards are enforced by an Arbitrazh court.

#### **Obligatory Jurisdiction**

In addition to voluntary dispute resolution in Russia, as described above, in certain cases, dispute resolution must be held in Russia. Such obligatory cases, for example, include tax disputes with the Russian tax authorities and bankruptcy proceedings for Russian entities. In either case, Russian law must be the governing law and there is a well established procedure for consideration of such cases.

#### **Dispute Resolution Abroad**

##### **Foreign Courts**

Foreign court judgments generally are not enforceable in Russia, unless a bilateral treaty exists between Russia and the country whose court issues a decision. The former Soviet Union concluded most such treaties with its "fraternal socialist countries," few of which are likely to be chosen as the site of international dispute resolution.

Consequently, a foreign party should take this into account if choosing to litigate in its own local courts against a Russian entity (except in countries with the above-mentioned bilateral treaties).

However, recently Russian courts have introduced a new practice, which in a par-

ticular case resulted in the following ruling: "A motion seeking acknowledgement and enforcement of a foreign award may be supported by a competent Russian court even in the absence of the corresponding international treaty, if foreign courts acknowledge decisions of Russian courts on a mutually applied principle of international courtesy. In this connection, while resolving the case, the court should check whether any acknowledgements of Russian court awards by the courts of the United Kingdom of Great Britain and Northern Ireland were granted, or whether such instances are impossible under the laws of this country."

We are aware of at least one instance where an English court decision was enforced in Russia. In that case, the Russian arbitrazh court reasoned its ruling by the fact that the award of the High Court of England and Wales was subject to the acknowledgement and enforcement by an arbitrazh court of the Russian Federation in accordance with the principle of international courtesy, which is a generally recognized principle of international law, and that in accordance with Part 4, Article 15 of the Constitution of the Russian Federation, generally recognized principles and norms of international law shall be deemed part of the RF legal system. The Russian court in that case further ruled that no grounds (provided for by Article 244 of the RF Arbitrazh Procedure Code) had been established to reject the acknowledgement and enforcement of a foreign award and confirmed that the case record contained proof that English law admits the possibility of enforcing awards issued by Russian courts. At the same time, it should be noted that the foregoing case an isolated one and should not be construed as being indicative of a general recommendation that English court decisions will be enforceable in Russia.

##### **Arbitration**

Russia is a party to the United Nations' 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), meaning that Russia must recognize and enforce awards made in other jurisdictions, except where specific limited exceptions apply.

Litigating high profile or major cases in international arbitrations is becoming increasingly popular among Russian parties. The most popular foreign arbitration venues are London, Stockholm, Paris and New York. Stockholm follows its own rules of arbitration, Paris the rules of the Interna-

tional Chamber of Commerce, London the LCIA rules and New York, the rules of the American Arbitration Association. Similar to awards issued by ICAC judgments, the Russian Arbitrazh court must enforce judgments issued by arbitral bodies. In fact, on September 19, 2006, the Russian Supreme Arbitrazh Court enforced a Stockholm judgment for \$28 million against a Russian oil company.

As far as the choice of governing law, most parties prefer foreign law where there exists a relatively settled law that generally benefits all parties. Russian commercial law is not often favored because it is difficult to predict the outcome of disputes since Russian commercial law has yet to recognise a number of western legal concepts, such as representations and warranties and indemnities.

Parties to commercial contracts in Russia frequently choose English law to govern relations and choose LCIA as the arbitration forum.

Two illustrative cases in which Chadbourne has recently been involved relate to multi-million dollars commercial disputes between a major foreign oil company and subsidiaries of a major Russian oil company. The two disputes were very similar as they both involved the rights of a foreign party to develop of an oil field in Russia; in both cases, the parties to contracts chose English law and the LCIA.

#### **Choosing a Venue in Russia**

When enforcement in Russia is an important consideration, claims should be made in Russia, or risk non-enforcement. Of course, the Arbitrazh Courts may be considered as a possibility to resolve a commercial dispute. However, foreign parties, and especially plaintiffs, may prefer ICAC.

ICAC has many years of experience in settling international disputes. Its rules of procedure are well established. It generally acts more quickly than the foreign arbitration venues, and its arbitrators are generally experienced and objective jurists, usually professors of law or officers of legal departments of foreign trade or international organizations. Moreover, the ICAC is often less expensive than other international arbitration venues. Despite the fact that ICAC's award can be enforced in Russia only through a corresponding procedure in Arbitrazh Court, we recommend this forum for plaintiffs as an efficient way to obtain an arbitration award in Russia. 