

Newsletter

Russian arbitration law reform

February 1, 2019

Dear Ladies and Gentlemen,

On 27 December 2018, the Russian President signed an Amendment Law into the Russian Law on Arbitration. The Amendment Law represents a further step forward in arbitration reform, which Russia is going through, that started from 2015.

Previously, the arbitration reform applied only to the four domestic arbitration institutions that were allowed to arbitrate disputes in Russia. Those institutions were the International Commercial Arbitration Court (ICAC), the Maritime Arbitration Commission (MAC) at the Russian Chamber of Commerce and Industry (both were exempted from the obligation to obtain a license), Russian Arbitration Center at the Institute of Modern Arbitration and Arbitration Center at the Russian Union of Industrialists and Entrepreneurs (RSPP).

The Amendment Law is aimed to liberalize the legal framework of arbitration institutions and simplify the process of obtaining licenses by domestic arbitration institutions. Furthermore, the Law annuls the necessity of obtaining such licenses by foreign arbitration institutions, but rather vests, on the Ministry of Justice, an obligation to maintain the list of reputable foreign arbitration institutions. There is still a requirement to apply to the Ministry of Justice, in order to be included in the mentioned list and be able to administer domestic disputes, or foreign disputes, with a Russian seat of arbitration. However, cancellation of formal licensing of foreign arbitration institutions is a good sign. As of today, the Council for Development of Arbitration is considering the application of one of the most reputable foreign institutions of the Far East and the legal community is optimistic about it, as it may serve as a good example of entering into the Russian arbitration market.

Those arbitration institutions, which do not have licenses, are prohibited from performing any activity relating to arbitration and administration of disputes. In addition, non-licensed institutions, as well as ad hoc arbitrations, are not allowed to advertise their services in any form, including advertising on the Internet. The mentioned amendments are aimed at further elimination of the Russian arbitration phenomenon called "pocket" arbitration.

The Amendment Law also changed the approach, previously established for corporate disputes arising out of shareholder agreements. Previously, the arbitration law provided that such disputes could only be considered by permanent arbitration institutions, which adopted arbitration rules for corporate disputes. The Amendment Law cancelled this rule and allowed administration of such disputes, with the seat of arbitration in Russia, by permanent arbitration institutions, which do not have such rules. The Amendment Law further provides that it is sufficient to conclude an arbitration agreement between the parties of the shareholder agreement, clarifying the previous controversial wording of the Arbitration Law, which prescribed that all shareholders, as well as the company itself, shall be the party to arbitration agreement.

The Amendment Law further grants the Council for Development of Arbitration, which initially was created to provide recommendations in licenses' issuance, the powers to analyze the case law on arbitration.

We note that the amendments have been introduced into Arbitration Law, but we hope that the corresponding amendments in procedural codes, relating to arbitration, will soon follow.

The Amendment Law comes into force on 29 March 2019.

We hope that the information provided herein will be useful to you.

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Sincerely,
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