

RUSSIA

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

<p>Key places of arbitration in the jurisdiction</p>	<p>As a practical matter, Moscow is the key place for arbitration in Russia. At the time of writing, there are just four institutions eligible to administer arbitrations under Russia’s new arbitration legislation, and all of them located in Moscow. These are the two institutions which obtained a governmental permit required under the country’s new arbitration legislation (the Arbitration Centre with the Institute of Modern Arbitration and the Arbitration Centre with the Russian Union of Industrialists and Entrepreneurs) and the two institutions which were exempted from the permit requirement: Russia’s most important arbitration institution, the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC), and the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation. Some of these institutions have established or are establishing branches in the Russian regions. For example, the ICAC opened branches in Rostov-on-Don, Irkutsk, Ufa and Kazan, with plans for further regional expansion, and the Arbitration Centre with the Institute of Modern Arbitration opened a Far East branch with offices in Vladivostok and Petropavlovsk-Kamchatsky. Numerous other arbitral institutions have been established in Moscow and Russia’s regions before adoption of the new Russian arbitration legislation in late 2015, but at the time of writing, none of them holds a governmental permit as required under the new legislation, which presently bars them from administering arbitrations. (See also Other key points to note below.) Hearings can generally be conducted outside of the location of the institution (subject to any provisions to the contrary in the applicable arbitration rules), and <i>ad hoc</i> proceedings can take place anywhere in the country.</p>
<p>Civil law / Common law environment?</p>	<p>Russia is a civil law country. Legislative acts are the primary sources of law. Court decisions are not officially regarded as sources of law, but guidance from the highest level of courts (<i>i.e.</i>, the Constitutional Court, the Supreme Court and – prior to its dissolution – the Higher Arbitrazh Court) determines how laws are to be interpreted.</p>
<p>Confidentiality of arbitrations?</p>	<p>Russia has separate statutes for “international” and domestic arbitrations. The former generally applies to Russia-seated arbitrations with significant cross-border elements and to the recognition and enforcement of foreign awards in Russia, while the latter regulates domestic arbitration of “intra-Russian” disputes.</p> <p>The new Russian statute on domestic arbitration expressly establishes the confidentiality of arbitral proceedings, but the statute on international commercial arbitration does not include analogous provisions. In practice, confidentiality is sometimes</p>

	addressed in arbitration rules (for instance, there are confidentiality provisions in the ICAC arbitration rules).
Requirement to retain (local) counsel?	<p>There is no requirement for parties to be represented by external counsel in Russian arbitrations.</p> <p>Federal Law of 31 May 2002 'On Advocate Activities and Advocacy in the Russian Federation' regulates foreign advocates' activities in Russia. According to Article 2 of that law, foreign advocates may provide legal assistance in the Russian Federation on matters of law of the country from which they come, provided that they are registered in a special Russian registry of foreign advocates. 'Advocate' is a special subcategory of Russian legal professional (essentially, a trial attorney being a member of advocates' bar organization, to some extent akin to barristers in English court practice). Most lawyers in Russia (including trial lawyers) are not advocates. Russian law does not require lawyers (including trial lawyers) to be advocates, does not require admission to the advocates' bar as a pre-condition to practicing law, and does not state that Russian or foreign legal professionals who represent clients in courts or arbitration are automatically deemed to be advocates. While Article 2 appears to apply to representation of clients in Russian courts, it is unclear whether it also applies to representation in arbitration.</p>
Ability to present party employee witness testimony?	It is possible to present party employee witness testimony. There are no specific rules in Russian law regulating witness testimony in arbitration.
Ability to hold meetings and/or hearings outside of the seat?	Russia's arbitration laws do not prohibit holding meetings and/or hearings outside of the seat.
Availability of interest as a remedy?	There are no procedural rules in Russian law specifically regulating the interest that a tribunal may or should award. Assuming Russian substantive law applies to the dispute, interest can be awarded as a remedy for non-performance of financial obligations; in the absence of the parties' agreement to the contrary, interest is to accrue at the "key rate" (ключевая ставка) of the Bank of Russia for the relevant default periods (Article 395(1) of the Civil Code).
Ability to claim for reasonable costs incurred for the arbitration?	As a matter of practice, costs are usually borne by the losing party, with the successful party recovering arbitrators' fees and expenses, fees and expenses of the arbitration institution and its own reasonable legal costs and expenses. Cost allocation is subject to agreement between the parties and the applicable arbitration rules, and usually tribunals have wide discretion in this regard.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Contingency fees of lawyers are not expressly prohibited as a matter of law, but courts have repeatedly held such fee arrangements to be unenforceable. Third-party funding of arbitration is not expressly regulated. Russian parties are increasingly considering seeking third party funding available

	<p>from foreign funders, at least in respect of proceedings seated outside Russia. Funder firms have also started to appear domestically.</p>
<p>Party to the New York Convention?</p>	<p>Russia is a party to the New York Convention, as the legal successor to the USSR. The USSR made a reservation that it will apply the Convention in respect of arbitral awards made in the territories of non-contracting states only on a reciprocal basis.</p>
<p>Other key points to note</p>	<p>Russia's arbitration laws were overhauled by reform legislation passed on 29 December 2015 (in force from 1 September 2016). According to the reform legislation, all Russian arbitration institutions except the ICAC and the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation (MAC) must receive a special permit from the Government and deposit their rules before 1 November 2017, otherwise they are not eligible to administer arbitrations in Russia. At the time of writing, only two arbitration institutions received such permits: the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs and the Arbitration Center at the Institute of Modern Arbitration. Permits may also be issued after 1 November 2017 (including to institutions that have had their filings rejected), and the number of eligible arbitral institutions in Russia is expected to grow with time. Ad hoc arbitrations are not prohibited, except in respect of corporate disputes in respect of Russian companies, which is a defined term encompassing all disputes relating to the incorporation, management and participation in a Russian corporation, and may in practice include post-M&A disputes in respect of Russian companies.</p> <p>As a matter of Russian law, corporate disputes can only be arbitrated in arbitral institutions (Russian or foreign) holding a Russian Government permit (as above), and cannot be arbitrated ad hoc. While it can be argued that foreign arbitral institutions can administer Russian corporate arbitrations without a permit, the more conservative reading of the reform legislation suggests that resulting awards would not be enforceable in Russia. In addition, some types of corporate disputes (<i>e.g.</i>, most types of disputes relating to "strategic" Russian companies, as defined in Russian legislation on foreign investment, <i>i.e.</i> entities engaged in certain listed types of sensitive businesses such as the atomic industry, defense industry, mining at major mineral deposits, major mass media and dominant telecommunications companies, and more), are non-arbitrable. Foreign arbitral awards are generally enforceable in Russia based on the New York Convention, but as noted a foreign award is likely to be refused recognition and enforcement in Russia if rendered in respect of a Russian corporate dispute at a foreign arbitral institution holding no Russian Government permit, or in foreign-seated ad hoc proceedings.</p>

	<p>It is important to be aware of whether a dispute will qualify as 'domestic' or 'international' for Russian law purposes. It is arguable that domestic disputes are not capable of being referred to arbitration abroad. If the dispute qualifies as corporate, it is also important to check when the arbitration clause was made. The new Russian arbitration legislation only allows the parties to make arbitration clauses in respect of Russian corporate disputes (including post-M&A disputes) from 1 February 2017 and suggests that earlier arbitration clauses relating to such disputes are non-enforceable.</p>
<p>WJP Civil Justice score (2018)</p>	<p>0.53</p>

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	Russia has separate statutes for international and domestic arbitration. International arbitration is governed by Law 'On International Commercial Arbitration' dated 7 July 1993 (the ICA Law) which was significantly modified by arbitration reform legislation adopted in December 2015. The reform legislation also included a new Federal Law 'On Arbitration' dated 31 December 2015 (the Domestic Arbitration Law) which replaced Russia's pre-existing federal statute on domestic arbitration. The Domestic Arbitration Law and the reformed ICA Law entered into force on 1 September 2016. The ICA Law generally applies to Russia-seated arbitrations with significant cross-border elements and to the recognition and enforcement of foreign awards in Russia, while the Domestic Arbitration Law regulates the arbitration of "intra-Russian" disputes. In respect of Russia-seated international arbitrations, some provisions of the Domestic Arbitration Law (e.g., in respect of eligibility criteria for arbitrators) apply by reference. Qualification of a dispute as 'domestic' or 'international' not only determines which statute and arbitral rules will apply, but may have wider consequences. For example, it is arguable that purely domestic disputes are not capable of being referred to arbitration outside Russia, and those arguments have been supported in some Russian court decisions. It is also important to bear in mind that new Russian arbitration legislation expressly allows arbitration clauses in respect of Russian corporate disputes from 1 February 2017 and suggests that earlier arbitration clauses relating to such disputes are non-enforceable.
UNCITRAL Model Law? If so, any key changes thereto?	Russia`s two arbitration laws are largely harmonized, and based to a significant extent on the UNCITRAL Model Law. There are some differences, for example the criteria of 'international' disputes under the ICA Law are not identical to those under the Model Law, arbitrators may not decide cases <i>ex aequo et bono</i> , etc.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	There are no specialised courts or judges dealing exclusively with arbitration-related matters. The key seat of arbitration in Russia and the location of the most important arbitral institutions in the country is Moscow. The judicial corps in Moscow is well-trained, and Moscow courts of different levels often have to deal with arbitration-related cases such as recognition of foreign arbitral awards and annulment of awards issued in Moscow-seated arbitrations. Regional courts have also had exposure to arbitration matters, e.g. in the cases of recognition and enforcement of foreign arbitral awards against companies in the Russian regions.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Pre-arbitration interim relief is available from courts. Applications for interim relief are considered <i>ex parte</i> . As a practical matter, Russian courts are usually reluctant to grant interim relief, unless

	very strong evidence of immediate risk of asset dissipation can be demonstrated.
Courts' attitude towards the competence-competence principle?	Both the ICA Law and the Domestic Arbitration Law recognise the principle of competence-competence. Russian courts can be expected to recognise and support this rule.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The grounds for the annulment of an award under Russia's arbitration legislation are based on the criteria for the recognition and enforcement of awards under the New York Convention. However, as a practical matter, the application of these grounds may differ from that applied by courts in other countries. For example, Russian courts have traditionally taken a broad view of the public policy exception to the recognition and enforcement of arbitral awards (although the approach has recently evolved towards a narrower interpretation). The New York Convention-based non-arbitrability exception to enforcement will also apply differently in Russia compared to some other jurisdictions. This is because Russia, unlike many foreign jurisdictions, has specific and complex rules defining the arbitrability of various types of disputes, including corporate disputes.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Russian courts will generally refuse enforcement of annulled arbitral awards.
Other key points to note?	∅

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

Russia has separate statutes for international and domestic arbitration. International arbitration is governed by Law 'On International Commercial Arbitration' dated 7 July 1993 (the **ICA Law**) which was significantly modified by arbitration reform legislation adopted in December 2015. This law governs Russia-seated 'international' arbitrations and the recognition and enforcement of foreign awards. The reform legislation also included a new Federal Law 'On Arbitration' dated 31 December 2015 (the **Domestic Arbitration Law**) which replaced Russia's pre-existing federal statute on domestic arbitration. The Domestic Arbitration Law and the reformed ICA Law entered into force on 1 September 2016.

Depending on the existence of 'international' elements as defined in the ICA Law, a dispute may qualify as either 'international' or domestic. This will determine the legal regime and in practice may also determine the applicable rules (for example, the ICAC has adopted separate rules for 'international' and domestic arbitrations). If the dispute is entirely domestic/intra-Russian, it is arguable that it is not capable of being arbitrated outside Russia. There are some court decisions supporting this position.

Important provisions related to arbitration may be found in other Russian legislation, most importantly in the Arbitrazh Procedural Code (the **APC**), which governs proceedings in Russia's commercial (arbitrazh) state courts, including on matters of recognition, enforcement and setting aside of arbitral awards. The crucial definition of *corporate disputes* and the rules on their arbitrability are contained in Article 225.1 of the APC. Provisions related to arbitration can also be found in the Civil Procedural Code (the **CPC**), which governs proceedings in ordinary state courts.

Both the ICA Law and the Domestic Arbitration Law are largely based on the UNCITRAL Model Law on International Commercial Arbitration (1985) (Model Law). However, they differ from the Model Law in some respects.

The Domestic Arbitration Law contains a range of detailed and technical rules adapted to purely Russian disputes. These include mandatory rules not found in the Model Law, such as arbitrator qualification requirements and rules on the operation of arbitral institutions. Some of these domestic provisions also apply by reference to international arbitration seated in Russia, pursuant to Article 1(2) of the ICA Law.

The key differences between the reformed ICA Law and the Model Law can be summarised as follows.

- (1) The determination of the 'international' nature of arbitration under the ICA Law differs in some respects from that under the Model Law. For instance, a foreign seat and/or the parties' agreement that the subject-matter of the dispute is related to more than one jurisdiction are insufficient to render the dispute "international" under the ICA Law. Also, in addition to the standard Model Law language covering cross-border commercial disputes, disputes relating to foreign investments in Russia and Russian investments abroad are in any event considered international under Article 1(3) of the ICA Law.
- (2) The revised ICA Law follows the Model Law in designating courts as supporting and supervisory authorities (as defined in Article 6 of the Model Law). However, for international commercial arbitration proceedings under the auspices of the ICAC and Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation, the President of the Chamber of Commerce and Industry, rather than the courts, is designated as the supervisory authority for arbitrator nominations, replacements and challenges (see Clause 11 of Annex I and Clause 10 of Annex II to the ICA Law).

- (3) The provisions on arbitral agreements in the ICA Law are Model Law-based at their core, but are more extensive and detailed. For example, the ICA Law:
- (a) provides for the possibility of including arbitration agreements in stock exchange and clearing rules and corporate charters (Articles 7(7) and 7(8));
 - (b) contains a default rule that an arbitral agreement in a contract applies to any transactions between the same parties made with the purpose of the performance, modification and termination of the main contract (Article 7(10));
 - (c) provides that, in the event of assignments (change of parties), the arbitration agreement remains in effect as between the assignor and the assignee (and, in the event of the transfer of obligations, remains binding for both the initial and the new obligor) (Article 7(11)), and
 - (d) contains a default rule that a contractual arbitration clause applies to disputes relating to entry into the contract, its effectiveness, modification, termination, validity and to the restitution obligations arising from its invalidation (Article 7(12)).
- (4) The ICA Law allows parties to opt out (by express agreement) of the Model Law-based provisions regarding referral to assistance and supervision authorities in matters of arbitrator appointments and challenges and on the preliminary issue of jurisdiction (Articles 11(5), 13(3), 14(1) and 16(3)); they may also agree on the finality of the award (Article 34(1)). All of these opt-out and finality agreements are only possible in the context of institutional arbitration.
- (5) Unlike the Model Law, the ICA Law does not contemplate arbitrators deciding cases *ex aequo et bono*.

1.2 When was the arbitration law last revised?

Significant reform of the arbitration laws took place quite recently. On 29 December 2015, the Russian President signed into law arbitration reform legislation, including the Domestic Arbitration Law, the revised ICA Law and amendments to a number of other enactments including the APC, resulting in a complete overhaul of Russia's arbitration regime. The reform legislation came into force on 1 September 2016, although a number of provisions took effect later. For example, the provision that only arbitral institutions holding a special Government permit are eligible to administer arbitrations has only become effective on 1 November 2017. As of the time of writing, the reform legislation has become fully effective.

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

Russian law does not establish special choice of law rules for arbitration agreements, leaving this issue open to interpretation. When determining the validity of foreign arbitral agreements in the absence of the parties' express choice, Russian courts are most likely to apply the law of the seat of arbitration, however, other scenarios (including the application of Russian law) cannot be ruled out.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Arbitration clauses are considered separable from the main contract in which it is set forth according to Article 16(1) of the ICA Law and Article 16(1) of the Domestic Arbitration Law.

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

Pursuant to Article 7 of the ICA Law, an arbitration agreement must be made in writing. This requirement will be satisfied, for instance, where the parties co-sign a contract containing an arbitration clause, or if they exchange letters to the same effect. They can also conclude an arbitration agreement by means of reference to a document containing such an agreement. Arbitration agreements made by exchange of electronic

messages are also acceptable, provided that the legal requirements for contracts made by electronic exchange have been observed. In practice, these legal requirements are only satisfied where an electronic exchange is signed with a legally compliant electronic signature (arguably, a simple e-mail will not suffice).

The parties are also considered to have concluded an arbitration agreement in writing where one of the parties alleges its existence in a statement of claim and the other does not deny its existence in its statement of defence.

Russian law sets out additional requirements in respect of the arbitration of corporate disputes, which impacts arbitration agreements. The notion of corporate disputes (per Article 225.1 of the APC) encompasses all disputes relating directly or indirectly to the management of Russian companies or participation in them. Arguably, the definition of corporate disputes covers, among other things, disputes arising out of shareholders' agreements and share purchase agreements in respect of Russian companies. Arbitration clauses in respect of corporate disputes are permitted, and the arbitration of corporate disputes is expressly allowed under the reform legislation, starting from 1 February 2017. Such clauses can be included in particular in the articles of association of Russian companies (provided that the articles are adopted by all participants unanimously, and subject to carve-outs in respect of public joint stock companies and joint stock companies with at least 1,000 voting shareholders).

Arbitration agreements in respect of corporate disputes have to comply with a number of specific requirements, which vary depending on the type of dispute.

The only universal requirement in respect of corporate disputes is that they can only be arbitrated under the auspices of eligible arbitral institutions, meaning those that have obtained a Russian government permit envisaged by the reform legislation (except for the International Commercial Arbitration Court with the Chamber of Commerce and Industry of the Russian Federation (ICAC), which is exempted from the permit requirement). At the time of writing, permits have been issued to just two Russian institutions (the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs and the Arbitration Center at the Institute of Modern Arbitration), though more permits are expected to be issued in future. It remains a matter of controversy whether foreign institutions holding no Russian government permit are eligible to administer Russian corporate arbitrations (such as, for example, disputes under share purchase and shareholders' agreements in respect of Russian companies). On a conservative interpretation of the reform legislation, awards issued under the auspices of institutions without a permit, even if issued outside Russia, could be unenforceable in Russia.

In addition, corporate disputes cannot be referred to *ad hoc* tribunals.

Another requirement is that the seat of arbitration in respect of most corporate disputes related to a Russian company must be in Russia, but exceptions apply: for example, disputes over title to Russian company shares (and arguably, all disputes whatsoever arising under Russian share purchase agreements), as well as disputes over creation of lien and foreclosure in respect of such shares, are not required to be arbitrated with seat in Russia. All disputes involving the target Russian company as well as disputes arising out of shareholder agreements and similar other contracts relating to management of the company must be arbitrated under specialized arbitration rules that provide for information-sharing with the non-disputing shareholders of the target Russian entity and that permit them to join the dispute. Such specialised rules have already been adopted by some Russian institutions, including the ICAC. Where a dispute has to be arbitrated under such specialized rules, a further requirement is that the parties, the target company and all its shareholders must accede to the arbitration agreement. This requirement may often be difficult or impossible to achieve in practice.

It is also important to bear in mind that new Russian arbitration legislation expressly allows arbitration clauses in respect of Russian *corporate disputes* from 1 February 2017 and suggests that earlier arbitration clauses relating to such disputes are non-enforceable. This is indeed how Russian courts treated such clauses in judgments issued under the new arbitration legislation.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

The default position under Russian law is that parties who have not signed the arbitration agreement, and have not agreed to join the arbitration, are not bound by the arbitration agreement. However, an arbitration agreement applies not only to the signatory parties but also to their successors. Furthermore, Article 7(11) of the ICA Law expressly provides that, in the event of assignment of claims and/or transfer of obligations, the arbitration agreement will apply to all relevant parties (i.e., the assignee, assignor, and the initial and new obligors).

2.5 Are there restrictions to arbitrability? In the affirmative:

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law etc.)?

There is a defined list of non-arbitrable disputes in the APC (as to commercial disputes) and the CPC (as to private non-commercial disputes). According to Article 33 of the APC, the following disputes are considered non-arbitrable:

- (a) insolvency disputes;
- (b) disputes arising out of public officials' refusal to register a legal entity in the state register of legal entities;
- (c) intellectual property disputes involving organizations responsible for the collective management of copyright and related rights or falling within the exclusive competence of the Court for Intellectual Rights due to their public nature (e.g., IP registration challenges);
- (d) disputes arising from administrative and other public law matters;
- (e) class actions (however, multi-party actions in corporate disputes may, in principle, be arbitrated);
- (f) privatization disputes;
- (g) disputes relating to public procurement (with a reservation that in future public procurement disputes may become arbitrable, provided that an appropriate arbitral institution is designated for such disputes by separate federal law);
- (h) disputes over compensation for environmental damage;
- (i) certain corporate disputes (Article 225.1(2) of the APC):
 - disputes about the convocation of general shareholders' meetings;
 - disputes arising out of notarization of transactions in respect of participation interests in Russian limited liability companies;
 - challenges to the acts, resolutions and actions (or failures to act) of public and municipal bodies, private entities performing public-law functions, and public officials;
- (j) disputes concerning "strategic" Russian companies as defined in Federal Law No. 57-FZ on Foreign Investments in Business Entities of Strategic Importance for the Defense of the Country and the Safety of the State of 29 April 2008 (the **Strategic Investments Law**); there is a carve-out from this restriction - disputes over share ownership in "strategic" companies can be arbitrated, unless they arise under a transaction that required approval under the Strategic Investments Law; importantly, for the purposes of arbitrability, "strategic" status of the target Russian entity is to be tested as of the date of commencement of the arbitration, and not as of the date when the arbitration clause is entered into;
- (k) disputes relating to "voluntary" and mandatory tender offers and squeeze-out procedures under chapters IX and XI.1 of Federal Law No 208-FZ on Joint-Stock Companies of 26 December 1995; and
- (l) disputes over the expulsion of participants from legal entities.

Despite the fact that the law provides for a closed list of non-arbitrable disputes, there is a continuing controversy in Russian court practice about arbitrability of various types of commercial disputes with a public element, such as concession agreements with state entities, agreements involving the use of State funds for a public purpose, etc. In particular, in respect of concession agreements, a court ruling in the *Orlovsky tunnel*

case in February 2016 suggested that arbitrations under concession agreements cannot be administered by foreign institutions, and another ruling made in September 2017 by a Moscow court in the case *Glavnaya Doroga v Avtodor* (later overturned) suggested non-arbitrability of concession disputes. It would be fair to say that the courts' position in respect of agreements with public elements is still evolving.

2.5.2 b. Do these restrictions relate to specific persons (i.e. State entities, consumers etc.)?

Further carve-outs from arbitrability, in respect of disputes concerning individuals, are envisaged by the CPC. For example, it prohibits arbitration of employment, inheritance and eviction disputes.

There is no general restriction/non-arbitrability of disputes involving public entities, however such disputes may be deemed non-arbitrable if they are of a public nature (see section a above).

2.6 Intervention of domestic courts

2.6.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

Under Article 148(1)(5) of the APC, Russian courts must terminate litigation proceedings ("leave the claim without consideration") and refer the parties to arbitration if there is a valid and enforceable arbitration agreement between the parties, provided that the defendant objects to the court's jurisdiction and invokes the arbitration agreement before its first submission on the merits. This rule applies irrespective of the seat of the arbitration.

2.6.2 How do courts treat injunctions by arbitrators enjoining such courts to stay litigation proceedings?

Russian courts do not enforce anti-suit injunctions ordered by foreign courts (Information Letter of the Presidium of the Higher Arbitrazh Court of the Russian Federation of 9 July 2013 No. 158). While there is no clear guidance on the subject, a similar approach is to be expected in respect of arbitrators' anti-suit injunctive orders.

2.6.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

It is open to debate if Russian courts have any legal standing to intervene in an arbitration seated outside of their jurisdiction. To our knowledge, no attempt to obtain anti-suit injunctions through Russian courts has ever been successful even domestically, and it appears quite unlikely that a Russian court would entertain an anti-suit injunction in respect of a foreign-seated arbitration.

2.7 The conduct of the proceedings

2.7.1 Can parties retain outside counsel or be self-represented?

There is no requirement to retain counsel to represent the parties in the proceedings. Generally, the parties are allowed to be self-represented in the proceedings.

2.7.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

Under the Russian arbitration laws, arbitrators must be impartial and independent. However, these general principles are not particularised in legislation.

In order to give the parties more guidance, in 2010 the Chamber of Commerce and Industry of the Russian Federation published non-binding Rules on Independence and Impartiality of Arbitrators, influenced by the

IBA Guidelines on Conflicts of Interest in International Arbitration. This non-binding guidance may be used by courts in practice as a reference point in resolving challenges.

According to Article 12(1) of the ICA Law, when a person is approached in connection with his possible appointment as an arbitrator, he or she shall disclose, in writing, any circumstances which may give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator must inform the parties about any such circumstances that arise during the arbitral proceedings.

A party can challenge an arbitrator if it has sufficient grounds to believe that an arbitrator is not impartial and independent or does not satisfy the requirements established by the law or agreed by the parties. However, it may only challenge its own appointed arbitrators if the circumstances giving rise to the challenge became known only after the appointment (Article 12(2) of the ICA Law).

In practice, the courts' approach to challenges is heavily fact-dependent, and challenges are decided on a case by case basis.

2.7.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Under Article 11(3) of the ICA Law, unless the parties agree otherwise (including by reference to arbitration rules), the appointment of an arbitrator shall be made, upon application of a party, by the competent Russian court if: (i) in an arbitration with three arbitrators, a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment; (ii) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator.

A court appointing an arbitrator must have due regard for any qualifications required of the arbitrator by the agreement of the parties, and must ensure that the arbitrator will be independent and impartial (Article 11(6) of the ICA Law).

Russian courts have only recently (as part of the arbitration reform) been designated as the competent body to assist in the constitution of arbitral tribunals and in resolving deadlocked challenge procedures. It remains to be seen how efficiently Russian courts will perform these functions.

2.8 Do courts have the power to issue interim measures in connection with arbitrations?

Russian courts have powers to issue interim measures in connection with arbitrations, upon application of a party.

The list of interim measures is open-ended but includes asset freezing orders as well as orders enjoining the respondent or other parties from disposing of the object of the dispute (Article 91 of the APC).

Interim relief applications will be considered by the judge *ex parte* on an urgent basis. Injunctive relief is granted if failure to do so may obstruct or make impossible the enforcement of the decision, or cause substantial damage to the applicant. In practice, Russian courts are often reluctant to grant interim relief, unless urgency and risk of imminent dissipation are very obviously established.

2.9 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

2.9.1 Does it provide for the confidentiality of arbitration proceedings?

The Domestic Arbitration Law expressly establishes confidentiality of arbitral proceedings by default. By contrast, the ICA Law does not contain such default rules. In practice, confidentiality is often addressed in arbitration rules (for instance, there are confidentiality provisions in the ICAC Rules).

2.9.2 Does it regulate the length of arbitration proceedings?

The length of arbitration proceedings is not regulated by law.

2.9.3 Does it regulate the place where hearings and/or meetings may be held?

The parties are free to choose the legal seat of arbitration (save for the restriction that most corporate disputes related to Russian companies must be arbitrated in Russia). The physical location of meetings and hearings can be at any place the tribunal considers appropriate (subject to any restrictions in the applicable rules and the parties' agreement).

2.9.4 Does it allow for arbitrators to issue interim measures?

The arbitral tribunal is allowed to issue any interim measures it deems necessary upon application of parties to the dispute. If the measure is granted, the arbitral tribunal may ask for security (Articles 17 of the Domestic Arbitration Law and the ICA Law). Parties may agree (including by reference to arbitration rules) that the arbitration institution administering the dispute can issue interim measures before the constitution of an arbitral tribunal.

2.9.5 Does it regulate the arbitrators' right to admit/exclude evidence?

There is no restriction on the presentation of testimony by a party employee. Article 19 of the ICA Law stipulates that arbitrators are free to assess the admissibility, relevance and significance of evidence.

2.9.6 Does it make it mandatory to hold a hearing?

According to Article 24 of the ICA Law and Article 27 of Domestic Arbitration Law, unless the parties' agreement provides otherwise (including by reference to arbitration rules), the tribunal may decide the dispute on the basis of the documents submitted by the parties without holding a hearing, unless a party requests a hearing.

2.9.7 Does it prescribe principles governing the awarding of interest?

Russian arbitration laws do not stipulate any arbitration-specific rules on interest to be awarded as a remedy for non-performance of financial obligations. In the absence of contrary agreement, and assuming Russian substantive law applies to the dispute, interest is to be awarded at the "key rate" (*ключевая ставка*) of the Bank of Russia in the relevant periods of default (Article 395(1) of the Civil Code).

There are also separate rules for so-called "statutory interest" to which a creditor is entitled for the use of his funds (for instance, in a situation of a contractually-agreed deferred payment for delivered goods) if the parties agreed to apply the statutory interest rate, or if the law specifically provides for such statutory interest. Statutory interest is calculated at the "key rate" of the Bank of Russia– Article 317.1 of the Civil Code.

There is also a specific rule in the Civil Code (Article 308.3(1)) that a court may award a creditor a fair and proportionate amount to be paid by the debtor for non-performance of the judgment. The term "court" under the Civil Code includes an arbitral tribunal, so arguably an arbitral tribunal may award such a payment. As recently clarified in the ruling of the Supreme Court of the Russian Federation of 24 March 2016 No.7, Article 308.3 applies only to the failure to perform non-monetary obligations (i.e., it does not apply to late payments).

2.9.8 Does it prescribe principles governing the allocation of arbitration costs?

Under the Domestic Arbitration Law, the default rule (absent the parties' agreement and/or provisions of the arbitral rules to the contrary) is that the arbitration costs are allocated/awarded to the winning party in proportion to the claims that have been satisfied; the winning party may also be awarded its legal costs. There are no similar rules in the ICA Law. As a practical matter, both in domestic and Russia-seated international arbitrations, absent the parties' agreement to the contrary, the unsuccessful party will usually

be ordered to pay the successful party's costs (including arbitrators' fees and expenses, fees and expenses of the arbitration institution and reasonable legal costs and expenses of successful party).

2.10 Liability

2.10.1 Do arbitrators benefit from immunity to civil liability?

According to Article 51 of the Domestic Arbitration Law, arbitrators are excluded from civil liability (except liability for damage caused by a criminal offense). This rule also applies to international arbitration seated in Russia.

There are no arbitration-specific offences in the Russian Criminal Code. To the extent that the activity of the participants of an arbitration qualifies as a general criminal offense (for example, fraud), such activity may trigger criminal liability on general grounds.

3. The award

3.1 Can parties waive the requirement for an award to provide reasons?

According to Article 31 of the ICA Law an award should provide grounds (reasons). Article 34 of the Domestic Arbitration Law sets out a more detailed list of mandatory elements of an award, but allows the parties to opt out or modify the default requirements.

3.2 Can parties waive the right to seek the annulment of the award?

Parties are permitted to waive the right to seek annulment of the award (both in domestic and Russia-seated international arbitration), but only in administered (institutional) arbitration.

3.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

Russian law does not establish any atypical requirements for the award. Under Article 31 of the ICA Law an award shall be made in writing and shall be signed by a sole arbitrator and by at least the majority of an arbitral tribunal. The award must also indicate:

- (a) the reasons on which it is based;
- (b) the remedies/claims granted and dismissed;
- (c) the arbitration fees and costs and their allocation between the parties, and
- (d) the date of the award and the seat of arbitration.

For domestic arbitration purposes, the requirements to an award are more detailed, but can be overridden by party agreement.

3.4 Is it possible to appeal an award (as opposed to seeking its annulment)? a. If yes, what are the grounds for appeal?

Appeal of the award is not possible. The setting aside of an award rendered in Russia is possible (on grounds similar to those for refusal to enforce awards under the New York Convention). In institutional arbitration, parties may waive the right to apply for set-aside.

3.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

For enforcement of domestic award or an international award rendered in Russia, the award creditor must submit an application for a writ of execution with the arbitrazh court that has territorial jurisdiction at the award debtor's registered address or, if the debtor's address is unknown, at the court having jurisdiction over the location of the property against which the creditor seeks to enforce. The parties may agree that

application for a writ of execution will be filed with the court at the seat of arbitration or at the location of the award creditor.

An application must be accompanied by originals or duly authenticated copies of the award and the relevant arbitration agreement. If any of the documents are not in Russian, they have to be translated and the translators' signature should be verified by a notary. The application must also include a document confirming the payment of a state duty.

The application is heard by a single judge at a hearing with summons to the parties, held within one month from the application. Even if a party fails to appear, the court may proceed with the hearing.

The court assesses whether there are any grounds stipulated in the New York Convention or federal laws (which mirror the Convention) to reject the recognition and enforcement of the award fully or in part. If either party is not satisfied with the court's ruling in respect of the application to enforce the award it has the right to appeal the ruling to a cassation arbitrazh court within one month.

For recognition and enforcement of foreign arbitral awards the award creditor must submit the relevant application to the Russian arbitrazh court. The proceedings are broadly the same as those described in respect to enforcement of domestic awards or international awards rendered in Russia. However, the parties cannot change the court venue by agreement.

Once the Russian arbitrazh court issues a ruling recognising the foreign award, a writ of execution is issued, allowing enforcement through the Russian bailiff system. The award creditor must apply for the writ of execution within three years of issuance of the award. If the award beneficiary misses this deadline for good cause, the deadline may be extended by the court (Article 246 of the APC). Once a writ of execution has been issued, it can be enforced through bailiffs for an additional three years (Article 321(1) of the APC).

Foreign declaratory awards are automatically recognized in Russia unless the recognition is opposed by the party whose interests are affected by the award (in other words, the customary recognition and opposition procedure under the New York Convention applies in reverse order).

The grounds for refusal in recognition and enforcement of Russian ('international' and domestic) and foreign awards, as well as for the setting aside of awards made in Russia (both in 'international' and domestic disputes), are similar and Model Law-based.

3.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

According to Article 238(6) of the APC, if an application for enforcement and an application for annulment are filed with respect to the same award, proceedings in respect of the application filed later must be suspended. If both applications (for enforcement and for annulment) were filed on the same day, proceedings in respect of enforcement application must be suspended. These rules apply to annulment applications filed with a Russian arbitrazh court.

Russian court practice is inconsistent with respect to the enforcement of awards pending annulment by a foreign court. For instance, the case *Bouygues Batiment International S.A. v. CJSC Potok & 0458* (case No A40-100678/12) concerned the enforcement of an ICC award rendered in Stockholm. The respondent objected to the enforcement of the award on various grounds, including ongoing set aside proceedings before the Svea Court of Appeal. Russian courts found that pursuant to the ICC Rules the award becomes final and binding upon being rendered by the tribunal. Accordingly, the court could not refuse to enforce even if the award were subject to a set-aside application. However in another case - *Stena RoRo v. Baltiisky Zavod*, the Presidium of the High Arbitrazh Court (the highest instance for resolution of commercial disputes before 2014) adjourned the enforcement proceedings pending resolution of a set aside application abroad.

3.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Generally, Russian courts will refuse to recognize and enforce a foreign award which has been annulled at its seat. However, in 2011, in *Ciment Francais v Open Joint Stock Company Sibirskiy Cement Holding Company* (case No A27-781/2011), an arbitrazh court of the first instance recognised an ICC arbitral award issued in Turkey which had been set aside by a Turkish court. The court noted that both the New York Convention and Russian laws allow a court to refuse recognition of arbitral awards which have been set aside. However, the European Convention on International Commercial Arbitration provides for recognition and enforcement to be refused in such circumstances only where the set-aside was based on limited grounds indicated in the convention, which were not present in the case. This decision was overturned by higher courts, which refused recognition and enforcement of the ICC award.

3.8 Are foreign awards readily enforceable in practice?

Based on the New York Convention, foreign arbitral awards are to be recognised and/or enforced in Russia in the absence of convention-based grounds for non-recognition. Russian courts have dealt with a large number of applications for recognition and enforcement of foreign awards, and the practice is generally favorable towards recognition and enforcement.

Russian courts used to apply the New York Convention-based public policy exception for refusal of the recognition and enforcement of foreign arbitral awards broadly. The situation has improved with the issuance of helpful guidance by the Higher Arbitrazh Court in 2013, although the risk of non-recognition on public policy grounds has not disappeared. In order to streamline court practice, the Presidium of the Higher Arbitrazh Court issued Information Letter No. 156 dated 26 February 2013 on public policy issues. The Higher Arbitrazh Court clarified that public policy comprises only those fundamental provisions of law that are mandatory and universal, have social and public significance, and comprise the basis of the economic, political and legal system of the state. Following the recent arbitration reform, the public policy exception was applied broadly in at least one case to prevent the recognition in Russia of an ostensibly foreign arbitral award which, according to the courts' findings, was actually issued in Russian-seated proceedings. Going forward, Russian courts may be expected to use the public policy exception to block enforcement of foreign awards they consider to be issued in circumvention of the Russian arbitration legislation.

Additional issues may arise in specific sectors, for example recently Russian courts have refused to enforce an arbitration clause in a Russian concession agreement, finding that Russian legislation relating to this sector only allows such disputes to be arbitrated and administered domestically. A more recent Russian court judgment (later overturned) suggested non-arbitrability of concession disputes. The risks of non-recognition on Convention-based grounds are also high in respect of disputes deemed non-arbitrable and/or required to be arbitrated in eligible (permitted) arbitral institutions under Russia's new arbitral legislation (see also, Section 2.E above).

Once the recognition of a foreign award is granted by a Russian court, and absent voluntary compliance by the debtor, the award creditor must enforce the award via the bailiff system. In practice, the compulsory enforcement procedure can be protracted where the debtor seeks to conceal his assets or where assets are insufficient.

4. Funding arrangements

Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

Assignment of claims (including in return for funding) is widespread, but third-party funding without the assignment of the legal interest in the claim is a relatively new phenomenon for the Russian market, which is not expressly regulated by law. In practice Russian parties are increasingly looking to foreign funders (at

least to finance foreign-seated arbitration), but this type of arrangement is not yet widely used. Some funder firms have begun to emerge domestically.

Contingency fees of lawyers are not expressly prohibited as a matter of law, but courts have held such fee arrangements to be unenforceable. For example, Ruling of the Constitutional Court No. 1-P of 23 January 2007 held unenforceable a success fee arrangement that made payments to lawyers conditional on the positive outcome of a court hearing. Various aspects of success fee arrangements have been reviewed by the courts, but the Constitutional Court's position has never been overturned.

5. Is there likely to be any significant reform of the arbitration law in the near future?

Significant reform of the arbitration laws took place in late 2015, as described above. The reform was followed with a corresponding change in the arbitral rules of the Russian arbitral institutions, including the ICAC arbitration rules (reformed as of February 2017).

The interim period under the reform legislation, during which period Russian arbitral institutions were required to obtain a Government permit to administer arbitrations, ended on 1 November 2017. At present, there are just three eligible arbitral institutions in Russia for general commercial arbitration, but the number is expected to rise with time. At the moment, there is unlikely to be any further significant reform in the arbitration field in Russia.