

RUSSIA

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

1. Law	●
a. Framework	●
b. Adherence to international treaties	●
c. Limited court intervention	●
d. Arbitrator immunity from civil liability	●
2. Judiciary	●
3. Legal expertise	●
4. Rights of representation	●
5. Accessibility and safety	●
6. Ethics	●
Evolution of above compared to previous year	☰
7. Tech friendliness	●
8. Compatibility with the Delos Rules	n.a.

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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 any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Key places of arbitration in the jurisdiction?	As a practical matter, Moscow is the key place for arbitration in Russia.
Civil law / Common law environment? (if mixed or other, specify)	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.
Confidentiality of arbitrations?	Russia has separate statutes for ‘international’ and domestic arbitrations. The 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 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, nor to hire local counsel.</p> <p>Russia’s federal statute regulating trial lawyers (‘advocates’) provides that foreign ‘advocates’ may represent clients in Russia on matters of foreign law, provided that they undergo registration in a specialized Russian registry. It is unclear if this requirement prevents or restricts the participation of foreign lawyers in arbitration in Russia where these lawyers are not registered, or where Russian law applies to the dispute.</p> <p>As a practical matter, we have not come across any instances of foreign attorneys (whether or not registered in Russia) being barred from participating in Russian arbitrations, whether or not foreign or Russian substantive law applied.</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 and/or remotely?	Russia’s arbitration laws do not prohibit holding meetings and/or hearings outside of the seat. Remote hearings are not prohibited.
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” (<i>ключевая ставка</i>) of the Bank of Russia for the relevant default periods (Article 395(1) of the Civil Code).

<p>Ability to claim for reasonable costs incurred for the arbitration?</p>	<p>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 applicable arbitration rules, and usually tribunals have wide discretion in this regard.</p>
<p>Restrictions regarding contingency fee arrangements and/or third-party funding?</p>	<p>Assignment of substantive rights and obligations (including in return for funding), has long been practiced in Russia, but third-party funding without assignment 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 to finance foreign-seated proceedings, but they are not using this type of arrangement widely as yet. Russian law does not prohibit such out-of-Russia funding and does not impose any disclosure requirements in its respect. Some funder firms have begun to emerge 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>Party to the ICSID Convention?</p>	<p>Russia has signed the ICSID Convention but has not ratified it.</p>
<p>Compatibility with the Delos Rules?</p>	<p>Delos has not obtained a governmental permit as required under Russian law; therefore, it is not qualified under Russian law to administer Russian-seated disputes. Russian law does not expressly forbid Russian-seated proceedings under the aegis of a foreign institution holding no Russian permit, but there are legal issues surrounding such proceedings and they are unlikely to be widely used in practice. Awards issued in arbitration proceedings under the Delos Rules seated outside Russia would generally be enforceable in Russia, subject to exceptions. For example, such awards would presumably be unenforceable in Russia if they are issued in 'corporate disputes' relating to Russian companies, as defined under Russian law (more on this below).</p>
<p>Default time-limitation period for civil actions (including contractual)?</p>	<p>The general statute of limitations under Russian law is three years from the date when the claimant learned or ought to have learned of the violation of its rights and the identity of the defendant (Articles 196 and 200 of the Russian Civil Code). Since 2013, there is also an objective limitation (ten years since the date of violation) which applies irrespective of when the claimant learned or ought to have learned of the violation. Thus, generally the claimant must commence litigation within the subjective three-year limitation period, but in any case, no later than ten years from the violation. These rules are subject to certain exceptions, for example there are special limitations periods for the avoidance of transactions, rules for tolling limitations periods, etc.</p>

Other key points to note?	<p>Russia's arbitration laws were overhauled by reform legislation passed on 29 December 2015 (in force from 1 September 2016, and most recently amended on 27 December 2018).</p> <p>The most extensive changes relate to arbitration of so-called 'corporate disputes', 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 involving Russian companies. As a matter of Russian law, 'corporate disputes' may only be referred to a limited number of eligible arbitration centres in Russia (that is, the institutions holding a special governmental permit or exempted from the permit requirement), and may not be referred to <i>ad hoc</i> arbitration. 'Corporate disputes' may also be referred to foreign institutions holding the Russian governmental permit. At the time of writing, those comprised SIAC, HKIAC, ICC and VIAC. Various additional requirements (including the requirements to choose Russia as the seat and to apply specialised corporate arbitration rules) may apply depending on the type of a 'corporate dispute'. In addition, some types of corporate disputes (e.g., most types of disputes relating to 'strategic' Russian companies, as defined in Russian legislation on foreign investment, i.e., entities engaged in certain listed sensitive businesses such as atomic industry, defense industry, mining at major mineral deposits, major mass media and dominant telecommunications companies, and more), are non-arbitrable. Additional requirements may apply, on the type of the 'corporate dispute'.</p> <p>Non-'corporate' disputes may be referred to foreign arbitration institutions, whether holding the Russian permit or not. This fully applies to international commercial disputes.</p> <p>Foreign arbitral awards are generally enforceable in Russia based on the New York Convention, but a foreign award is likely to be refused recognition and enforcement in Russia if rendered in respect to a Russian corporate dispute at a foreign arbitral institution holding no Russian Government permit, or in <i>ad hoc</i> proceedings.</p> <p>Attention should be paid to the importance of the qualification of a dispute as 'domestic' or 'international' as a matter of Russian law. Arguably, domestic disputes cannot be referred to arbitration seated abroad. It is also noted that the Russian governmental permits issued to SIAC, HKIAC, ICC and VIAC only enable them to administer Russian 'corporate disputes' of an international / cross-border nature, but not Russian domestic disputes (apart from certain disputes relating to companies redomiciled into and/or operating in certain 'special administrative regions' in Russia).</p> <p>If a dispute qualifies as 'corporate', it is also important to check when the arbitration clause was entered into. The new Russian arbitration legislation only allows arbitration clauses in respect to Russian corporate disputes (including post-M&A disputes) from 1 February 2017, earlier arbitration clauses relating to such disputes being presumably non-enforceable. However, parties to earlier</p>
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	<p>agreements remain free to enter into new arbitration agreements in respect to corporate disputes to remove any uncertainty.</p> <p>In June 2020, Russia passed a new statute which gives courts exclusive jurisdiction with regard to disputes involving Russian sanctioned entities. The statute potentially allows such parties to refer disputes to Russian courts and obtain a Russian anti-suit injunction to prevent arbitration or litigation outside the country. Where the Russian sanctioned entity has entered into an arbitration or choice of court agreement referring disputes to a foreign forum, these consequences only apply where the Russian court is satisfied that foreign sanctions have rendered the sanctioned entity's arbitration or choice of court agreement incapable of being performed.</p>
<p>World Bank, <i>Enforcing Contracts: Doing Business</i> score for 2020, if available?</p>	<p>The score for Russian Federation is 72.2.</p> <p>For the Russian cities, Moscow it is 72.7 and Saint Petersburg it is 72.1.</p>
<p>World Justice Project, <i>Rule of Law Index: Civil Justice</i> score for 2020, if available?</p>	<p>0.47</p>

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	Russia has separate statutes for international and domestic arbitration. Domestic arbitration is governed by Federal Law 'On Arbitration' dated 31 December 2015 (the " Arbitration Law ") which replaced Russia's pre-existing federal statute on domestic arbitration. That law also applies by reference to certain aspects of Russia-seated international arbitrations, but otherwise, international arbitration is governed by the Law "On International Commercial Arbitration" dated 7 July 1993 (the " ICA Law "), significantly modified by the arbitration reform legislation adopted in December 2015.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	Russia's domestic and international arbitration laws are largely harmonized and based to a significant extent on the UNCITRAL Model Law, including some of the amendments adopted in 2006 (except the detailed provisions on provisional measures). There are some differences, for example the criteria for 'international' disputes under the ICA Law are not identical to those under the Model Law, and 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 and enforcement 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 case of recognition and enforcement of foreign arbitral awards against companies registered in the Russian regions.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Pre-arbitration interim relief is available from the courts. Applications for interim relief are considered <i>ex parte</i> . 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 Arbitration Law recognise the principle of competence-competence. Russian courts can be expected to recognise and support this rule.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	This is not expressly provided for by Russian law. However, under Russian law, awards have to be reasoned. Arguably, the same requirement applies to rulings.
Grounds for annulment of awards additional to those based on the criteria for the recognition and	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.

<p>enforcement of awards under the New York Convention?</p>	<p>However, their implementation 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.</p>
<p>Do annulment proceeding typically suspend enforcement proceedings?</p>	<p>Russian law seeks to prevent parallel proceedings in relation to annulment and enforcement of the same award. Pursuant to Article 238(6) of the Arbitrazh Procedural Code, in the event the parties file for both enforcement and annulment of the award in different courts, generally the proceeding filed later will be suspended. If both proceedings are initiated on the same day in different courts, the enforcement proceedings will be suspended. If both applications are brought before the same court, they will be consolidated in one proceeding.</p>
<p>Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?</p>	<p>Russian courts will generally refuse enforcement of annulled arbitral awards.</p>
<p>If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award at the jurisdiction?</p>	<p>This is not expressly addressed by Russian law and we have not identified any Russian court practice on the issue. Assuming the parties' arbitration agreement (including any arbitration rules included by reference) does not rule out remote proceedings and the parties have not agreed specifically to have an in-person physical hearing, a remote hearing should not be a valid reason for refusing recognition of the award.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>Public bodies in Russia may be reluctant to refer their disputes to arbitration, but state-owned companies very often agree to arbitrate. The fact that one of the parties is a public body or a state-owned company does not constitute a non-enforcement or annulment ground. On a reasonable interpretation of Russian law, there is also no basis to consider awards against public or state-owned entities to violate Russian public policy. However, Russian courts have found some disputes with public elements (such as the use of public funds) to be non-arbitrable, and have on some occasions refused to enforce awards against Russian governmental entities on public policy grounds. They have also been known to prevent enforcement against assets beneficially owned by the Russian Federation.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>This is not expressly regulated by Russian law. Some Russian scholars argue that blockchain evidence can theoretically be used in commercial litigation, but this remains untested in the courts.</p>

<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>Under Russian arbitration legislation, both the arbitration agreement and the award must be in written form. This is not expressly addressed in the law and remains untested but it appears highly doubtful whether an arbitration agreement or award recorded in blockchain form would be recognised as valid in Russia.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>Russian legislation does not expressly allow blockchain awards or arbitration agreements to be as originals for the recognition and enforcement purposes, and this remains highly doubtful.</p>
<p>Other key points to note?</p>	<p>Since 19 June 2020, Russian courts have exclusive jurisdiction in disputes involving Russian sanctioned entities. This does not make Russian sanctioned entities' arbitration or choice of court clauses invalid, but potentially allows such parties to refer disputes to Russian courts for resolution on the merits and obtain a Russian anti-suit court order to prevent proceedings outside the country. These consequences only apply where the Russian court is satisfied that foreign sanctions have rendered the sanctioned entity's arbitration or choice of court agreement incapable of being performed, i.e., that sanctions block the Russian party from participating in foreign proceedings.</p>

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version? If yes, what key modifications if any have been made to it? If no, what form does the arbitration law take?

Russia has separate statutes for international and domestic arbitration. Both 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, and neither incorporates the detailed 2006 amendments on injunctive relief.

International arbitration is governed by the Law 'On International Commercial Arbitration' dated 7 July 1993 (the "**ICA Law**") which was significantly modified by the arbitration reform legislation adopted in December 2015. This law governs Russia-seated 'international' arbitrations and the recognition and enforcement of foreign awards. Domestic arbitration is governed by Federal Law 'On Arbitration' dated 31 December 2015 (the "**Arbitration Law**"). Some parts of this law also apply by reference to Russia-seated international arbitrations.

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 statutes, most importantly in the Arbitrazh Procedural Code (the "**APC**"), which governs proceedings in Russia's commercial (*arbitrazh*) state courts, and in particular recognition, enforcement and setting aside of arbitral awards proceedings. 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.

The 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 with respect to 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 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. An arbitration reform legislation resulting in a complete overhaul of Russia's arbitration regime came into force on 1 September 2016, although a number of provisions took effect later. For example, the provision according to which only arbitral institutions holding a special Government permit are eligible to administer arbitrations only became effective on 1 November 2017. As of the time of writing, the reform legislation has become fully effective. On 27 December 2018 the Arbitration Law was amended. The amendments seek to simplify the arbitration of shareholder disputes and shareholders' derivative claims. However, the corresponding provisions in the APC were not amended and there is now a conflict between the Arbitration Law and the APC regarding the requirements applicable to arbitration of shareholder disputes and shareholders' derivative claims. The amendments of 27 December 2018 also clarify that Russia-seated disputes relating to procurement of goods, works and services for Russian state-owned companies (regulated by Federal Law No. 223-FZ of 18 July 2011) may only be arbitrated in eligible institutions and may not be arbitrated *ad hoc*.

On 8 June 2020, Russia passed amendments to the APC, which came in effect on 19 June 2020. The amendments grant Russian courts exclusive jurisdiction in disputes involving Russian sanctioned entities and potentially allow these entities to refer disputes with foreign counterparties to Russian courts for resolution on the merits. The sanctioned entities are also potentially entitled to seek Russian court's anti-suit orders to enjoin foreign parties from commencing or proceeding with arbitration or litigation outside Russia against the sanctioned entity. The foreign party's non-compliance with such order may be sanctioned by a fine amounting up to the full amount claimed outside Russia, plus legal costs. Where a Russian sanctioned entity has entered into an arbitration or choice of court agreement referring its disputes to a foreign forum, such agreement prevents Russian courts from hearing disputes on the merits

and issuing anti-suit orders. However, courts may find that the relevant arbitration or choice of court clause is incapable of being performed if sanctions create obstacles for the sanction party's access to the chosen forum. The amendments do not specify how this is to be determined, and whether they only apply where foreign sanctions have permanently and conclusively prevented a foreign arbitration or litigation (or the Russian party's participation therein), as opposed to when the obstacle is only temporary and can be overcome, e.g., by receiving licenses from the sanctions' regulators.

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 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

Russian law distinguishes the "seat" (i.e., the legal place) of the arbitration from the physical place, or venue, of hearings. Where the parties have not expressly agreed on the seat but have designated the physical place or venue of the hearings, arguably, there is no legal ground for the courts to imply a choice of the seat. However, there can be no assurance that Russian courts would not find an implied choice of the seat in such circumstances.

Russian courts may determine the seat and venue flexibly. For example, in a recent case (No. A40-219464/2016), a Russian court disregarded the parties' designation of a foreign seat of arbitration and determined that, under the circumstances of the case, Russia was the actual place of all proceedings and also had to be considered as the actual seat of arbitration. However, the circumstances of that case were highly unusual, and Russian courts may be expected to distinguish the "seat" from the physical venue of hearings, in contrast with this case.

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

According to Article 16(1) of the ICA Law and Article 16(1) of the Arbitration Law arbitration clauses are considered separable from the main contract in which they are set forth.

2.4 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 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 an electronic signature compliant with the Russian legal requirements (arguably, a simple e-mail will not suffice).

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 to the arbitration of corporate disputes, which impacts arbitration agreements. The notion of corporate disputes (as per Article 225.1 of the APC)

encompasses all disputes relating directly or indirectly to the incorporation, management of Russian companies or participation in them. Arguably, the definition of corporate disputes covers, among other things, any and all disputes arising out of shareholders' agreements and potentially, any and all disputes arising out of share purchase agreements and other types of M&A agreements in respect to Russian companies. However, with regard to share purchase and option agreements, recent court practice suggests that there are carve-outs. In a few recent cases, Russian courts considered disputes of a purely financial nature (e.g., claims for payment of the share purchase price) arising out of share purchase and option agreements. The courts held these disputes to be non-'corporate' (see, Ruling of the Supreme Court of the Russian Federation dated 6 February 2018 in case No. 5-KГ17-218). While technically not binding precedents, these rulings may be followed by courts in other cases.

Arbitration clauses in respect to 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 to public joint stock companies and joint stock companies with at least 1,000 voting shareholders).

Arbitration agreements in respect to 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 to 'corporate disputes is that they can only be arbitrated as required under the auspices of eligible arbitral institutions, meaning those that have obtained a Russian government permit envisaged by the reform legislation or have been exempted from the permit requirement. At the time of writing, the Russian arbitration institutions eligible to administer arbitration of corporate disputes comprise ICAC, the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs and the Arbitration Centre at the Institute of Modern Arbitration. In addition, four foreign institutions (SIAC, HKIAC, ICC and VIAC) received the permits and are now eligible to administer Russian 'corporate' disputes of international nature. 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 to 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 considered unenforceable in Russia.

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

Another requirement is that the seat of arbitration in respect to 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 arising under Russian share purchase agreements), as well as disputes over the creation of lien and foreclosure in respect to such shares, are not required to be arbitrated in Russia. All disputes involving the target Russian company as well as disputes arising out of shareholder agreements and similar contracts relating to management of the company (including derivative claims of the Russian company's shareholders or directors seeking to challenge the company's transactions with third parties) may only 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 specialized rules, the "**Corporate Arbitration Rules**"). The Corporate Arbitration Rules have already been adopted by some Russian institutions, including ICAC. However, none of the foreign institutions developed such rules. Where a dispute has to be arbitrated under Corporate Arbitration Rules, a further requirement is that the parties, the target company and all its shareholders must agree to the arbitration agreement. This requirement may often be difficult or impossible to achieve in practice. The amendments of 27 December 2018 to the Arbitration Law envisage that for private disputes arising from shareholders' agreements, the arbitration clause in the agreement is sufficient and there is no need to have the target company and all its shareholders agree to the arbitration clause. The same amendments provide that there is no need to apply Corporate Arbitration Rules to such shareholder disputes (such that the

dispute can be arbitrated under 'ordinary' arbitration rules). The amendments also specify that derivative shareholder claims for invalidation of a company's contracts may be submitted to arbitration in accordance with the contractual arbitration clauses, without the need to have the target company and all shareholders agree to such clauses; however, it is still necessary to refer dispute to an eligible arbitral institution and to apply Corporate Arbitration Rules, and the amendment fails to address another type of derivative claims, which can be brought by directors. These amendments are helpful but the requirements that they seek to repeal are still present in Article 225.1 of the APC. It may be argued that the amendments of 27 December 2018 prevail over the APC. This view is also supported by a non-binding opinion issued in May 2020 by the advisory "Council for Improvement of Arbitration" with the Russian Ministry of Justice in response to a joint request by VIAC and HKIAC. However, the issue will likely remain in a grey zone pending amendments to the APC and/or guidance from Russia's higher courts.

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

2.5 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).

A related and highly relevant category of disputes relates to shareholders' and directors' derivative claims. Under Russian corporate law, shareholders and directors are able to challenge in court their company's transactions on limited grounds, e.g., due to lack of required corporate approvals. Historically, shareholder derivative claims engineered by Russian companies, seeking to invalidate a company's contract in a Russian court, were often used to avoid future enforcement in Russia of a foreign arbitral award rendered in a dispute under the contract. The Russian arbitration reform allowed arbitration of this type of 'corporate disputes', but subject to strict requirements as explained in paragraph 2.4 above. The recent amendments to the Arbitration Law simplify the arbitration of derivative claims and potentially ensure that all shareholders' derivative claims can be referred to the chosen arbitral institution to the exclusion of Russian state courts. However, this remains in dispute pending further amendments to the APC and/or guidance from Russia's higher courts, because these amendments only concern the Arbitration Law and not the APC. Furthermore, these amendments only seek to liberalize the requirements to arbitration of shareholders' derivative claims but do not address another type of derivative claims which can be brought by directors. The arbitration of such directors' claims is still subject to all requirements referred to in paragraph 2.4 above.

2.6 Are there restrictions to arbitrability? In the affirmative:

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment 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 related to the convocation of general shareholders' meetings;
 - disputes arising out of notarization of transactions in respect to participation interests in Russian limited liability companies;
 - challenges to 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 under 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 was 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.

There are certain other types of disputes designated as non-arbitrable under the CPC and certain other pieces of Russian legislation, but none of them appear relevant in the context of international commercial arbitration.

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 to concession agreements, a court ruling in the *Orlovsky tunnel* case in February 2016 suggested that arbitrations under concession agreements cannot be administered by foreign arbitral institutions, and another ruling made in September 2017 by a Moscow court in the case *Glavnaya Doroga v Avtodor* (later overturned) suggested the non-arbitrability of concession disputes. It would be fair to say that the courts' position in respect to agreements with public elements is still evolving. Arbitrability of disputes relating to the procurement of goods, works and services by State-owned companies regulated by Federal Law No. 223-FZ of 18 July 2011 is now confirmed. However,

amendments of 27 December 2018 to the Arbitration Law specify that, should such disputes be referred to Russia seated arbitration, they must be administered by eligible arbitral institutions and cannot be arbitrated *ad hoc*.

2.6.2 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, the CPC prohibits arbitration of employment, inheritance and eviction disputes.

There is no general restriction as to the arbitrability of disputes involving public entities, however such disputes may be deemed non-arbitrable if they are of a public nature (see section 2.6.1. above).

There are however certain carve-outs in respect to foreign companies redomiciled in Russia and investing in the designated ‘special administrative regions’ of the Kaliningrad Oblast and Primorsky Krai of Russia pursuant to the re-domiciliation legislation adopted in August 2018. For example, such companies are potentially able to refer corporate disputes, including ‘strategic’ corporate disputes, to foreign arbitral institutions that hold no permit in Russia. These carve-outs are not reviewed in detail here as they seem to be of a limited relevance to international parties.

3. Intervention of domestic courts

3.1 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.

3.2 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 to arbitrators’ anti-suit injunctive orders.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

It is open to debate whether Russian courts could 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. However, considering the amendments to APC effective from 19 June 2020, Russian courts have the power to issue anti-suit injunctions to enjoin a foreign party from participating in foreign arbitration proceedings against a Russian sanctioned entity, where sanctions render the arbitration agreement incapable of being performed.

4. The conduct of the proceedings

4.1 Can parties retain foreign counsel or be self-represented?

There is no requirement to retain local counsel to represent parties in the proceedings, and representation is furthermore not mandatory. However, on 28 November 2018 Russia adopted amendments to the APC, taking effect from 1 October 2019, according to which party representatives before Russia’s commercial (*arbitrazh*) state courts need to have higher legal education and/or an academic law degree. Certain exceptions apply by operation of law, e.g., the CEO may represent his or her company in court irrespective

of whether he or she has a legal education or a law degree. In any event, such limitation is unlikely to apply in arbitration, where parties are generally deemed free to be self-represented or represented by outside counsel of their choice.

For completeness, Federal Law of 31 May 2002 “On Advocate Activities and Advocacy in the Russian Federation” provides that foreign ‘advocates’ (that is, regulated trial lawyers) may provide legal assistance in Russia on law of the country from which they come, provided that they get registered in a specialized Russian registry of foreign ‘advocates’. It is not entirely clear whether this provision applies to arbitration and restricts the party ability to use foreign counsel of their choice where the counsel is not entered into the Russian registry and/or where the case involves Russian law. In practice, we have not come across any instances where parties were prevented from using the services of foreign counsel in Russian arbitration proceedings.

4.2 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 be of a gravity such as to justify this outcome?

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

In order to give 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.

4.3 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 to any qualifications required for the arbitrator pursuant to the parties’ agreement, 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 the resolution of deadlocked challenge procedures. It however remains to be seen how efficiently Russian courts will perform these functions.

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

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.

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

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The 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).

4.5.2 Does it regulate the length of arbitration proceedings?

The length of arbitration proceedings is not regulated by law.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

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 with a seat 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).

Article 27 of Arbitration Law provides that video conference hearing is possible only if the parties so agree.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

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 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.

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

Article 19 of the ICA Law stipulates that arbitrators are free to assess the admissibility, relevance and significance of evidence.

4.5.6 Does it make it mandatory to hold a hearing?

According to Article 24 of the ICA Law and Article 27 of 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.

4.5.7 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 any agreement to the contrary, 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).

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

Under the 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 successful party in proportion to the claims that have been satisfied; the successful 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 the successful party).

4.5.9 Other atypical features

Under the Arbitration Law, unless the parties agree otherwise, the sole arbitrator or the chairman of the tribunal) must have the Russian higher legal education or an equivalent foreign legal education. The parties may agree not to apply these educational requirements to the chairman of the tribunal so long as another member of the tribunal satisfies them. There are further non-derogable requirements, for example it is not permitted to appoint as arbitrators persons younger than twenty-five years old.

The abovementioned limitations and requirements apply to domestic arbitrations and to Russia-seated international arbitrations.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

Article 51 of the Arbitration Law grants arbitrators with immunity from civil liability (except liability for damage caused by a criminal offense). This rule also applies to international arbitrations seated in Russia.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

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.

5. The award

5.1 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 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.

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

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

5.3 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 the members 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.

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

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? 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.

5.5 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?

With regard to enforcement of domestic awards or international awards 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 award. 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 Russian notary, following the standard Russian law procedure for certification of translations. 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 to 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 of 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.

5.6 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 applications for enforcement and an application for annulment are filed with respect to the same award, proceedings in respect to 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 the award even if it were subject to a set-aside application. However, in another case - *Stena RoRo v. Baltiyskiy 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.

5.7 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. Exceptionally, if the European Convention on International Commercial Arbitration is applicable, Russian courts may have to recognize and enforce an annulled foreign award, depending on the annulment grounds. In 2011, in *Ciment Francais v Open Joint Stock Company Sibirskiy Cement Holding Company* (case No A27-781/2011), an *arbitrazh* court of first instance recognised an annulled ICC arbitral award issued in Turkey, but higher courts overturned the judgment, finding that the actual annulment grounds in the case did not trigger the right to enforcement under the aforementioned convention.

5.8 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. However, the rate of recognition and enforcement tends to be much lower in high value cases.

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).

Additional difficulties may arise in respect to awards issued in arbitrations seated outside Russia against Russian sanctioned entities, where Russian courts have exclusive jurisdiction pursuant to the amendments to the APC passed in June 2020. The foreign award will remain enforceable in Russia where the Russian sanctioned entity participated in the proceedings without raising jurisdictional objections. In the event the sanctioned entity commenced parallel litigation on the merits in Russia and/or obtained a Russian anti-suit order in respect of the foreign proceedings as explained in Section 1.2 above, the foreign tribunal may still proceed to issue an award on the merits, but such an award would not be enforceable in Russia.

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.

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

Assignment of the rights and obligations and therefore of the legal interest in claims (including in return for funding) is widespread, but third-party funding without the assignment is a relatively new phenomenon for the Russian market, which is not expressly regulated, nor prohibited 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, and it is known that at least some of some of them are funding proceeding outside Russia. There is too little information to ascertain if and on what terms they provide funding 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.

7. Arbitration and technology

7.1. Is the validity of blockchain-based evidence recognised?

Russian legislation and court practice do not expressly provide that blockchain evidence may be used in arbitration and litigation. While prominent scholars argue that blockchain evidence can theoretically be used in commercial litigation, this remains untested.

7.2. Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

Under the Arbitration law both arbitration agreement and award must be in written form. Russian legislation does not qualify records in blockchain as records in writing. Arbitration agreements or awards made in blockchain are untested in Russia and we believe Russian courts are likely to consider them invalid.

7.3. Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

Russian legislation does not expressly provide that blockchain awards/or arbitration agreements are to be deemed originals. This is also untested in Russian court practice, but we believe Russian courts are unlikely to accept such documents as valid originals.

7.4. Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Russia recognizes documents signed with qualified electronic signatures (as defined in Federal Law "On Electronic Signature" dated 6 April 2011 No. 63-FZ) as fully equal to documents bearing physical signatures, except where the Russian legislation requires a particular document to be signed physically.

The ICA Law and the Arbitration Law both provide that the award must be "issued in written form" and "signed" by the members of the tribunal, after which signed originals are delivered to the parties. Neither statute defines expressly if the awards may be 'e-signed'. Arguably, they imply physical signing of the awards. However, it remains untested in practice whether e-signed awards may be deemed enforceable.

8. 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 corresponding amendments of arbitral rules of the Russian arbitral institutions, including the ICAC arbitration rules (reformed as of February 2017). The arbitration legislation was reformed again in late 2018 to liberalise corporate dispute arbitration, but such reform remains incomplete until the corresponding changes are introduced to the APC. It is unclear if and when such changes will be made, or if and when the conflict between the amended arbitration law and the APC will be addressed by Russia's higher courts.

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 five eligible arbitral institutions in Russia (three Russian and two foreign arbitration institutions) for general commercial arbitration, but the number may rise with time. Most recently, SIAC and ICC, and before them HKIAC and VIAC, obtained the Russian arbitration law permits. It remains to be seen if any other reputable foreign arbitration institutions follow suit.

9. Compatibility of the Delos Rules with local arbitration law

Under Russian law, foreign arbitral institutions need a special Russian governmental permit to administer arbitrations. Delos does not have such a permit. Russian law does not expressly forbid such arbitrations but the legal position and enforceability of resulting awards is doubtful. Delos arbitrations conducted outside Russia are not regulated by Russian arbitration laws, and Delos awards issued in commercial matters in non-Russian seated proceedings should be enforceable in Russia. This is subject to exceptions, e.g., where the dispute is non-arbitrable under Russian law or qualifies as a *corporate dispute* as defined in Russian law (such disputes can only be resolved in arbitrations administered by institutions holding a Russian permit). Further issues and problems for potential enforcement in Russia may arise if the award is in respect to disputes deemed domestic under Russian law and in respect of some other types of disputes

10. Further reading

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ARBITRATION INFRASTRUCTURE IN THE JURISDICTION

<p>Leading national, regional and international arbitral institutions based out of the jurisdiction?</p>	<p>At the moment of writing, there are five Russian arbitration centres:</p> <ul style="list-style-type: none"> - the ICAC; - the Arbitration Centre with the Institute of Modern Arbitration; - the Arbitration Centre with the Russian Union of Industrialists and Entrepreneurs; - the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation; - the National Centre for Sports Arbitration at the Sports Arbitration Chamber. <p>All of them are located in Moscow. The most prominent and popular among Russian companies is the ICAC.</p> <p>At the time of writing, the Singapore International Arbitration Centre (SIAC), the Hong Kong International Arbitration Centre (HKIAC), the International Court of Arbitration of the International Chamber of Commerce (ICC) and the Vienna International Arbitral Centre (VIAC) are the only foreign arbitral institutions holding a Russian governmental permit which allows them to administer Russian <i>corporate disputes</i> and some types of public procurement disputes. However, they are not entitled to administer Russian domestic disputes (that is, disputes lacking the required international elements as defined under the ICA Law).</p>
<p>Main arbitration hearing facilities for in-person hearings?</p>	<p>Each national arbitration institution mentioned above has its own facilities for in-person hearings. Foreign institutions do not have such permanent facilities in the jurisdiction.</p>
<p>Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?</p>	<p>All arbitration institutions are located in Moscow where parties have access to a highly developed services market including reprographic facilities.</p>
<p>Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?</p>	<p>Parties in Russia frequently arrange for audio recordings of hearings, and do only infrequently use transcript and reporting services. To our knowledge, international providers of these services are not represented in Russia, and we are not aware of any regional providers of court reporting services.</p>
<p>Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?</p>	<p>Major providers include:</p> <ul style="list-style-type: none"> - Lingoservice: https://www.lingoservice.ru/synchronous/; - Sinhronperegod: https://sinhronperegod.ru/; - LanArk: https://www.ffwd.ru/ustnyj-sinhronnyj-peregod/.
<p>Other leading arbitral bodies with offices in the jurisdiction?</p>	<p>∅</p>