New services offered by Russian Arbitration Association

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Introduction

The Russian Arbitration Association (RAA) was formed in 2013 by a number of law firms and private practitioners with a view to promoting arbitration – both domestic and international – in Russia. Over the past two years, the RAA has been active in organising conferences for older and younger groups (with regard to the latter, through its active RAA40 group) and discussing legislative proposals. However, the main original objective of the RAA was to create an alternative arbitral institution in Russia that could administer disputes according to internationally accepted standards and attract internationally renowned arbitrators to work on its cases. To achieve this goal, the RAA has now developed and adopted two sets of arbitration rules – the RAA Arbitration Rules and the RAA Online Arbitration Rules – and created an arbitrators' database, which can be freely accessed by users looking for an arbitrator with a background in Commonwealth of Independent States (CIS) and Eastern Europe-related matters.

Does Russia need a new arbitration centre?

Although Russia cannot be said to be among the most popular arbitration venues, it has a great variety and number of arbitral institutions offering resolution of domestic or international disputes (and frequently both). Research has identified more than 2,000 such institutions across the country. However, it is unknown whether the majority of these arbitration centres resolve any cases. Nevertheless, a few dozen have a proven track record of effective dispute resolution. These circumstances raise the question: is there really a need for yet another arbitral institution? Arguably, yes – if the quality of the RAA's dispute resolution services is of a higher level and its pool of arbitrators is deeper than that of the top institutions on the market, this would give the RAA a significant competitive advantage.

When arbitration seated in Russia is an acceptable option for the parties to a cross-border contract, the parties usually opt for the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (known by its Russian acronym, MKAS). Statistics and experience show that few arbitration clauses provide for International Chamber of Commerce or London Court of International Arbitration proceedings with a seat in Russia. While MKAS arbitration may be an appropriate option in many cases – as it can resolve simple and straightforward cases quickly and inexpensively – many features of the MKAS rules and practice make it a less advantageous option for more complex cases.

For example, MKAS tribunals do not usually conduct pre-hearing conferences and rarely get in touch with the parties before the merits hearing. The procedures are fairly standardised and are difficult to adapt to the needs of complex cases; while the hearings are usually very short (in many cases no longer than half a day) and are often heard by all-Russian tribunals. The tribunals are less accustomed to hearing from witnesses and dealing with Western-style cross-examination. At the same time, the tribunals are more authoritative and do not always follow the parties' agreement on various procedural matters. In short, MKAS arbitration may be surprisingly unfamiliar to parties used to Western-style international arbitration. Moreover, the MKAS is also well known for paying low arbitrators' fees, which significantly limits the pool of arbitrators with international experience.

For all of these reasons, the MKAS has been heavily criticised, particularly by its foreign users. Nonetheless, many Russian parties insist on Russia as the seat of arbitration. Further complications arise from the sanctions presently imposed on Russia in relation to the Ukrainian crisis. It is no secret that the Russian sanctions regime – although much less extensive than that imposed on Iran – interferes significantly with arbitrations administered by European and US-based arbitral institutions and causes delays and practical difficulties in cases involving Russian entities. The level

of these difficulties varies from case to case, and thus far arbitral institutions seem to be able to deal with them; but in certain cases – for one reason or another – Russian-seated arbitration may indeed be a preferable option. From this perspective, the RAA may offer a good alternative to MKAS and, potentially, the usual European arbitration centres.

RAA Arbitration Rules

Instead of developing its own set of arbitration rules, the RAA administers disputes under the United Nations Commission on International Trade Law Arbitration Rules in force at the start of arbitration (presently the 2010 revision). The rules developed and adopted by the RAA include regulations for arbitration proceedings, fee schedules and internal rules, each of which addresses various aspects of the RAA's services.(1) These rules came into force on July 1 2014.

Depending on the agreement between the parties, the RAA may act as the appointing authority, the administering authority or both. If acting as the appointing authority, the RAA will assist in selecting the arbitral tribunal and deal with any issues relating to the appointment of arbitrators or their replacement. If acting as the administering authority, the RAA will:

- scrutinise draft arbitral awards;
- certify arbitral awards;
- maintain custody of case files; and
- administer the costs of arbitration proceedings.

The RAA has a special arbitrator nomination committee, which consists of seven prominent arbitration specialists elected by RAA members. The nomination committee is charged with appointing arbitrators and approving applications for inclusion in the arbitrators' database (see below).

For party-appointed arbitrators, parties may seek assistance from the RAA by filing a request for an appointment. If one party fails to nominate its candidate within the applicable timeframe, the opposing party may file a request for an appointment on the defaulting party's behalf. The nomination committee aims to appoint arbitrators within 15 days of receipt of the request for an appointment.

For presiding or sole arbitrators, the general rule is that he or she should not be of the same nationality as either of the parties, unless the parties agree otherwise or are of the same nationality, or if the amount in dispute is below $1 million. The appointment procedure for sole or presiding arbitrators is intended to ensure the parties' maximum involvement and transparency. Within 10 days of receipt of the request for an appointment, the nomination committee will submit to the parties a list comprising at least seven candidate arbitrators, accompanied by statements of independence and impartiality and signed by the proposed candidates. Each party will then have 15 days to return the list to the RAA (without copying the other party), deleting from the list no more than three candidates to whom it objects and ranking the remaining candidates in order of preference. Any party failing to do so will be deemed to have given the same preference to all proposed candidates. Within five business days thereafter, the nomination committee will appoint as the sole or presiding arbitrator the candidate with the highest combined ranking or – in case of equal ranking – will make an appointment at its own discretion.

Draft awards must be scrutinised by the RAA board if the total value of the administered dispute is greater than $10 million – that is, in such cases no award can be signed and issued by the arbitral tribunal without scrutiny. As a general rule, the board will scrutinise the draft award within 30 days of its submission to the RAA, but in exceptional circumstances this term may be extended. As to the scope of the scrutiny, the RAA board may suggest that the arbitral tribunal make amendments regarding the form of the award and may also – without limiting the arbitral tribunal in its freedom to make decisions – draw its attention to points of substance. The suggestions of the RAA board with regard to points of substance shall not be binding, but rather serve as guidelines and will not be communicated to the parties.

The RAA also aims to ensure the efficiency of proceedings by penalising arbitrators for delays in rendering awards. Thus, the award should be rendered within two months of the close of proceedings. Arbitrators' fees are reduced by 10% for each month of delay (with up to a 50% reduction for not rendering the award within six months of the close of proceedings). While many institutions claim that they take into account the amount of time it took the tribunal to render the award when deciding on arbitrators' fees, the RAA is one of the few institutions (if not the only one) that has formalised this in its rules.

The RAA charges fees at rates somewhere between those of the Stockholm Chamber of Commerce and the International Chamber of Commerce. The fees are calculated on an *ad valorem* basis; this will likely give the RAA some competitive advantage, as it will attract world-class arbitrators who are willing to accept appointments for which they will be paid adequately.

It is understood that the RAA has not yet handled any cases, but this is unsurprising, given that it began offering the administered arbitration just over a year ago. The RAA is nevertheless an option to consider for Russian and CIS-related disputes, as it may well provide a better alternative to the MKAS while satisfying the desire of Russian parties to arbitrate in Moscow.

Online Arbitration Rules

The RAA has also developed a separate set of rules to deal with smaller cases – the Online Arbitration Rules. These online rules were approved internally earlier this year and should soon be published on the RAA website. The online rules are intended for smaller cases with amounts of up to $50,000 at stake and are primarily aimed at simple, standard cases. The cases will be resolved by a sole arbitrator appointed by the RAA.

All submissions will be made using a document exchange system, which is essentially an online data room to which all parties to the proceedings and the arbitrator will have access.

The arbitration commences when the claimant files the fully developed statement of claim, rather than a brief request for arbitration; the online rules provide for only one round of exchange of submissions. This means that the claimant must include all arguments and evidence supporting its case. The respondent then has 30 days to file the fully developed statement of defence, again with sufficient argumentation and exhibiting relevant evidence. If the respondent brings a counterclaim at the time of filing of the statement of defence, the claimant then has 30 days to file its statement of defence to the counterclaim. As a general rule, the arbitration will be decided on the basis of the documents only, unless the sole arbitrator considers that a hearing is necessary. It appears that the parties cannot request the hearing as of right, but nothing prevents them from suggesting that the arbitrator hold a hearing. If a hearing is conducted, it will be held via video or telephone conference; only in exceptional circumstances will an arbitrator order an in-person hearing.

It is therefore expected that arbitration costs (other than arbitrators' fees) will be reduced – if not eliminated – through use of the online rules. Thus, the parties are also likely to handle these cases through their in-house teams. Moreover, the arbitrators and the parties' representatives will be able to conduct proceedings from their offices or homes, thus eliminating travel costs. Under the online procedure, arbitration costs should be more or less limited to the arbitration fees, which are set at a flat rate of 10% of the amount in dispute, but no lower than $1,000.

Unless there is a counterclaim, the arbitrator is expected to render the final reasoned award within 60 days of the commencement of arbitration. Even though the parties and arbitrator may be in different locations across Russia or potentially abroad, for all relevant purposes the place of arbitration shall be deemed to be Moscow, Russia.

The online rules require a fairly complicated arbitration agreement – in addition to all of the usual features of an arbitration agreement, the suggested arbitration clause requires parties to provide the names and email addresses of two persons within the company who will be authorised to receive notifications of the proceedings and to act on behalf of the company in arbitration. The parties must also undertake to maintain these email addresses and notify the opposing party promptly of any change in authorised representative and his or her contact details. Until this is done, the parties will need to agree that notification at the email addresses provided in the agreement is valid and proper.

While the online rules are more likely to be used for domestic disputes, nothing prevents parties from agreeing to use them for cross-border contracts where appropriate.

Arbitrators' database

The RAA also maintains an open arbitrators' database on its website.(2) Anyone can apply to be added to the database and the RAA encourages anyone with appropriate qualifications to apply. The applications are then reviewed by the nomination committee; if accepted, the relevant candidate's details will be added to the database.

Unlike the MKAS, the RAA does not maintain a formal list of arbitrators, so the database is rather a roster of specialists with at least some connection to Russia and the CIS who are willing and able to serve as arbitrators. Its purpose is to make information regarding potentially suitable arbitrators available to parties that may be in search of arbitrators with region-specific experience. It is also expected that the nomination committee will use the database to propose arbitrator candidates for RAA-administered cases where appropriate.

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Endnotes

(1) Available at www.arbitrations.ru/upload/medialibrary/dd3/ar_en_web.pdf.

(2) Available at www.arbitrations.ru/en/arbitrators/?SHOWALL_1=1&arrFilter_pf%5BFIRST_NAME_EN%5D=&arrFilter_pf%5BLAST_NAME_EN%5D=&arrFilter_p

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