

# **Arbitration In Russia: Legal Framework**

Boyarkin & Partners

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Russia is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) and the European Convention on International Commercial Arbitration of 1961.

The primary source of the Russian international arbitration law is the law 'On International Commercial Arbitration', enacted on July 7, 1993, which is almost identical to the UNCITRAL Model Law.

## **Arbitration Agreement**

An arbitration agreement must be in writing. An agreement is deemed to be in writing if it is contained in a document signed by the parties or in an exchange of letters, faxes, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.

The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

## **Procedure**

An arbitration agreement between the parties can contain the details of the procedure to be followed in the arbitration. The arbitration agreement may be silent on matters of procedure and the parties, when a dispute arises, may fail to agree on these matters. If this is the case an arbitrator has authority to decide on the matters of procedure. Otherwise rules established by the parties must be followed in an arbitration clause or a submission agreement.

There are a number of international arbitral bodies who have standard rules of procedure. Such rules can be implemented into an arbitration clause or a submission agreement by a relevant reference. Perhaps one of the most popular institutional arbitration among the Russian companies is that of the Stockholm Chamber of Commerce.

## **Recognition and Enforcement**

Although there may be some hostility towards arbitration, the Russian law holds that an arbitral award, regardless of the seat of a tribunal, must be enforced by the Russian court. A party, which builds its claim on a decision of a tribunal or is seeking enforcement, must submit a copy or an original of the arbitral award together with a copy or an original of the arbitration agreement to court. The award and the arbitration agreement must be translated into the Russian language.

The reasons to refuse recognition or enforcement of the arbitral award are those as established by the New York Convention and the UNCITRAL Model law.

## **Domestic Arbitration**

Soviet law did not allow the private resolution of disputes: recognition of tribunals would make the state a hostage of the free and, consequently, unpredictable will of the parties. It was unacceptable for ideological reasons. The Federal law 'On arbitration tribunals' which allowed resolution of domestic disputes by non-state arbitrators was enacted quite recently, on July 24, 2002.

An individual may be an arbitrator if he is independent and impartial and agreed to act as such. The chairman of a tribunal and a sole arbitrator must have a law degree. A person who has a criminal record cannot be an arbitrator. Similarly a former judge, an advocate, a notary public, a prosecutor or an investigator cannot be appointed if they were dismissed from their office for acts unacceptable for their profession.

The parties should agree on the number of arbitrators which must be uneven. If the parties fail to do so the number is three. A court can provide little assistance in appointing an arbitrator. If the parties fail to elect a tribunal the arbitration stops, and then the dispute may be resolved in court.

A tribunal is competent to decide on its competence. When considering validity of the arbitration agreement, the arbitration clause is considered to be separate from the underlying contract. An arbitrator must keep confidential all information which became known to him during the arbitration. An arbitrator cannot be questioned as a witness about information he/she obtained.

A tribunal can issue an order to preserve evidence or protect assets unless the parties agreed to the contrary. A party can also file a statement to issue an order for interim measures with a court. Such a statement does not constitute a waiver of the right to arbitrate.

It is presumed that the decision of a tribunal can be appealed in court. The parties, however, may agree that the tribunal's decision is final and if this is a case the award may not be reviewed on merits.