

Arbitration of Corporate Disputes Involving Counter- Parties From Russia

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6th DIS Baltic Arbitration Days

Publications on Russian arbitration reform

- The Russian arbitration reform, by Alexey Yadykin, Martin C. Mekat and Noah Rubins (Freshfields Bruckhaus Deringer LLP) Arbitration International, 2016, 32, 641–650
- Russian arbitration reform, by Julia Zagonek, Pavel Boulatov, Oleg Todua (White & Case) Client Alert International Arbitration
- Russian Arbitration Law 2016: key issues, by Maxim Kulkov and Sergey Lysov (KK&P) a PLC publication
- Arbitration Reform in Russia and Questions Arising From It, by Boris Karabelnikov, article in journal Zakon, 9/2016 (in Russian)
- Russian Reform of Commercial Arbitration: Key Issues, by Jonathan Hines and Nane Oganessian, article in International Commercial Arbitration Review Issue No. 2 for 2015/ No. 1 for 2016 (in Russian)
- ICCA International Handbook on Commercial Arbitration Supplement 92, National Report on the Russian Federation, by Boris Karabelnikov, Kluwer, December 2016

Publications on arbitrability of corporate disputes under Russian law with charts and lists of conditions:

- Corporate disputes under Russia's arbitration reform, by Nane Oganessian and Jon Hines, Morgan Lewis, GAR 2/2017
- Russia Implements Arbitration Reform, by Steven P. Finizio and Dmitry Andreev, WILMER CUTLER PICKERING HALE AND DORR LLP
- Arbitration of Corporate Law Disputes, by Ruslan I. Karimullin, International Commercial Arbitration Review Issue No. 2 for 2016 (in Russian)

Sources of arbitration legislation in Russia following the 2016 reform:

- The Federal Law, On Introduction of Amendments to Certain Legislative Acts of the Russian Federation and Loss of Effect of Paragraph (3)(1) of Article 6 of the Federal Law, On Self-Managing Organizations, In Connection With Adoption of the Federal Law, On Arbitration (Third-Party Tribunals) in the Russian Federation, 29 December 2015, No. 409-FZ (“Law No. 409-FZ”)
- The Law of the Russian Federation, On International Commercial Arbitration, 7 July 1993, revised by the Law No. 409-FZ
- The Federal Law, On Arbitration (Third-Party Tribunals) in the Russian Federation, 29 December 2015, No. 382-FZ (“Law No. 382-FZ”)
- The *Arbitrazh* Procedural Code
- The Civil Procedural Code

Notion of corporate dispute under the Russian law: (slide 1)

- “Disputes connected with the creation of a juridical entity in the Russian Federation, management or participation in a juridical entity” (Art. 45(7) of Law No. 382-FZ)

It is unclear whether this definition absorbs

- (i) disputes with participation of indirect and/or foreign shareholders of a Russian company and
- (ii) disputes between foreign shareholders of a Russian company concerning management of that company or its foreign affiliates.

Notion of corporate dispute under the Russian law: (slide II)

- “disputes arising between participants of a juridical entity and that very juridical entity, including disputes concerning claims of participants of juridical entity with regard to legal relations of the juridical entity, where the participants of the juridical entity in accordance with a law possess a right to bring such claim” (Article 225.1(4) of the *Arbitrazh* Procedural Code)

It is unclear whether this definition suggests that dispute arising from a contract of a Russian juridical entity with a third party also qualifies as a “corporate dispute” under Russian law to extent participants such juridical entity are authorized to file claims disputing validity of transactions of that juridical entity

List of corporate disputes which are now obviously proscribed from arbitration under Russian law

- (i) calling of general meetings of shareholders,
- (ii) certification by public notaries of transactions with participatory shares of LLPs,
- (iii) challenging before courts of non-normative acts and of actions or failures to act of the State executive bodies of different levels,
- (iv) corporate disputes connected with companies having “strategic” importance in accordance with the Federal Law No. 57-FZ, 29 April 2008
- (v) disputes connected with purchase by a joint stock company of its own shares and disputes related to acquisition of more than 30 per cent of stock of a public joint stock company; and
- (vi) disputes connected with expelling of participants from commercial and non-commercial juridical entities.

How Russia sold its oil jewel: without saying who bought it

By [Katya Golubkova](#), [Dmitry Zhdannikov](#) and [Stephen Jewkes](#) |

MOSCOW/LONDON/MILAN

More than a month after Russia announced one of its biggest privatizations since the 1990s, selling a 19.5 percent stake in its giant oil company Rosneft, it still isn't possible to determine from public records the full identities of those who bought it. The stake was sold for 10.2 billion euros to a Singapore investment vehicle that Rosneft said was a 50/50 joint venture between Qatar and the Swiss oil trading firm Glencore.

Unveiling the deal at a televised meeting with Rosneft's boss Igor Sechin on Dec. 7, President Vladimir Putin called it a sign of international faith in Russia, despite U.S. and EU financial sanctions on Russian firms including Rosneft.

"It is the largest privatization deal, the largest sale and acquisition in the global oil and gas sector in 2016," Putin said.

But important facts about the deal either have not been disclosed, cannot be determined solely from public records, or appear to contradict the straightforward official account of the stake being split 50/50 by Glencore and the Qataris.

<http://www.reuters.com/article/us-russia-rosneft-privatisation-insight-idUSKBN1582OH>

The manner in which Russian laws now require “arbitrable” corporate disputes to be arbitrated. The following conditions are to be complied with:

1. Place of arbitration must be in Russia;
2. The arbitration clause must be signed by all shareholders (participants) of the company and by the company itself (the company may not be a party to an arbitration clause in disputes concerning title for its shares and operations of depositories);
3. The arbitration should be administered by a permanent (not *ad hoc*) arbitral institution which had received a special permission for consideration of corporate disputes from the Russian Government, or by the ICAC at the CCI of the RF, Russia’s main arbitral institution, which is authorized to consider corporate disputes by virtue of the law without additional governmental permission. The permanent arbitral institution which administers corporate disputes must have special rules for arbitration of those disputes;
4. Arbitration rules must provide for information about the dispute to be available to any shareholders (participants) of the corresponding company. That means that arbitral proceeding in a corporate dispute by definition would not be confidential.

In my opinion, as of 1 September 2016 Russian legislation imposes a *de-facto* ban on arbitration of corporate disputes involving Russian counter-parties.

Of course, that prohibition does not affect non-Russian arbitration laws and rules which may regulate arbitration of corporate disputes outside Russia, although enforcement in Russia of awards rendered by foreign tribunals in those matters most likely would not be possible.

Reputation of the ICAC at the CCI of the RF suffers from actions of Russian State courts

The two ever-largest arbitral awards rendered by the ICAC at the CCI of the RF (case *Maximov v. NLMK* of 2011 and *Yukos Capital S.A.R.L. v. Yuganskneftegaz* of 2006) were set aside by Russian State courts on entirely frivolous grounds – the real reason was that the State-controlled companies which have lost those arbitration cases experienced no problems in annulment of the corresponding awards.

Russian oligarchs still keep their major assets outside Russia

With news that [Alisher Usmanov has made a bid to complete a \\$1.3billion takeover of Arsenal](#) from current majority shareholder Stan Kroenke, Gooners everywhere are in dreamland.

<http://metro.co.uk/2017/05/19/arsenal-fans-beg-stan-kroenke-to-sell-the-club-to-alisher-usmanov-6648696/>

Enforcement of foreign arbitral awards in Russia in 2014 -2017

- Minimum estimate of 60 awards rendered against Russian companies in the course of 2014, 15 and 16 under Rules of ICC, SCC, LCIA, DIS and Vienna.
- Number of awards rendered under Rules of ICC, SCC, LCIA, DIS and Vienna brought to Russia for enforcement – 2, number of enforced – just 1 (rendered under DIS Rules in 2014).
- Only 24 original cases under New York Convention were considered by Russian courts from 1 January 2015 to 31 March 2017. The bulk of those awards represent cases decided in Ukraine and Belarus.

Source of information about cases decided in Russia: ConsultantPlus data base.

Conclusion

Prohibitions and limitations concerning arbitration of corporate disputes provided by new Russian legislation do not affect non-Russian arbitration laws and rules which may regulate arbitration of the corresponding corporate disputes outside Russia, although enforcement in Russia of awards rendered by foreign tribunals in those matters most likely would not be possible.