RAA40

Russian Arbitration Association

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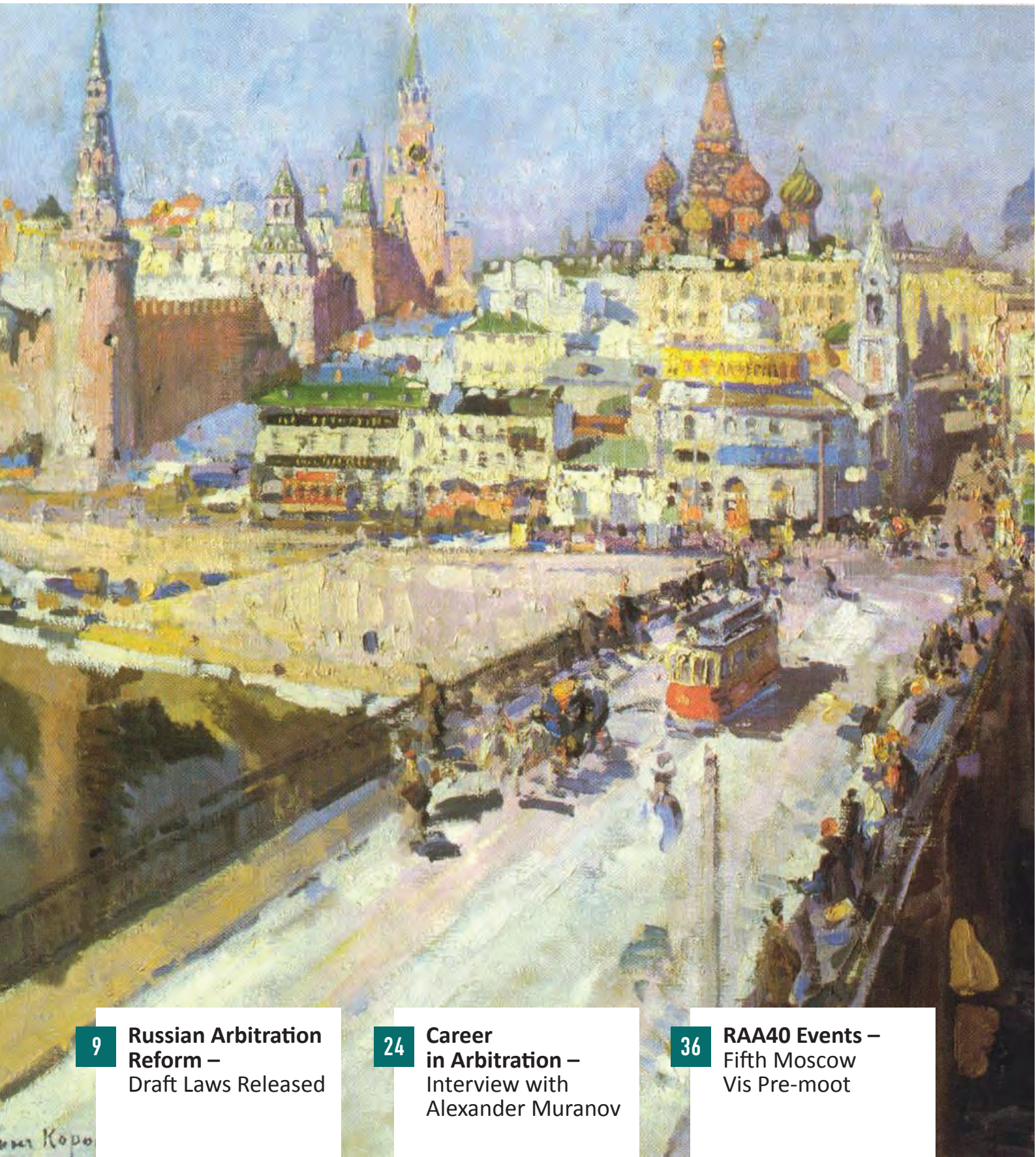

Table of Contents

Welcome from Co-Chairs

We are pleased to present the second issue of the Newsletter, which is being released on the eve of the RAA conference.

There are many important developments to report since our first newsletter published in December 2013. Ministry of Justice had released a package of draft laws dealing with both domestic and international arbitration reform in Russia. After a round of comments from the affected parties new drafts have been released less than two weeks ago. The most important elements of the reform are discussed in an article of Egor Chilikov (Baker Botts) in this newsletter.

The courts both in Russia and abroad have been busy with arbitration-related cases. For instance, the Supreme Commercial Court has issued and is in the process of drafting of many important decisions on arbitrability. The decisions and pending cases are outlined in the newsletter's reports.

We continue with our features on careers in international arbitration and arbitration-related LLM programs. We are very grateful to Alexander Muranov (Muranov, Chernyakov & Partners), who shared with us his experience of building a very successful career in international arbitration and advice to younger practitioners, and to Daria Sakhno (Goltsblat BLP), who discussed her experience of pursuing an LLM at Queen Mary, University of London.

We welcome any ideas, suggestions and contributions from RAA40 members and others interested in the field. These could be case notes or short articles dealing with either legal issues or practice skills or anything else that may be of interest to young arbitration practitioners. We expect to publish the next issue in September 2014.

Should you have any queries about the activities of RAA40, wish to share with us your ideas or submit a contribution to the newsletter, you can always contact us at raa40@arbitrations.ru.

Yours sincerely,
RAA40 Co-Chairs


Anna Shumilova


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Courts and Arbitration in Russia

Overview of Essential Cases (January–April 2014)

by Sergey Usoskin, Advocate, RAA40 Co-Chair

Party-Affiliated Arbitral Institutions Banned: Conflict-Avoidance Mechanisms Do Not Matter

OJSC Institut Neftegazproject v. CJSC Yamalgazinvest (Case No. A40-147862/12-29-1477, Presidium of the Supreme Commercial Court, Resolution No. 8445/13 dated 29 October 2013 (published in February 2014)).

The SCC reaffirmed its unwavering opposition to arbitration administered by institutions affiliated with one of the parties. Significantly, this decision suggests that no measure taken by the arbitral institution to avoid a conflict or appearance of a conflict changes this position.

The SCC dealt with an application to set aside an award rendered in an arbitration administered by the Arbitration Court at OJSC Gazprom. The tribunal rendered the award in favour of an indirect subsidiary of OJSC Gazprom against an independent entity. During the course of the arbitration the respondent failed to raise any objections to the proceedings. Once the award was rendered it moved to set it aside on public policy grounds arguing that the institution administering the arbitration was not independent.

The SCC decided that the award should be set aside despite all the mechanisms adopted by the institution to avoid any appearance of the tribunal's lack of independence and impartiality. Such mechanisms included delegation to a separate officer of the Arbitration Court unaffiliated with OJSC Gazprom all functions relating to the formation of the tribunal.

The SCC explained that even if there are no doubts about the tribunal's independence and impartiality, the award would be contrary to public policy if an arbitration was administered by a party-affiliated with the arbitral institution. Given that OJSC Gazprom provided organization support to the Arbitration Court and approved its rules and regulations, the Arbitration Court should not have therefore administered disputes between Gazprom-affiliated and independent companies.

Arbitral Tribunal's Power to Apply Public Law Rules Explained

Ul'ianovsk Customs Service v. LLC VSK, LLC Dicom and LLC Start
(case No. A72-11373/2012, Presidium of the Supreme Commercial Court Resolution No. 13691/13 of 28 January 2014).

The Presidium of the Supreme Commercial Court once again addressed the arbitral tribunals' powers to apply public law rules and abusive use of arbitration to "engineer" decisions for improper purposes.

In a dispute between three captioned LLCs, an arbitral tribunal voided a sales contract by which LLC VSK sold certain equipment it earlier to Russia. The tribunal held that the seller violated the prohibition on disposal of the equipment: the prohibition was imposed due to the customs duties exemption the seller earlier obtained.

The SCC decided that the arbitral tribunal was entitled to resolve a commercial dispute over validity of the contract between the parties. At the same time the award rendered in such a case would not affect seller's liability for a customs laws violation as the latter is a non-arbitrable public law issue.

However, the SCC went on to note that the award was contrary to public policy for a different reason. The court inferred from the totality of circumstances in this case that the only purpose of the arbitration was to help the seller avoid liability for a breach of the customs law regulations. The SCC held that such an award, rendered in "artificial" disputes, created for improper purposes, ran contrary to the Russian public policy.

Commencement of Insolvency Proceedings Torpedoes Arbitration?

LLC Terminal-Vostok v. Vincia Establishment
(case No. A40-166263/13, Federal Commercial Court for the Moscow Circuit resolution dated 8 April 2014).

The Federal Commercial Court held that once the first stage of insovlency proceedings – supervision («наблюдение») commences all claims against the debtor company, including these heard in an ongoing arbitration, should be referred to the court supervising the insolvency.

The court set aside an award rendered by an arbitral tribunal sitting under rules of the ICAC at the Russian CCI. The tribunal rendered the award on 3 October 2013 less than a month after the court confirmed that the respondent company should be put under supervision in the course of the insolvency proceedings.

The court relied on the provision of the insolvency law, which requires any claims against the debtor company placed under supervision to be lodged with the supervising state court. The court interpreted this provision to preclude an arbitral tribunal from considering the merits of any ongoing case once the respondent had been placed under supervision.

Earlier the Supreme Commercial Court held that an arbitral tribunal should terminate the proceedings once an insolvent company is put into liquidation («конкурсное производство») as from this moment disputes seize to be arbitrable. In addition, the creditors are entitled to pursue the cases before state courts against a debtor put under supervision if litigation started before. The position has been the same with respect to arbitration and it remains to be seen whether the described decision represents a shift in approach of state courts.

Additional Award or a Correction of the Award: It Matters

Corradino Corporation Ltd v OJSC Russian Insurance Center (Case No. A40-132569/13, Federal Commercial Court for the Moscow Circuit, Resolution dated 26 March 2014).

The court annulled an additional award rendered by an arbitral tribunal sitting under rules of the Maritime Arbitration Commission at the Russian CCI. It held that the tribunal failed to observe the parties' right to be heard, when it rendered an additional award on application of one of the parties without allowing the other party to comment.

The arbitral tribunal initially ordered the insurer to pay a certain amount to the insured. Then the insurance company applied for a "correction" of the award asking the tribunal to deduct unconditional franchise from the amount awarded. The tribunal decided to treat this application as an application for the issuance of an additional award, and went on to issue it.

On application of the insured the court annulled the additional award. It noted that the matter should not be treated as a correction of clerical error given that the tribunal effectively reconsidered its decision. The court acknowledged the tribunal's right to issue an additional decision, but went on to find that the same procedural guarantees that apply to proceedings leading to the original award equally apply to additional awards. This meant that at the very least the other party to arbitration should be given an opportunity to comment on the application and participate in a determinative hearing.

Parties' Agreement to Arbitration Should be Specific Enough

LLC Atlantis Group of Companies v. AGD B.V (Case No. A21-4873/2012, Federal Commercial Court for the North-Western Circuit, Resolution dated 25 February 2014).

The claimant sued for the price of cod it sold to the respondent. The respondent sought to have the proceedings stayed relying on what the respondent argued amounted to an arbitration clause in the parties' contract. Under the provision the respondent cited "any disputes should be resolved by arbitration of the seller's state. The award should be final".

The court refused to enforce this provision. It began by noting that the parties failed to specify an arbitral institution or arbitration rules. The court then refused to read the clause as an agreement to ad hoc arbitration observing that such an agreement should be specific, i.e. say expressly that the parties agree to ad hoc arbitration. Finally, the European Convention on International Commercial Arbitration, which provides a remedial mechanism where the arbitration clause is too vague, was inapplicable given that the Netherlands (the buyer's country of incorporation) was not party to it.

Cases to Watch

Case: Ministry of Natural Resources and Environment of Karelia v. LLC Forrest-Group (no. A26-9592/2012)
Forum: Presidium of the Supreme Commercial Court

Significance of the Case: The Ministry sought annulment of an award rendered by a domestic arbitral tribunal in a dispute over rent due for a forest plot the Ministry leased to a logging company. The Ministry claimed that the matter was not arbitrable as the lease contract contained provisions addressing certain public law matters (such as issuance of logging permits). The Supreme Commercial Court upheld the application and set the award aside. The full text of the decision has not yet been released. However, in referring the case to the Presidium the three-judge panel noted that a private law dispute over rent payments cannot be isolated from the entirety of the contract. Given that the contract addressed some public law matters, it follows that no disputes under the contract may be submitted to arbitration.

Case: LLC Arbat-Stroy v. Construction Division of the Moscow Health Department (no. A40-148581/12)
Forum: Presidium of the Supreme Commercial Court

Significance of the Case: The applicant secured annulment of a domestic arbitral award in a dispute over performance of a public procurement contract. The full text of the resolution has not yet been released. However, in referring the case to the Presidium, the three-judge panel put forward two principal arguments. First, all disputes under public procurement contracts are not arbitrable in Russia. Second, the arbitration clause was unenforceable. Under rules applicable to domestic arbitration, arbitration clauses contained in adherence contracts are not enforceable. The arbitration clause formed part of the contract that the contractor had to accept as part of the bidding process, which in the panel's view rendered the clause unenforceable.

Case: ENEL OGK-5 v Rospostavka and Worley Parsons Europe Energy Services
Forum: Presidium of the Supreme Commercial Court

Significance of the Case: The parties entered into two agreements with conflicting dispute resolution clauses. An ICAC at the RF CCI tribunal decided that the arbitration clause in the later agreement overrode the earlier clause. The courts disagreed and set the award aside. Whilst the full text of the Supreme Commercial Court decision has not been released yet, the Presidium apparently confirmed the tribunal's decision.

Case: DNB Bank v Karelskaya Shipping Company (no. A40-164314/2012)
Forum: Presidium of the Supreme Commercial Court

Significance of the Case: The Federal Commercial Court for the Moscow Circuit set aside an arbitral award in a dispute between a shipping company and its insurer on application of the shipping company's lender. The lender had an interest in the ship and the insurance coverage and pursued a separate arbitration against the insurer. The court held that the tribunal's refusal to allow the lender to participate in the arbitration in question prejudiced its rights since the tribunal pronounced on the technical condition of the insured ship. The Supreme Commercial Court quashed this decision and dismissed the application. It found that the award had no res judicata effect for the insurer and hence in no way affected its rights. The full text of the resolution has not been released yet.

Case: Serbian Privatization Agency (Agency) v. OJSC Avtodetal-Service (no. A72-15958/2013)
Forum: Federal Commercial Court for the Povolz'e Circuit

Significance of the Case: Agency seeks enforcement of an arbitral award rendered in Serbia on the basis of a privatization agreement between the parties. The first instance court rejected the application. It noted that privatization is a public law matter and therefore such disputes are not arbitrable. The court further said that privatization-related disputes are generally not arbitrable in Russia. An appeal is currently pending before the Federal Commercial Court for Povolz'e Circuit.

Case: Stans Energy v Kyrgyzstan
Forum: The Arbitration Court at the Moscow Chamber of Commerce and Industry

Significance of the Case: Stans Energy argues that Kyrgyzstan violated its rights under the Moscow Convention on the Protection of Investor's Rights and claims over $117 million in compensation. To establish jurisdiction of an arbitral tribunal it relies on a provision of the Convention that provides that the disputes are to be resolved by inter alia investment arbitration. The key question is whether this provision constitutes the state's sufficiently clear consent to arbitration.

Case: Kyrgyzstan v. Li John Bek & Central Asian Corporation for Development (no. A40-19518/14)
Forum: Moscow Commercial Court

Significance of the Case: Kyrgyzstan seeks annulment of an award rendered by a tribunal sitting under the rules of the Arbitration Court at the Moscow Chamber of Commerce and Industry. According to various public reports the tribunal relied on the Moscow Convention on the Protection of Investor's Rights as the basis for its jurisdiction and found that Kyrgyzstan expropriated the investors' assets. This will be the first case where a tribunal's treatment of the Moscow Convention as state's consent to jurisdiction will be tested.

Breathtaking Developments

Russian Arbitration Reform Is Underway

by Egor Chilikov, Associate, Baker Botts LLP

On January 17, 2014 the Ministry of Justice released a set of draft bills for public consultations. Amended drafts then followed on April 14 showing that the Ministry was quite attentive to many of the public comments. The work is still ongoing. Filing to the State Duma is scheduled for summer 2014.

There are four draft bills in the set altogether – ("the Drafts"). One is a completely rewritten Law on Domestic Arbitration ("LDA"). The other three contain amendments to a number of arbitration-related laws, including the Law on International Commercial Arbitration ("LICA"), the Arbitrazh Procedure and Civil Procedure Codes, the Tax Code and the Criminal Code.

Key objectives of the Drafts are twofold. First, they aim to rectify the current state of affairs in domestic arbitration with its outdated regulations and various bad practices, like fabricated awards or party-affiliated ("pocket") arbitral institutions. Second, they aim to tune key regulatory blocks which commonly define arbitration environment in a given seat, like arbitrability, enforcement of arbitration agreements, various forms of assistance provided to arbitral tribunals by state courts, setting aside and enforcement of arbitral awards. The Explanatory note to the Drafts asserts that the proposed developments should advance trust in arbitration seated in Russia and encourage less disputes to flow abroad.

This note provides an abbreviated overview of some key ideas of the Drafts. Many details are omitted, as well as discussion of the drafting technique and drawbacks.

International and Domestic Arbitration Frameworks

Law on Domestic Arbitration has been completely rewritten based on the UNCITRAL Model Law. The LDA and LICA drafts have thus been harmonized, and most of the proposed amendments come under both Laws. This step is more than welcomed. First, there has never been any good policy reason to make regulations on international and domestic arbitration as different as they currently are. Secondly, the existing LDA is obviously outdated on a number of counts; some of its procedures are more common for state courts, rather than for arbitral tribunals. It is telling that the drafters found it impractical to amend the existing LDA, but decided just to rewrite it completely.

A number of reasonable differences though remain. For example, LDA is more detailed with respect to some elements of the arbitral procedure (like, written submissions of the parties, content and allocation of arbitration costs, rules on confidentiality), while LICA, quite expectedly, leaves most of the procedural issues for the parties and the tribunal to decide. Another example is that under LDA arbitrators shall assess validity of a choice-of-law clause based on the Russian conflict of laws rules, while under LICA arbitrators shall follow those conflict of law rules which they decide to be applicable.

Fighting Bad Practices in Domestic Arbitration

The domestic arbitration environment leaves much to be desired. The last two decades were marked by various manipulations in this sphere. The level of trust to the domestic arbitral proceedings and awards is often quite low. Many would not refer their disputes to domestic arbitration, unless they are forced to by the circumstances.

The Drafts provide for a complex set of means to rectify the situation. An emphasis is made on tightening regulations related to domestic arbitral institutions. The following changes are envisaged:

- Activities of arbitral institutions will be scrutinized by the Ministry of Justice backed up by a special expert committee, consisting of government officials (which shall not occupy more than 50 % of seats in the committee), judiciary, business, and arbitration practitioners. First, each domestic arbitral institution shall obtain a permission to act from the Ministry. Permission will be granted if, inter alia, an institution satisfies the expert committee that it "will advance widespread use of arbitration in Russia". As for already existing institutions, the committee shall also account their reputation and activities. Secondly, the Ministry is vested with a power to check activities of domestic institutions and to initiate their compulsory liquidation in court should they not comply with the requirements of LDA or instructions of the Ministry. Obviously, these powers and criteria vest the Ministry with a wide discretion, which is though balanced by expanded and (hopefully) representative composition of the expert committee.

- Arbitral institutions will likely enlarge; small and dormant ones will be likely expelled from the market. First, arbitral institutions shall compile and make public a recommended list of arbitrators. This list shall include not less than 30 persons (1/3 shall be lawyers eligible under the LDA and LICA to serve as a presiding or sole arbitrator) - quite a big figure for a small institution. Secondly, institutions shall ensure that appointments of arbitrators are made by, or may be appealed to an appointment committee. The committee shall be made of at least five members, 1/3 of which may be arbitrators from the list, while the rest shall be appointed by the listed arbitrators from an independent pull. Members the committee shall be regularly rotated. Again, it is an additional burden which may not be easy for many institutions to meet. The rationale for these regulations is apparent - it is easier to scrutinize a few big, rather than a lot of small ones.

- Arbitral institutions with "wrong" objectives will, hopefully, be pushed off the market. First, each arbitral institution (except arbitral institutions under auspices of the chambers of commerce and industry) shall get registered as a non-profit entity, and only non-profit entities or stock markets shall serve as their founders. Today's arbitration market demonstrates that the profit-making stimulus often drives away from advancing proper arbitration practices. This is what the drafters are attempting to change. The message is that arbitration is a business for arbitrators; the institution's role is to assist, educate and promote. Secondly, arbitral institutions are prohibited from administering cases in which any of their founders or any other persons who control them are parties to - this will put an end to "pocket" arbitral institutions. Thirdly, arbitral institutions are prohibited from using titles which would mix their identity with certain Russian state courts.

- Arbitral institutions shall make their rules and information on their founders and funding all public.

- Arbitral institutions shall be liable for damages caused by a bad management of a case.

These regulations, if implemented, will considerably change the market framework and environment. It is understandable, that existing arbitral institutions do not like it. Obviously, many of them will not survive the reform, but those which will should be certainly the best ones. From a user standpoint this is a good change. The above regulations do not cover ad hoc tribunals, thus potentially allowing bad practices to keep flowing in through this door. At least two factors, though, may help to put this risk under control.

First, state courts will retain full control over awards of ad hoc tribunals by means of setting them aside or refusing to enforce. Same applies to awards of institution based tribunals, unless some of the control powers

are withheld by the parties (see below). No doubt, it is usually not easy for the courts to reveal manipulations and make use of these findings within the limited grounds for setting aside or refusal to enforce. Russian courts will need to adjust their practices to exercise their control functions effectively. Thereto, the Drafts stipulate that all tribunals (even ad hoc ones) shall store their cases file for 10 years, while the courts are entitled to order production of such files to check grounds for setting aside or refusal to enforce. A downside of this is that with a case file at hand the courts may become more inclined to reconsider merits of the case.

Secondly, the Drafts provide that all arbitrators, disregarding whether sitting in ad hoc or institution based tribunals, shall be subject to criminal liability for taking bribes or forging arbitral awards. Plus as per existing regulations, arbitrators may be subject to criminal liability for fraud or conspiracy to commit fraud. These provisions may serve as a powerful shield against various manipulations should Russian authorities use it properly and effectively. On the other hand, this may cause arbitrators to refuse appointments, should Russian authorities or parties to the proceedings abuse these provisions. It is fixed in the Drafts that arbitrators shall not be questioned by investigators about issues of which they became aware while hearing a case.

Foreign arbitral institutions will also be affected by the proposed changes should they happen to administer cases in Russia. They shall get the named above permission of the Ministry of Justice to administer cases in Russia, otherwise relevant arbitral proceedings shall be deemed to be ad hoc proceedings. Permissions will be granted to those foreign institutions which possess a "recognized international reputation". These regulations seem to assure that domestic institutions do not bypass the above requirements by getting relocated abroad and continuing their bad practices from there.

The Drafts provide tax exemptions for arbitrators and allow retired judges to serve as arbitrators.

Arbitration Agreements

Drafters attempt to fine tune regulations on arbitration agreements. First, this goes to the issues of form. The Drafts stipulate that an "in writing" requirement is satisfied if an arbitration agreement is executed by means of exchange of documents in various forms, including fax and "electronic documents", in respect of which it may be "evidently established" that they originate from a designated party. Same formula is used in Article 434 of the Civil Code. Practice of Russian courts is quite diverse as to what types of communications allow the required certainty as to the document's origin. For example, mere e-mail exchange will very likely not be considered sufficient, unless there is an established business common between the parties to use particular e-mail addresses or a separate agreement which attributes a particular e-mail address to a particular party. The Drafts provide that the parties may agree in writing as to which forms of communication should count.

The Drafts expressly fix that all doubts should be resolved in favor of arbitration agreements; that assignment of a contract entails assignment of an arbitration agreement; that powers to enter a contract assume powers to enter an arbitration agreement. It is also fixed that an arbitration agreement in a given contract covers all issues related to entering into the contract, its force, termination, validity and consequences thereof. This signifies a very permissive turn, similar to the one which has taken force in Russian courts.

Parties are allowed to enter those dispute resolution agreements which vest only one party with a right to go to arbitration. This will resolve the Sony Ericson case dilemma.

Arbitrability

The Drafts provide for a general definition of arbitrability. A dispute is arbitrable, if (1) it is a private ("civil law") dispute and (2) it is between the parties which have entered the arbitration agreement. If traced to the underlying basics, the proposed definition suggests that arbitrable disputes should not affect either public interests or interests of third parties. It is probably hard to specify a more effective general definition; its success will depend on how it is received and construed by the courts.

General definition is coupled by a non-exhaustive list of non-arbitrable disputes. They include, for example, bankruptcy disputes, disputes related to privatization and state procurement, disputes related to the acts of state officials and bodies, class action disputes, most of family disputes, labor and succession disputes. Investor-state disputes are termed arbitrable, provided that they are envisaged by international treaties or domestic laws.

The Drafts expressly declare that some of the corporate disputes are arbitrable. Three groups may be distinguished. First, some corporate disputes are arbitrable without limitations. Among them are disputes which commonly arise out of share purchase agreements - disputes over the title to the shares and over the payment of the purchase price. Second, some disputes are arbitrable, provided that certain conditions are met. Among them are disputes regarding damages caused to the company by its managers, disputes regarding validity of company's transactions, disputes which involve corporate governance issues. Such disputes are arbitrable if (1) all relevant parties have expressed their consent to arbitrate (such consent may be incorporated into the company's charter), (2) the dispute is administered by an arbitral institution (which has respective rules for arbitrating corporate disputes) and (3) the seat of arbitration is in Russia. Finally, some disputes are not arbitrable under any circumstances. For instance, this group includes disputes related to entities of strategic importance to the State.

Rules on arbitrability of corporate disputes are scheduled to come into effect on April 1, 2016. All respective arbitration agreements which are concluded before this date shall be deemed incapable of being performed.

Assisting and Supervising Authority

Drafters propose to assign all assisting and supervising authority to state courts, while currently it is split between state courts and the President of the Chamber of Commerce and Industry (the latter is tasked to assist with composition of arbitral tribunals).

The courts of first instance will be deciding all arbitration matters. Decisions on setting aside or enforcement of awards, as well as decisions on interim measures will be subject to appeal to the courts of cassation instance. Drafters gave up the idea of elevating the setting aside and enforcement authority to the courts of cassation instance – this idea was embodies in the earlier Drafts.

Assistance with Composition of Arbitral Tribunals

It is suggested that when tasked to appoint an arbitrator, the courts should assure that a candidate is independent and unbiased. In the earlier Drafts the courts were required to choose candidates from a list of arbitrators of the designated arbitral institution, or otherwise - from a list which will be compiled by the Ministry of Justice. This proposal has been withdrawn from the Drafts, but may still be employed by the courts. Not clear whether the Ministry is still going to compile its list.

Assistance with Collection of Evidence

The Drafts provide that arbitral tribunals and parties may apply to the state courts for assistance with collecting evidence. Assistance shall only be granted in aid of cases before institution based tribunals. Grounds to refuse assistance are expressly specified. This proposal is welcomed since as per the current framework, it is not clear whether at all and under what conditions the courts are authorized to grant such assistance.

Assistance with Interim Measures

The Drafts stipulate that arbitral tribunals are entitled to adopt interim measures and that such measures shall be binding upon the parties. It is stipulated that parties may agree on any kind of emergency procedures

procedures for adoption of interim measures before a tribunal is in place - such measures shall be also binding upon the parties.

The Drafts keep silent as to enforceability of interim measures ordered by an arbitral tribunal. Absent special regulations on enforceability of interim measures (like those which are proposed in the 2006 UNCITRAL Model Law), enforcement may be achieved if a court is convinced that respective measures constitute a "final award" which is envisaged by the New York Convention. Practice of the Russian courts has been so far quite conservative in this respect; almost no interim measures of arbitral tribunals have so far passed the "finality" test. The Drafts, thus, will unlikely change anything on this front.

The parties, though, have a right to seek self-standing interim measures from state courts in aid of arbitral proceedings with a seat in Russia or abroad.

Setting Aside and Enforcement of Awards

Grounds for setting aside and refusal to enforce are harmonized by the Drafts with Art. V of the New York Convention.

According to the Drafts, parties to an institutional arbitration are entitled to withhold authority of state courts to set aside awards on grounds other than non-arbitrability and contradiction to public policy. Ad hoc tribunal shall still undergo a full review. Thus Russian arbitral awards which are not intended to be enforced in Russia may escape some scrutiny of the Russian courts - a very pro-arbitration step for Russia as an arbitral seat.

Currently Russian courts may assume jurisdiction to set aside an award issued outside Russia but under Russian law. Drafters suggest striking off this ground for jurisdiction. This will make use of Russian law in the contracts which refer to a foreign arbitral seat less risky.

The Drafts stipulate that application for setting aside of an award may be filed not only by parties to the proceedings, but also by third parties which are affected by the award. This codifies the approach which is currently being applied by the state courts.

The Drafts provide that entries in the public state registers (like the register of legal entities or the register of immovables) may not be changed based on an arbitral award before enforcement of the award is ordered by a state court.

Entry into Force

The Drafters currently intend to have the Drafts entered into force on January 1, 2015. Arbitral institutions are then allowed a transitory period till July 1, 2016 to get accommodated to the proposed rules. Transitory rules for existing arbitration agreements and ongoing arbitration proceedings are stipulated as well.

Draft LCIA Rules

by Robert Dougans, Nabeel Osman, Maria Gritsenko, Bryan Cave LLP

The LCIA has published a final draft of its revised arbitration rules, which will be considered by the LCIA Court at its meeting at Tylney Hall on 9 May. The LCIA Drafting Committee consisted of VV Veeder QC (Essex Court Chambers, London), James Castello (King & Spalding, Paris) and Professor Boris Karabelnikov (Moscow). The Committee proposed a number of the changes to the 1998 LCIA Rules, to reflect recent trends in arbitration practice.

In general terms, the draft seeks to streamline the arbitration procedure by imposing stricter obligations on all participants of the arbitration process, including the arbitrators. For example, prior to their appointment by the LCIA Court, arbitral candidates shall sign a declaration confirming that the candidate is "ready, willing and able to devote time, diligence and industry to ensure the expeditious conduct of the arbitration" (Article 5.4). The Tribunal and the parties should meet to discuss the conduct of the proceedings no later than 21 days after notification that the Tribunal has been constituted (Article 14.1). The Tribunal shall set aside adequate time for deliberations and render the award "as soon as reasonably possible" after the final submissions, in accordance with a timetable notified to the parties (Article 15.10). When ruling on the costs, the Tribunal may take into account any such behaviour by the parties, which resulted "in undue delay and unnecessary expense" (Article 28.4).

The new rules also introduce an emergency arbitration procedure (Article 9B); the emergency arbitrator's decision would take effect as a final and binding award (Article 9.11). This emergency arbitration procedure would come in addition to the existing ability to apply for expedited formation of the Arbitral Tribunal (now described as "urgent formation", Article 9A).

Another important change is the new Article 16.4, which expressly states that, unless the parties have agreed otherwise, the law applicable to the arbitration agreement and the arbitration shall be that of the seat of the arbitration. This is a welcome clarification, given that the issue of the law applicable to the arbitration has been a matter of debate in a number of cases.

Finally, counsel appearing before the Arbitral Tribunals will note a new Annex to the Rules, setting out General Guidelines for the Parties' Legal Representatives. The parties to the arbitration are now under obligation to ensure that their legal representatives have agreed to comply with these guidelines (Article 18.5). The Annex provides that counsel should not engage in activities "intended unfairly to obstruct the arbitration or to jeopardise the finality of any award", including repeated challenges to an arbitrator's appointment or the Tribunal's jurisdiction that the counsel knows to be "unfounded". Counsel should not knowingly make false statements, rely on false evidence, conceal documents or initiate unilateral contact with the members of the Tribunal or the LCIA Court. The Arbitral Tribunal has authority to decide whether a legal representative has violated the Guidelines and apply appropriate sanctions listed in Article 18.6, such as a written caution or a written reprimand. The draft rules also envisage a possibility for the Tribunal to refer the matter to the counsel's regulatory and/or professional body; this provision is currently in square brackets and is likely to be one of the most debated at the Tylney Hall meeting. If the draft is then approved by the LCIA Court, the new rules are expected to come into force by the end of this year.

Courts and Arbitration Abroad

Sweden

by Fredrik Ringquist, Mannheimer Swartling

Naftogaz Award Upheld by Svea Court of Appeal

Judgment of the Svea Court of Appeal (Stockholm), 24 January 2014, case no. T 2635-13 (National Joint-Stock Company "Naftogaz of Ukraine" ("Naftogaz") vs. Italia Ukraina Gas S.p.a ("IUGAS")). Unofficial English translation available at http://www.arbitration.sccinstitute.com/files/190/1907836/T%202635-13_eng.pdf.

Facts

In December 2003, Naftogaz, a Ukrainian state-owned company, concluded a natural gas supply agreement with the Italian company IUGAS. In the agreement, Naftogaz undertook to supply IUGAS with natural gas over a 10-year period. Starting from May 2007, IUGAS requested delivery under the agreement, but no deliveries were made by Naftogaz. In January 2008, IUGAS initiated arbitration in Stockholm against Naftogaz under the SCC Rules, in accordance with the arbitration clause in the supply agreement. The proceedings were bifurcated; jurisdiction and liability were to be tried in a first phase and quantum in a possible second phase.

The Tribunal rendered its partial award in October 2010. In the award, the Tribunal ruled that it had jurisdiction. It declared the supply agreement valid and found Naftogaz liable to pay damages due to its failure to deliver as agreed.

Naftogaz subsequently requested the Svea Court of Appeal to set aside the partial award. This request was rejected by the Svea Court of Appeal in July 2012.

In December 2012, the Tribunal rendered its final award, ordering Naftogaz to pay USD $16 million, together with interest, to IUGAS for Naftogaz's failure to deliver under the supply agreement.

Naftogaz challenged the final award with the Svea Court of Appeal. Among other things, Naftogaz claimed that the Tribunal had committed a procedural error and/or exceeded its mandate by incorrectly dismissing or disregarding a number of Naftogaz's arguments in the second phase of the proceedings on the basis of res judicata. Naftogaz also argued that the reasons given by the Tribunal in the final award in several instances were insufficient to the extent that they were to be equated with a situation where no grounds had been provided at all. This circumstance, according to Naftogaz, constituted a procedural error.

Held

In a judgment dated 24 January 2014, the Svea Court of Appeal rejected Naftogaz's challenge application. As to Naftogaz's claim that the Tribunal had incorrectly applied the doctrine of res judicata, the Svea Court of Appeal noted that the Swedish Arbitration Act lacks provisions on the res judicata effect of arbitral awards.

However, referring to a Swedish Supreme Court case (NJA 1998 p. 189), the Svea Court of Appeal stated that Swedish procedural law principles related to the res judicata effects of judgments were to be applied also with respect to the res judicata effects of arbitral awards. The Svea Court of Appeal went on to conclude that the Tribunal had in fact considered the merits of Naftogaz's objections in the second phase of the arbitration, before dismissing them on the basis of res judicata. Accordingly, the Svea Court of Appeal concluded that there was no basis to set aside the final award on the ground that the Tribunal had incorrectly dismissed or disregarded arguments on the basis of res judicata. Moreover, the Svea Court of Appeal held that the Tribunal had provided sufficient grounds for its reasoning in the final award. The Svea Court of Appeal also noted that the award provided that the fact that any particular submission, argument, document or fact was not expressly mentioned or dealt with therein did not mean that it had not been carefully considered by the Tribunal.

Svea Court of Appeal Dismisses Appeal on the Basis of Exclusion Agreement

Decision of the Svea Court of Appeal (Stockholm), 11 April 2014, case no. T 245-11 (Aker Martime Finance AS ("Aker") and Kvaerner AS ("Kvaerner") vs. Open Joint-Stock Company S.P. Korolev Rocket and Space Corporation Energia ("Energia"), KB Yuzhnoye and State Enterprise "Production Association Yuzhny Machine-Building Plant named after A.M. Makarov" (the latter two jointly "Yuzhnoye")) and case no. T 314-11 (Boeing Commercial Space Company ("BCSC") and The Boeing Company ("Boeing") vs. Energia and Yuzhnoye).* No English translation is currently available.

Facts

The dispute concerned an international cooperation referred to as Sea Launch relating to the launching of commercial spacecraft from a mobile sea platform. In October 2009, BCSC and Boeing commenced an ad hoc arbitration in Stockholm under the UNCITRAL Arbitration Rules. Energia, Yuzhnoye, Aker and Kvaerner were respondents in the arbitration, although no claims were raised by BCSC and Boeing against the latter two companies. BCSC and Boeing demanded payment from Energia and Yuzhnoye based on alleged sub-guarantee obligations contained in an agreement from May 1995 regarding the creation of the Sea Launch project. Kvaerner subsequently raised a cross-claim against Energia and Yuzhnoye based on the same alleged sub-guarantee obligations. Energia and Yuzhnoye rejected the claims and requested that they be dismissed, inter alia, on the ground that the opposing parties lacked the right to rely on the arbitration clause in the 1995 agreement.

In October 2010, the Sole Arbitrator issued an award in which all claims were dismissed for lack of jurisdiction.

In January 2011, BCSC/Boeing and Aker/Kvaerner filed applications with the Svea Court of Appeal requesting that the award be set aside. Energia and Yuzhnoye requested that the applications be dismissed, inter alia, on the basis that the arbitration clause in the 1995 agreement excluded appeals, including appeals against jurisdictional decisions.

Held

In a decision dated 11 April 2014, the Svea Court of Appeal dismissed the applications of BCSC/Boeing and Aker/Kvaerner. Among other things, the Svea Court of Appeal stated that the Swedish Arbitration Act was silent on the issue of whether or not parties were entitled to agree to exclude the right of appeal as regards negative jurisdictional decisions. However, referring to statements made in the preparatory works to the Swedish Arbitration Act, the Svea Court of Appeal stated that provisions of the act should not be viewed as mandatory solely on the basis that they did not expressly provide otherwise. The Svea Court of Appeal further stated that a distinction had to be made between positive and negative jurisdictional decisions when it came to the validity of exclusion agreements. Unlike the former, the latter does not exclude the competence ordinarily vested in state courts. On this basis, the Svea Court of Appeal concluded that it would not be inconsistent with the European Convention on Human Right to allow agreements which exclude the right to appeal

negative jurisdictional decisions. Nor did the Svea Court of Appeal agree with the assertion of BCSC/Boeing and Aker/Kvaerner that the absence of a right to appeal the award would result in a denial of justice. In this connection, the Svea Court of Appeal noted that BCSC/Boeing and Aker/Kvaerner had not alleged that they in fact lacked the opportunity to litigate their claims in state court proceedings. In the view of the Svea Court of Appeal, there were no reasons not to allow parties to exclude the right to appeal negative jurisdictional decisions. On the contrary, parties had a highly legitimate interest in the finality of negative jurisdictional decisions. The Svea Court of Appeal went on to conclude that the wording of the exclusion agreement in the 1995 agreement fulfilled the requirements under Swedish law of being express and clear.

*Disclaimer: the author was a member of the Mannheimer Swartling team that represented Energia in the Svea Court of Appeal and the underlying arbitral proceedings.

Committee Appointed to Modernise the Swedish Arbitration Act

On 6 February 2014, the Swedish Ministry of Justice appointed a committee to propose ways to strengthen Sweden's position as a venue for arbitration. According to Sweden's Minister of Justice Beatrice Ask, the Swedish Arbitration Act is modern and well-functioning. However, the time had come to review the act since it was adopted in 1999. The committee is led by former Swedish Supreme Court Justice Johan Munck.

Among other things, the committee will assess whether the Swedish Arbitration Act is to be amended to include specific provisions on multi-party arbitration. The committee will also review measures aimed at enhancing the efficiency of challenge proceedings in Sweden, including the possibility of using the English language in proceedings involving foreign parties. The committee has been asked to present its conclusions by 15 August 2015.

England

by Robert Dougans, Nabeel Osman, Maria Gritsenko, Bryan Cave LLP

High Court orders Interest on Judgment Entered in Respect of an Award

Sonatrach v Statoil Natural Gas LLC [2014] EWHC 875 (Comm).

The High Court has held that when an English arbitral award is being enforced through the Courts, the Court may order judgment interest to accrue on the judgment even if the arbitral tribunal did not make an order for post-award interest.

In an arbitration with its seat in England, the tribunal made an award in favour of the defendant (Statoil) in April 2013. The tribunal did not award post-award interest under section 49(4) of the Arbitration Act 1996. In July 2013, Statoil obtained an order to enforce the award as a Court judgment in England. Mr Justice Cooke awarded interest at 8% (under the Judgments Act 1838) on the outstanding amounts awarded by the tribunal from the date of the court order until payment.

Mr Justice Flaux later had to deal with the issue of whether Mr Justice Cooke could award post-award interest where the arbitral tribunal had not done so. He did so by differentiating between circumstances where the Court was asked to award interest post-award but pre-judgment, and the position where judgment on an award has been entered by the Court through the procedures under the Arbitration Act 1996. He confirmed that the Court has the same power to order interest on a judgment in those circumstances as it does in respect of any other judgment.

This decision is consistent with the decision of Mr Justice Beatson in Gater Assets Ltd v Nak Naftogaz (No 2) [2008] EWHC 1108 (Comm), which confirmed that interest under the Judgments Act interest will accrue in respect of any judgment entered on a foreign arbitral award enforced in the English Courts.However, referring to a Swedish Supreme Court case (NJA 1998 p. 189), the Svea Court of Appeal stated that Swedish procedural law principles related to the res judicata effects of judgments were to be applied also with respect to the res judicata effects of arbitral awards. The Svea Court of Appeal went on to conclude that the Tribunal had in fact considered the merits.

Court of Appeal Refuses a Challenge to the Enforcement of a New York Convention Award Founded on "Hollow Formalism"

Lombard-Knight & Anor v Rainstorm Pictures Inc [2014] EWCA Civ 356

The English Courts continue to display their pragmatic, pro-arbitration stance as illustrated by their rejection of a challenge to enforcement of a Californian arbitral award.

In March 2012, a Californian arbitrator issued an award in respect of Rainstorm, who applied to enforce this award in the English High Court by a without notice application in August 2012. The Arbitration Act 1996 requires such an application to be accompanied by certified copies of the agreement. Rainstorm's application did not attach formally certified/notarised copies of the agreements, but exhibited them to the Claim Form which was (as usual) certified by a statement of truth. Rainstorm's application also exhibited a document from the arbitral body certifying the truth of the award. Mr Justice Eder allowed Rainstorm's application to enter judgment in respect of the award.

Lombard-Knight applied to set aside this order. This application was granted by Mr Justice Cooke on the grounds that Rainstorm had failed to comply with the requirements of the Arbitration Act as the two arbitration agreements had not been produced to the court as originals or certified copies as

"independent certification" was required. He refused other challenges to the order. Lonbard-Knight appealed, and Rainstrom cross-appealed.

The Court of Appeal accepted Rainstrom's cross-appeal. They held that there was no requirement in the Arbitration Act for the documents to be subjected to "independent" certification. They also noted that there was no challenge to the actual validity of the arbitration agreement, nor was there any suggestion that the agreements exhibited to the Claim Form differed in any way from the agreement between the parties. They also noted that the Claim Form had been signed with a statement of truth, and it was the obvious implication that these were true copies. To require a litigant to say so expressly would introduce an "unnecessary element of formalism". The Court of Appeal said it had been "hollow formalism" for Mr Justice Cooke to set aside the original enforcement order. Where both parties so clearly agreed that the photocopies produced by Rainstorm were true copies, any failure (real or alleged) properly to certify the copies was immaterial.

As well as suggesting the bare minimum required to certify an arbitral award in an application to the English Courts, this case also illustrates that arguments based on form rather than substance are still likely to be dismissed by the English Courts.

Pursuing an LL.M. Degree in Arbitration

Interview with Daria Sakhno, a QMUL graduate

***Daria Sakhno** is an associate at Goltsblat BLP (Moscow) dispute resolution group, a Fellow of the Charted Institute of Arbitrators; she obtained her LLB from the National Research University "Higher School of Economics" (Moscow) and LLM in Comparative & International Dispute Resolution from the Queen Mary, University of London in 2012.*

***Queen Mary, University of London ("QMUL")** offers both full-time and part-time LLM programs in international arbitration as well as various other programs in the area, including distance-learning ones. Courses offered include international arbitration, international construction arbitration, ADR, International Trade and Investment Dispute Settlement, International Commercial Litigation, Negotiations, International Arbitration and Energy and many others. The tuition fee for the 2014-2015 full-time program is 18 000 pounds. The application periods closes on 1 July 2014 though the university recommends to apply as early as possible.*

Can you briefly tell us about your background before you decided to embark on an LLM program?

Before I decided to apply for an LLM at QMUL I studied at the Higher School of Economics, focusing on dispute resolution. I worked as a legal counsel for a real estate company, but it was mainly unrelated to dispute resolution, we only had a few court cases relating to rendering of services and so on. At some point I decided I don't want to work in real estate and I understood that I am really interested in dispute resolution. My scientific supervisor, Professor Elena Kudryavtseva allowed me to write a research paper on sports arbitration, which later became my thesis and thanks to that I understood I want to learn more about different forms of arbitration. At this point I started considering doing a foreign LLM degree focusing on international dispute resolution.

What LLM programs have you considered?

First I looked at American degrees and I checked application and tuition fees and while there are a lot of opportunities to get a scholarship it is not guaranteed. Foreign students were denied access to students

loans. And in the end, I just couldn't afford it. So I switched to Europe. I considered Stockholm, I considered France and of course I considered the UK, because English is my first foreign language. I was googling all programs in international arbitration. I then narrowed down the search to QMUL, Westminster, Kingston, King's College, Aberdeen University. I applied to all of them and received offers from each one. And then the hardest part to choose the program started.

When have you applied?

I remember very well, because I applied during the January holidays. I started receiving answers in middle February. Queen Mary made an offer on my birthday [RAA40 - 11 March], so I thought might be this is a sign. Stockholm responded in May or June.

So why have you chosen Queen Mary?

Much of that was because of my intuition. I cancelled Westminster even though they gave me scholarship, unlike Queen Mary. But I looked at the rankings. And then I cancelled Aberdeen because of the accent and I do think that is a point to consider, when you choose the university. By the time Stockholm responded I have already accepted Queen Mary's offer. I even thought of doing a second LLM at Stockholm, but then decided it may be too much.

Why have you chosen Queen Mary over King's College?

I read through all the materials and internet forums where students discussed their programs. King's has a huge campus and Queen Mary has a specialized, tailored program in international dispute resolution. Professors who teach there are authors of all these books that you will read even if you go to King's College. It was maybe one or two more points for Queen Mary, but I chose it. And in addition I really liked how Queen Mary is student-friendly and it is on top of rankings for student-satisfaction and they really engage with students.

Professors who teach there are authors of all these books that you will read even if you go to King's College

In terms of application materials what are the most important elements?

The key is the cover letter, which is the key for both university and job applications in the UK. There are things in your CV that can impress, e.g. you can have excellent marks in your previous degrees, but there would be a lot of applicants from around the world with the same marks, so you need to distinguish yourself from all these applicants. I spend several days drafting the cover letters. The same cover letter cannot be used for all universities, they need to be tailored. You need to check the university's website and see what's their focus. If they are interested in research as QMUL is for example you need to highlight your research activities in the cover letter. My professors at Queen Mary later told me that they were really impressed with the number of publications I had. When I applied I already wrote 15 articles including three published in leading Russian journals and a book co-authored with my professor. References are essential as well. I have asked my university's scientific supervisor to write a reference and she wrote exactly about my interest in international arbitration. And the second reference was written by the head of dispute resolution department at the HSE Tamara Georgievna Morshakova. I was very lucky in that both my referees wrote the reference letters themselves. I am sure people in the UK don't know my referees, but the way the references were written made them very impressive. These were not formal, standard-form references, where they ticked the boxes, but they wrote them in a way that demonstrated they really knew me. So what I said about the cover letter applies to references, they should highlight the applicant's personal achievements rather than be a collection of standard phrases.

What about the financial costs of obtaining a degree?

Overseas students are in a worst position, because they have to pay the highest fee and it was about 14 000 pounds during my year [RAA40 -18 000 now]. You need to consider the cost of a UK student visa, which is

which is several hundred pounds. And to obtain a visa you need to demonstrate that you have about 700 pounds per month of your stay at your account. I stayed at a university residence and it was an outstanding experience. I paid about 7000 pounds for the residence, which had all facilities en-suite and a kitchen that I shared with 5 other students. Then there is the cost of books, because library does not lend you books for the entire year. So you will need to buy major books and they cost a lot, especially arbitration-related books. And finally the cost of living. I think I spent a lot, 800-1000 pounds a month, but I know people who spend 300 – 400 pounds a month and still have not suffered, so it really depends on what you can afford and what kind of person you are.

How are the studies at QM organized? Are you allowed to choose courses? How many courses can you choose?

When you arrive to the induction class, you are told that you have two weeks to visit any class of about 130 and you can go to any one of them to choose which subject you are interested in, which professors you like. Then you can apply for three courses you will take and take exams in. You are allowed to take 1 additional course, where you will have access to all materials, but will not take the exam and it will not be mentioned on your certificate. You can try visiting other classes, but this will be hard without access to all the materials, because you need to be prepared for the class. I am not sure QMUL will be happy about students visiting these further additional courses. In QMUL the course is divided into three modules. During the first two you are attending classes, writing research papers, participating in discussions. And the third module is exams and dissertation. You spend 9 months from end of September to August. You have breaks and holidays of course during this period.

During a typical week how many classes will you have?

You will have three lectures. You don't have tutorials every week, but rather every three weeks. During tutorials you discuss the most important subjects and students are expected to play the primary roles in discus-

Professor Brekoulakis discusses international commercial litigation with students

sions. This does not mean that you can come to lectures unprepared. So what happened to me, because I had not worked in arbitration before and I was the youngest student in my class and the other students were older and had already practiced international arbitration, I understood I was the last in the row. I understood that I need to work really hard to be on the same page with them. Even though I only had three classes I was spending all the time in the library, reading books, looking for new cases and articles. While you don't have that many classes you still need to study a lot.

How many students you have in a class?

It depends on the class. In the arbitration class, because QMUL is so reknown for arbitration, you have 300 students. In International Commercial Litigation there were 30 students, but then next year it became really popular, there were about 100 students, because everyone was so impressed with Professor Brekoulakis who teaches this class. But for tutorials you have 6-7 students, so you have an opportunity to engage with a professor.

What courses have you chosen?

International Arbitration, International Commercial Law and International Commercial Litigation.

What did you like about education at QM?

The professor's approach to students, since they treated us as peers. I really enjoyed the fact that the professors were happy to communicate and help us outside of class, to answer our emails with all kinds of questions about law. From the professional point of you I was very proud to be taught by Professors Lew, Mistelis and Brekoulakis. I was really impressed by them.

By the end we met arbitration practices of most market-players in London

Have you engaged in any extracurricular activities?

A gathering is organized for LLM students every Thursday or Friday night, which is a very good opportunity to network with people who attend other courses. In addition, QMUL organizes a lot of events for students. There are meetings with law firm partners that are in the form of receptions and they are quite useful as I know 3-4 people who got their training contracts after contacts at such receptions. There are many events for Russian lawyers in London, which take place every one or two months, which are really good for networking.

I know you participated in the Willem C. Vis Moot when you were at QMUL. Can you tell about this experience?

I would say that Vis was like an additional subject, a major course. QMUL takes Vis very seriously, we met every day for practices and for drafting and we really hated… loved and hated each other by the end. And Vis changed me a lot, because it was the first opportunity for me to plead in a foreign language, to represent, well not a client, but still my university. We had a lot of practice moots at law firms in London, a total of 13 of them. So by the end we met arbitration practices of most market-players in London. In fact in your real life you may not get a chance to participate in an arbitration chaired by Audley Sheppard [RAA40 - Head of International Arbitration and International Law Groups, Clifford Chance LLP], or Guy Pendell [RAA40 - Head of International Arbitration Practice, CMS Cameron McKenna LLP]. But if you are on the QMUL Vis team you do get such a chance, and also advice from them on your skills and your case.

Is there anything you would have done differently?

Possibly I would have taken an additional course. For example there was a wonderful opportunity to study Investment Arbitration or Construction Arbitration. So perhaps I should have slept less to take that additional course.

What about employment in the UK after the LLM?

It is important to understand that you are not entitled to practice in the UK after an LLM. You need to take GDL and LPC to qualify. So you will be able to work on English cases, but not formally participate in them. It also depends on the type of employment. Many students did internships. I did an internship at the International Bar Association. But as for full-time employment with a law firm, I am afraid no Russian student got it. The real problem is the visa as very few law firms want to face all the problems associated with obtaining a visa.

What are you doing now? Does the LLM help you in what you do?

I am an associate in dispute resolution practice Goltsblat BLP (Moscow). Our office focuses more on litigation, but I work a lot with the London office on arbitration. My LLM already helped me with a couple of arbitration-related cases and with one litigation.

Do you think law firms in Russia pay attention to LLM, see it as an advantage?

I think law firms do not pay much attention to that if you don't have relevant experience. But in the end you need to become a better lawyer in the process of getting an LLM, so it helps in this way, not just that you got a degree.

Do you think it is better to do an LLM immediately after graduating or you should practice for some time?

On the one hand, it may be better to have two-three years experience, because you understand what you need to focus on. On the other hand once you started practicing it will be hard to take a break for a year to study and it is not clear whether you law firm will allow you to take such a break. But it depends on each person's personal situation and preferences, so you really need to decide this for yourself.

Building your Profile in International Arbitration

Interview with Alexander Muranov, Partner, Muranov, Chernyakov & Partners

Could you please tell us how your career started?

It started in a very common way. It was 1992, I was a student of the third grade, married andwith a one-year child. A friend of mine told me that a legal firm recently founded by Yuri Monastyrsky and Vladimir Stepanov (now known as Monastyrsky, Zyuba, Stepanov & Partners or MZS) is searching for a paralegal, a law student. I went there for an interview, and they offered me a half-day job. Then the things went the way they usually do: I worked all evenings after the institute, the projects I worked on included the ones related to litigation and gradually they tended to become bigger and more interesting. Note that this was all happening in the 90's, completely different times and fully dissimilar circumstances in contrast with those we have now. Legal practitioners of the era were often acting in legal vacuum and, thus, had to be creating law themselves, off the reel, often having no time for second thought. Creativity and energy were the high value. Now they are too of course but of quite different quality. And you should give credit to Y. Monastyrsky and V. Stepanov: they were really working hard to promote the firm, were building it up.

Why have you taken the decision to start your own legal business? How did you choose the litigation / arbitration "specialization" of your legal firm?

I would say that back then, in 2002, it was not really some conscious decision – rather the situation was dictating us what to do. We had two options – to get hired by someone else or to start our own business. We considered all available opportunities and it took us almost a year to make up our mind, while though the situation pushed us towards the second option. This situation was pretty simple – we were working on an interesting ongoing very complicated litigation project of "Severnaya Neft" in relation to subsoil use of the oil rich fields of Val Gamburtseva, and the client wanted to work with us directly (my current partner D. Chernyakov and me), even by way of taking us on the staff (however we initially rejected this idea as not quite proper for us). And it is not hard to understand the client: we were running the project by ourselves and implementation of that client's proposal could turn out to be much cheaper for them. In the meantime, the firm's management for various reasons overly distanced itself from supervising the project. Besides, the number of

controversies between the firm's management and us grew larger and greater. It is quite possible that if our input into the firm's business had been duly then monetarily appreciated, we would have stayed and would have been still working there. But the firm's reluctance in recognizing and rewarding our contribution led to the train of events that later took place. I must recognize that in those times we were all not too much sophisticated in this type of matters, were full of emotions. By the way, we could not make up our mind for a long time, hesitated for almost a year, as it was quite a risky movement into uncertainty, and quite a costly step in terms of expenses. But we were lucky enough with our clients. It is also very good that in the end we managed to keep good relations with MZS.

As regards our specialization, it formed in a natural way on the basis of the clients' knocking at our door, which primarily related to litigation / arbitration. It coincided with our previous experience and our interest to go even deeper in arbitration practical work and scholar researches. And only about three years ago we decided to start deliberately developing on the basis of all previous experience such other specializations as WTO / Customs Union law (also to some extent connected to arbitration) and Constitutional Court litigation.

What was the reason for your interest in arbitration?

Two things. The first one was the arbitration course at the Moscow State Institute of International Relations (MGIMO), but that to a lesser degree. The second reason was more important – in 1994 I start my postgraduate studies at MGIMO (aspirantura), and when such prominent scholar and arbitrator as Sergey Nikolaevich Lebedev invites you to become a rapporteur at the Maritime Arbitration Commission (MAC) and then at the International Commercial Arbitration Court (ICAC) it goes without saying that it is very difficult to say "No". And arbitration turned out to be quite interesting and even very unusual in comparison with then litigation in state courts (do not forget, it was 1996). Nevertheless, several years later (in 2002) when we were in the process of founding our own law firm I deliberately suspended my status of the rapporteur: it is a rather challenging work, and we had more important tasks at that moment. However, I have not lost my interest in arbitration: I continued working in the sphere of arbitration as a practicing lawyer, writing different articles on the matter, teaching at MGIMO, constantly communicating with other arbitrators, etc. In 2009 I have been included into the arbitrators rosters of the ICAC and of the MAC and started sitting as an arbitrator – that is how it all gradually worked out.

Which qualities should a lawyer (especially a young one) possess in order to succeed in the sphere of arbitration?

Probably too many things, while they are on the surface. The same ones that would help to succeed in any other legal field – why should arbitration sphere be very different? You would need to work, work intellectually hard and develop your diligence skills. You have to read a lot. Of course, you would need to know English, and at a quite high level. If you have an interest in linguistics that is wonderful, since arbitration (and jurisprudence in general) often requires attention to words, playing with terms and linguistic nuances. Then, you would need good writing and oral skills. Knowledge of current legislation is equally important (not only in private but also in public law: it is not good when arbitrators get lost in issues of influencing such different areas on each other), but I would emphasize significance of the methodological skills that would help you to find and analyze important information – that is what is really valuable. But this is much more difficult to develop such skills than just to learn statutory texts. You also must understand importance of comparative legal studies and problems of "juridical transplantology".

Besides, you would need to master your skills of being silent and listening when it is appropriate rather than talking profusely. You would not do any good without patience: there is little publicity in the sphere of arbitration, and it is sort of closed for newcomers – therefore, you should not be expecting quick fame and returns. It is a long term investment to act as an arbitrator in Russia, probably too long. If you want to have more speedy pecuniary results then in arbitration you should do representation, especially in Russian environment where arbitrators' fees are unnaturally too low. Another quality that you would need is readiness to start with working on small issues and not seeking immediate high salaries.

In Russian circumstances, doing scholarly studies is also traditionally a separate competitive advantage.

It is well known that, though arbitration is popular among Russian corporations, they often choose foreign jurisdictions as a place of arbitration. Should this warn or even stop young Russian lawyers interested in building their career in arbitration?

Certainly not, if they have such interest. Asking such question is similar to asking whether the wide spread of the English language around the world should prevent people interested in Russian from learning the Russian language. It goes without saying that it does not. It rather even implies that. Arbitration depends on commerce, depends on various persons involved in commerce. And all such parts have always been and will always be very diverse. This has been so from ancient times – even then, dozens of nations have been successfully involved into commercial relations: our trade world is their successor and beneficiary. Therefore, there is always room for realizing various types of ambitions. Of course, for quite a while ahead the "globally fittest", i.e. Anglo-American lawyers, would still be winning various opportunities, but you need not forget about the Customs Union, the CIS and general demand for Russian arbitrators, even though this demand may not be that great. Let's also see what so-called "de-offshorization" and arbitration reform of the Russian Ministry of Justice result in. They look quite promising for Russian arbitration, improving its competitiveness. In these circumstances, there are various new opportunities in the sphere of arbitration – therefore, the Russian jurisdiction may well be a good place for young lawyers to make their first steps in their arbitration careers. And after that, much depends on your luck and fortune. In any case, any young Russian lawyer interested in building her / his career in arbitration must analyze and take well-informed decisions: there are a lot of pros and contras to start such career building. In fact arbitration is a very closed and complicated sphere and many illusions fade away for newcomers very quickly. However, my estimates may be too premature: in a certain sense, I am a newcomer myself.

Do the periods of economical crisis influence dynamics of business in the sphere of arbitration? Do you see any increase in the amount of arbitration-related work during the times of economic instability? Possibly, right now may be the best moment to start career in the sphere of arbitration?

Times of economical crisis influence everything and all, including arbitration. Take ICAC as an example – after 2008 the number of arbitration cases there increased seriously.

I think that another thing that will have influence on arbitration in Russia is the current judicial crisis connected to the upcoming liquidation of the Higher Arbitrazh Court of the Russian Federation. If the positive dynamics of the state commercial court development may gradually tend to end, why should Russian business not start coming to arbitration more often?

However, during years of economical growth the number of arbitration cases also increases – this increase is normally related to foreign trade expansion.

Thus, both periods of depression and of economic growth influence arbitration favorably. Therefore, if we take a more generalized look we would see that on the long distance the number of serious arbitrations remains increasing (though in a short run various deviations are inevitable). And even though the amounts of arbitration work may increase during certain periods, you should always be mindful how and among whom (including among which jurisdictions) this work gets "distributed". In light of all this, you may start the career in arbitration at any time. With a bit of luck you will always find work in this sphere.

International law firm would sort of lock you up in a tight deck cabin, whereas Russian ones often let you see the whole ship

Is it better to start career in arbitration / litigation with a Russian or with an international law firm? Are there any differences between these two types of career starts?

I may go wrong, but my experience tells me that actually both options work well for the start of career – and soon afterwards much depends on luck and personal preferences. Of course, I am talking now about those firms, which work good in the sphere of arbitration. International law firms help to develop a

wider theoretical perspective, whereas good Russian law firms also broaden your perspective, but rather in a more pragmatic sense. Working at an international law firm teaches you "standard legal language", while working at a Russian one – language of communication with a real-life client. From the practical perspective, I would say that an international law firm would sort of lock you up in a tight deck cabin, whereas Russian ones often let you see the whole ship. Working at an international firm provides a lawyer with a high standard pay minimum – though working at a Russian law firm with a lower salary (not always, especially after several years of employment) gives you a chance of receiving a jack-pot of some kind at some point of time.

So working at any place has its pros and contras, which often depend on your tastes. It is important to be able to convert all such pros and "points" that you have scored while working at an international firm into new pros and "points" at a Russian one, and vice versa. As well as to minimize the contras' influence on your career.

Does obtaining a post-graduate degree, whether abroad or not, or active scholarly work help in pursuing a career in the sphere of arbitration?

In Russia, it certainly does. But you need to know where and what kind of education to get and how to apply the knowledge you receive in practice. Abstract knowledge does not do any good. E.g. MGIMO is well known for its education experience in private international law and arbitration courses while MGU is stronger in civil law. You must choose what you like: there are advantages for any option.

If I had to make just one choice – either scholarship, or practicing – I would choose scholarship

No doubt, in Russia for the past 80 years arbitration generally has been a sphere of involvement mostly for those who were / are doing scholarly work or who were / are teaching. The situation changes gradually, but it is still more or less the same at the moment.

In which status or capacity is it more interesting for you to take part in arbitration proceedings? As a party's counsel? As an arbitrator? Or as an expert?

It seems to me that certain balance between all these functions works best. At least in order not to ossify and not to become "professionally deformed". However, in Russia it is considered a mauvais ton to frequently represent a party in proceedings in the same arbitration institute where you also use to seat in arbitral panels. I cannot personally fully understand why this is so though I know the reason: many arbitrators do not practice law themselves on an every day basis as many young lawyers prefer.

However, if there were a need to choose just one option without any compromise, I would say "as an expert". You don't have that responsibility pressure which inevitably any counsel or arbitrator feels when he is taking part in the proceedings. An expert is more independent and, thus, has more freedom. And you get paid the same in terms of your time / efforts contribution.

You are one of rare examples of successful combination of scholarly and practical work in the sphere of arbitration. Which of these is more important for you?

For me more important again are both combination of these types of work and the results that you often see on the edge, where legal scholarship and legal practicing get diffused into one another or even get mutually annihilated.

But if I had to make just one choice – either scholarship, or practicing – I would choose scholarship. Arbitration practicing is more "routine", "standardized", closer to the ground, which means that it is often more boring than scholarly work, though very often there are exceptions to this rule. There are no more than 10-15% of really interesting and unusual arbitration cases in the Russian market. At the truly world level it may be higher to some extent, I believe. It does not mean of course that other cases deserve ignorance. They may be much more important in monetary terms, say e.g. a loan for 200 mln euro. It is a large case for sure though it still may be standard. Such a case is a dream for any arbitrator taking into account the fees. But I am

now talking about other criteria. In light of them I like thought-provoking cases and brain games provided by scholarship much more. At the same time do not forget that "All theory, dear friend, is gray, but the golden tree of life springs ever green". Thus it seems too controversial.

Besides, in Russian arbitration remunerations are generally so low that it would make it even easier for me as a partner of a law firm to select just scholarly work if I had to choose between the two. But I hope that I will never have to make this choice.

How do you see the perspectives of arbitration in Russia?

To my mind, they are spectacular. Just imagine, after the state courts reform finishes and there is a "new" "united" Supreme Court of the Russian Federation, any development of Russian commercial courts could likely stop and chances that Russian courts of general jurisdiction would start developing may not become greater than they are now. Where should business go? Probably to arbitration.

Note besides that Russia is now a member of the WTO system. This will likely lead to intensification of international trade and, hence, to an increase in a number of commercial disputes. And all this may be coupled with a potentially active development of the Customs Union, it is truly boosting.

Finally, if establishing new internal arbitration courts in Russia becomes subject to a certain approval procedure, this may lead to "crystallization" of the weak and unclear arbitration broth, which we currently have in Russia. Once everything unnecessary gets washed away, some serious competition between the remaining arbitration institutes may start, and any such competition leads to improvement.

From any point of view, future perspectives of arbitration in Russia are not bad. Though it may all become not as simple and relaxed as it is today.

Is it necessary to "specialize" in arbitration? Or should you always have a broader legal perspective, especially given the number of arbitrations taking place in Russia is not too big?

I believe that in Russia you need to start as a "generalist" – try everything and then choose. Immediate "specialization" may harm a young practitioner, but will certainly work good for more sophisticated lawyers. And it is true that if number of serious arbitrations is not significant in Russia, there are not many choices left open for you here.

In the end, after some time, in the sphere of global commerce arbitration may gradually replace national courts, which already start noticing signs of their forthcoming agony

What new developments do you think we would see in the sphere of arbitration in the next 5-10 years? Growth of online arbitration? Of expedited arbitration? Or maybe even decline of the arbitration's popularity?

What I am sure about is that we will see new faces working in the sphere of arbitration within this timeframe. In any case, the term of 5-10 years is not really sufficient for "planning" our arbitration perspectives – you should be operating with longer time periods for this purpose: from 15 years.

In any event, new information technologies will certainly influence arbitration – the mentioned online arbitration should soon be growing very fast. As well as should the expedited arbitration, the use of which may also intensify. However, it would soon be "drifting" towards regular arbitration, and some "hyper-expedited" arbitration would emerge as its alternative. Then "hyper-hyper-expedited" arbitration will appear etc.

The trend of arbitration "regionalization" has also good chances of becoming bigger. Let's see whether any quasi-arbitration body is formed under the auspices of the Customs Union (similarly to the WTO Dispute Settlement Body).

Therefore, I don't think that there will be any arbitration decline. Arbitration sphere will likely to become more and more "elite", complex, expensive and internalized. In the end, after some time, in the sphere of global commerce arbitration may gradually replace national courts, which already start noticing signs of their forthcoming agony (but this will happen not around the whole world, but only in the most developed regions). After that something completely different may emerge as an alternative to such arbitration. I am pretty sure that interest in mediation and other alternative dispute resolution forms, which have not become so overly regulated and structuralized, will certainly grow.

Will current political instability have any influence on arbitration in Russia?

It certainly will, and for the good of arbitration. Let's look at this logically: if there is political instability, this means there ar e problems. If there are problems, they need to be solved. How? Through arbitration, among other things. This means that everything in this sphere may become more intensified and interesting.

Could you please tell us a bit more about the "www.naukaprava.ru" project? What materials that may be useful for arbitration specialists are available at this resource?

There are plenty of interesting materials for those interested in arbitration. While the project started with collection of all official Soviet publications (from the Lenin's Decree of Peace of 1917 to the Decree on disintegration of the USSR – dozens of thousands in numbers), it soon then covered articles from all issues of such legal magazines as "International Commercial Arbitration" and "International Commercial Arbitration Review". Also available are a big number of domestic works on arbitration as well as all publications of the Chamber of Industry and Commerce of Russia / the USSR (which were almost the key arbitration papers of the time). Thus, this project is a sort of a Russian alternative to "heinonline.org" or "kluwerarbitration.com". We also upload regularly new articles and monographs there (with the authors' permissions of course).
Besides very soon we intend to re-launch the publication of the only Russian journal on arbitration which was annoyingly disrupted in 2013 by financial problems of the previous publisher.

So the project grows and we intend to develop it further. Hope that everything will work out well for all, including arbitration in Russia.

Arbitration Events to Attend

9 May 2014	**LCIA Young International Arbitration Group Symposium** Organiser: LCIA YIAG Location: Tylney Hall, UK http://www.lcia.org
9-10 May 2014	**20 Years of UNIDROIT Principles: Experiences and Prospects** Organiser: UNIDROIT Location: Rome, Italy http://www.unidroit.org
15-17 May 2014	**ICC Austria Seminar on Cross-Examination** Organiser: ICC Austria Location: Vienna, Austria http://www.iccwbo.org
29 May 2014	**Russian Arbitration Day** Organiser: ICAC at the RF Chamber of Commerce Location: Moscow, Russia http://arbitrationday.ru
11 June 2014	**Allen & Overy Young Arbitration Practitioner Drinks** Organiser: Allen & Overy LLP Location: London, UK http://www.allenovery.com
13-14 June 2014	**ICC YAF Europe Regional Conference** Organiser: ICC YAF Location: Rome, Italy http://www.iccwbo.org
12 September 2014	**LCIA Young International Arbitration Group Symposium** Organiser: LCIA YIAG Location: Tylney Hall, UK http://www.lcia.org
19 September 2014	**ABA Moscow Dispute Resolution Conference** Organiser: American Bar Association Location: Moscow, Russia http://www.americanbar.org

19-20 September 2014	**Global Conference of the Co-Chairs' Circle**
	Organiser: Co-Chairs' Circle (CCC) Location: Berlin, Germany http://www.co-chairs-circle.com
16 October 2014	**RAA Conference "On-line Arbitration"**
	Organiser: Russian Arbitration Association Location: Moscow, Russia http://www.arbitrations.ru

ABA Conference – 19 September 2014

ABA Section of International Law
Your Gateway to International Practice

The ABA Section of International Law invites you to attend the 2014 Conference on the Resolution of CIS-Related Business Disputes on September 19, 2014 at the Radisson Royal Hotel in Moscow, Russia. The sixth installment of this highly successful annual conference will bring together Litigators, Corporate Counsel, Arbitration Practitioners, Judges, Academics, Business Executives and Policy-Makers for a unique international forum.

World-class experts will present on key topics of interest including:

- The Merger of the Supreme Commercial (Arbitrazh) Court and Supreme Court of General Jurisdiction: Implications for the Administration of Justice, the Resolution of Commercial Disputes and International Arbitration in Russia
- Making CIS-Related Disputes "Stick" in Non-CIS Courts: Addressing Personal Jurisdiction and Forum Non Conveniens
- Lawyer Ethics in Dispute Resolution: A Cross-Border Analysis of What You Can and Cannot Do
- The New Russian IP Court: Taking Stock One Year On
- Corporate Disputes in a CIS Context: Managing Conflicts Between Successive Generations of Shareholders
- In-House Counsel Perspectives on the Resolution of CIS-Related Disputes

RAA40 is a Cooperating Entity on this event and RAA40 members can register for the conference at the discounted ABA Section of International Law Member Rates by using the hardcopy registration form which will be circulated in May 2014.

Please visit http://ambar.org/moscow2014 for more information on programming, hotel accommodations and the latest updates on the conference.

RAA Conference "On-line Arbitration" – 16 October 2014

RUSSIAN ARBITRATION ASSOCIATION

The Russian Arbitration Association (RAA) is organizing a conference on the global development of online arbitration which will take place on October 16, 2014 at the **Ararat Park Hyatt** in Moscow, Russia.

The key topics:

1. Evolution of the electronic documents exchange. Legal requirements of electronic signatures.

2. Electronic documents as evidence. Validating documents with electronic signatures.

3. Online Dispute Resolution Services

- UNCITRAL Draft Procedural Rules on online dispute resolution for cross-border electronic commerce transactions
- Russian State Commercial Courts' practice on electronic exchange of documents and information
- Online dispute resolution: experience of international arbitral institutions
- Online arbitration: from a business point of view

4. Online dispute resolution under the RAA Rules

The key speakers include the representatives of the Russian Ministry of Justice, Russian courts and leading experts from the international arbitration centers and law firms.

Contact:
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www.arbitrations.ru/en/

RAA40 Events

Russian Torpedo in Arbitration – 27 February 2014

by Sergey Usoskin, Advocate, RAA40 Co-Chair

On 27 February 2014 members of RAA40 gathered at Norton Rose Fulbright offices for a regular RAA40 seminar: this time to discuss whether claims of Russian companies' minority shareholders sometimes pose a threat to international arbitration and how to cope with such a threat.

Russian corporate law allows minority shareholders to challenge validity of transactions on the basis of (alleged) lack of proper corporate approvals. Sometimes such a challenge is launched in parallel to an arbitration against a Russian company. In some cases the party pursuing arbitration against the company argues that such a challenge is nothing more than an abusive tactic to frustrate enforcement of the award. The other hand the minority shareholder may respond that it merely exercises a right the law confers upon it.

The seminar began with a lively debate, with **Andrey Panov** (Norton Rose Fulbright LLP) and **Julia Popelysheva** (Counsel, Clifford Chance LLP) outling the potential arguments of parties to a mock dispute between US and Russian partners in a joint venture and a minority shareholder of the Russian partner. The dispute arose after the US partner commenced LCIA arbitration to enforce a call option under the agreement and the minority shareholder of the Russian partner sought to void the agreement in Russian commercial courts.

It was suggested that the US partner may try seeking to stay the Russian litigation relying on the arbitration clause in the JV agreement and an alter ego relationship between the Russian company and the shareholder. Further, the collateral nature of the proceedings and the apparent nexus between the shareholder and the claim can be exploited to demonstrate their improper nature.

On the other hand, the Russian minority shareholder is likely to deny any alter ego relationship (which even in other jurisdiction was found to exist only with respect to majority shareholders). The shareholder may also fall back on the provisions of Russian corporate law that envisage its right to commence such an action as well as decisions of Russian courts refusing to find similar claims to be an abuse.

Robert Dougans (Partner, Bryan Cave LLP) discussed English anti-suit injunctions and how they have been used to deal with Russian torpedoes. He noted that a party may secure such an injunction against either a party to the arbitration agreement or any other party pursuing “vexatious or unconscionable” litigation. The injunction has only personal effect, so it does not seek to directly prevent the foreign court from hearing the case before it. However, party’s failure to comply with the injunction may lead to very serious consequences

including criminal ones. The injunction does not normally directly bind the lawyers representing the party in litigation with respect to which an anti-suit injunction is issued.

Professor Anton Asoskov (Lomonosov Moscow State University, Faculty of Law, Russian School of Private Law, ICAC Arbitrator, MCIArb) discussed the effect of Russian torpedoes on arbitrations seated in Russia. He noted that, in fact, extension of arbitration clauses contained in contract to shareholders challenging such contracts on the basis of lack of proper approvals has been considered by the Supreme Commercial Court, but apparently no consensus has been reached. In practice, Russian-seated arbitral tribunals approach litigations launched by minority shareholders with some degree of caution. On the one hand they regularly refuse to stay arbitration pending resolution of the minority shareholder's claim. On the other hand, if the transaction has been court by a Russian court the arbitral tribunal has little choice but to respect the court decision to avoid rendering an award that may be either set aside or refused enforcement.

* * *

RAA40 is very grateful to the speakers (Professor Anton Asoskov, Robert Dougans, Andrey Panov and Julia Popelysheva) for their excellent and insightful presentations and to Norton Rose Fulbright for hosting the seminar.

Complex Arbitrations: Consolidation of Claims and Related Issues – 21 March 2014

by Anna Shumilova, Legal Manager, Rosneft Oil Company, RAA40 Co-Chair and Olesya Petrol, Counsel, RAA40 Co-Chair

On 21 March 2014 RAA40 and the Faculty of Law of Lomonosov Moscow State University co-organized the annual discussion preceding the 5th Moscow Pre-moot to Willem C. Vis International Commercial Arbitration Moot addressing one of the 21st Vis Moot topics "Complex Arbitrations: Consolidation of Claims and Related Issues".

Julia Zagonek (Partner, White & Case) introduced the topic. She outlined the effects multi-party and multi-contract transactions may have on arbitration. Julia focused on the issues specific to multi-party and multi-contract disputes such as extension of arbitration agreement to non-signatories and parallel proceedings.

Julia explained that as early as at the drafting stage the parties to complex transactions should consider which procedural rules to choose as the approach to complex disputes may vary between jurisdictions and institutional rules. In particular, not every set of arbitral rules permits the tribunal to consolidate proceedings. She also emphasized that consolidation is not always the best way forward, since the parties can face such problems as finding arbitrators having the relevant expertise and acceptable to everyone , delays, cost increase and cost allocation, as well as the issues of privilege and confidentiality.

Vladimir Khvalei (Vice-President, ICC International Court of Arbitration; Partner, Baker & McKenzie) then addressed the issue of "multi" arbitration proceedings under the ICC Rules.

Vladimir reported that according to the ICC statistics from 2001 till 2009 more than two parties participated in at least 28.5 % of cases. He explained that an additional party could be joined in an ICC arbitration proceedings only if: (I) there is a request by one of the "existing parties" to the proceedings, (II) an additional party signed the arbitration agreement, (III) a claim is made against the additional party, and

(IV) arbitrators have not yet been confirmed byclaim is made against the additional party, and (V) arbitrators have not yet been confirmed by the ICC Court (the parties may agree to waive the latter condition).

After a short break **Prof. Dirk De Meulemeester** (Managing Partner, Lexlitis law firm) took the floor to address consolidation in arbitration. He began with an overview of the arbitral institutions' rules and explained that while some of them vest on the tribunal wider discretion to order consolidation (e.g. ICC Rules 2012, CEPANI Rules 2013), others are silent on the matter (e.g. LCIA Rules, SIAC Rules).

He noted that consolidation has both advantages and disadvantages. On the one hand, it can be efficient as it allows to reduce legal resources, time and financial expenditures as well as to avoid conflicting awards. On the other hand, first, it can be difficult to enable all parties to participate in the nomination of an arbitrator and to distribute the costs fairly, and secondly, consolidation potentially may result in a violation of the party's substantive rights, for example in cases where competitors are joined in one consolidated arbitration.

Finally, Prof. De Meulemeester explained that consolidation is feasible if disputes arise in connection with the same legal relationship, if they concern the same exonomic situation and if the arbitral agreements are compatible.

The discussion was closed with the presentation by **Fredrik Ringquist** (Senior Associate, Mannheimer Swartling) who discussed do's and don'ts of drafting complex arbitration clauses.

* * *

The presentations were followed by Q&A session and drinks at Vatrushka Cafe.

RAA40 Co-Chairs are very grateful to Julia Zagonek, Vladimir Khvalei, Dirk De Meulemeester and Fredrik Ringquist for their time and efforts and for agreeing to share their knowledge and expertise with the young generation of arbitration practitioners.

Co-Chairs also take this opportunity to thank **Moscow office of White & Case** for hosting the event.

5th Moscow Pre-moot to the 21st Willem C. Vis ICA Moot – 22-23 March 2014

by Olesya Petrol, Counsel, RAA40 Co-Chair and
Anna Shumilova, Legal Manager, Rosneft Oil Company, RAA40 Co-Chair

PRE-MOOT
VIS MOSCOW

On 22-23 March 2014 the Faculty of Law of Lomonosov Moscow State University hosted the 5th Moscow Pre-Moot to the world's leading moot competition in private law and arbitration – the Willem C. Vis International Commercial Arbitration Moot. Since inception in 2010 the Moscow Pre-moot has grown from a small event, with only a few Russian teams participating, to a well-known forum bringing together hundreds of participants coming both from Russia and abroad where student-participants meet experts in international arbitration and hone their skills before the main competition in Vienna.

The Moscow Pre-Moot consisted of a set of mock arbitration hearings, in which teams of students represented parties to an international sale of goods dispute before panels of experienced arbitration practitioners and scholars. This year the proceedings were governed by the CEPANI Rules and issues in dispute between the parties concerned, inter alia, applicability of the CISG, consolidation of claims and pathological arbitration clauses.

Nine Russian and foreign teams (both regular participants and newcomers) took part in the 5th Moscow Pre-moot: Ankara University, Belarusian State University, Lomonosov Moscow State University, MGIMO University, Moscow State Academy of Law, National Research University Higher School of Economics, Peoples' Friendship University of Russia, Russian Academy of Justice and South Texas College of Law.

Experts from the Higher Arbitrazh Court of the Russian Federation, Lomonosov Moscow State University, the Russian School of Private Law, the Ministry of Justice of the Russian Federation, partners and lawyers from law firms Alrud, Baker Botts, Baker & McKenzie, BBH, Cleary, Gottlieb, Steen & Hamilton, Clifford Chance, Egorov Puginsky Afanasiev & Partners, Freshfields, Herbert Smith LLP, Ivanyan and Partners, Linklaters, Mannheimer Swartling, Monastyrsky, Zyuba, Stepanov & Partners, Morgan Lewis, Norton Rose, White & Case and in-house counsel from Rosneft, UBS, Yandex and MDM-bank acted as arbitrators.

During 22nd and 23rd of March each team pleaded at least 4 times for both Claimant and Respondent. Based on the average scores received by individual participants, the team of **South Texas College of Law won the Pre-moot**. Team of Lomonosov Moscow State University finished 2nd, and team of Russian Academy of

Justice – 3rd. The prizes were also awarded to the top three students for individual performance: 1st – Alvin Joel Santos (South Texas College of Law), 2nd – Yana Kovnatskaya (Lomonosov Moscow State University), 3rd – Polina Lomakina (Higher School of Economics).

The event would not be possible without the sponsor's support. The Pre-moot organizers take this opportunity to thank **White & Case** (and personally David Goldberg, Jula Zagonek, Olga Pryanichnikova and Daria Shevchenko), **Cleary, Gottlieb, Steen & Hamilton** (and personally Scott Senecal, Julia Solomachina and Yuri Babichev), **Monastyrsky, Zyuba, Stepanov & Partners** (and personally Yuri Monastyrsky), **Morgan Lewis** (and personally Jonathan Hines and Dmitry Ivanov) and **Baker & Mckenzie** (and personally Vladimir Khvalei) for their financial support and overall contribution.

RAA40 and Lomonosov Moscow State University are also grateful to the Pre-moot's media partner – the **Russian Law Journal** (www.russianlawjournal.org).

If you have any questions concerning the Moscow Pre-moot please visit www.vismoot.ru or contact the organizers at moscowpremoot@gmail.com.

We invite students and arbitrators to take part in the 6th Moscow Pre-moot in March 2015!

Next RAA40 Newsletter

In-House Counsel in Arbitration (September 2014)

In the next issue of the Newsletter which is to be released in mid-September 2014 we invite you to consider the role of an in-house counsel (IHC) in international arbitration and particularly to discuss:

- the role and the place of the IHC in international arbitration as seen by external counsel and IHC himself;
- how IHC's contribution is integral to the success of an arbitration and to what extent the IHC should interfere in an arbitration;
- IHC and attorney-client privilege;
- the key features of the IHC role in resolution of Russia and CIS-related disputes;
- IHC's needs and expectations when working with external counsels; and
- how to build up an in-house career.

Should you wish to share with us your ideas on the above issues, please, do not hesitate to contact us at raa40@arbitrations.ru. Deadline for submitting contributions is 1 September 2014.

Become a Member of RAA40

RAA40 goes back to 2008, when Anton Asoskov, Francesca Albert and Richard Chlup established the Moscow Arbitration Forum 40 (MAF40). In September 2013 MAF40 became RAA40 joining forces with the Russian Arbitration Association.

RAA40 is a forum for the young arbitration practitioners in Russia to exchange ideas, meet renowned experts in the field and each other, share their experience and learn from the experience of others. To achieve this purpose RAA40 organizes regular seminars and other events to address the most pressing and current issues, publishes a newsletter and participates in other projects.

Membership in RAA40 is open to anyone interested in arbitration. There are no registration or membership fees and you do not need to be a member of RAA to become a member of RAA40. However, to become a member you need to possess either a degree in law or have practical experience in arbitration. As suggested by the name RAA40 members should be 40 or less.

Members of RAA40 gain the following advantages:

- the first to learn about RAA40 events and other projects and have priority access to them;
- a periodic newsletter covering arbitration-related developments in Russia;
- attend some the arbitration-related events on special terms.

To become a member please complete a form available at http://www.arbitrations.ru/en/raa-40/enter.php.

Acknowledgements

Co-chairs of RAA40 wish to express their special thanks of gratitude to:

Norton Rose Fulbright and to **Andrey Panov** (Associate) personally, who kindly agreed to host RAA40 seminar on 27 February 2014. Please refer to page 33-34 for more information about the event.

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Baker&Mckenzie and personally **Vladimir Khvalei** (Partner) for allowing to use the firm's facilities for production of the hard copies of this newsletter.

We would also like to recognize and express our gratitute to the firms that supported and sponsored the 5th Moscow Pre-Moot co-organized by the RAA40:

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