ВЕСТНИК
МЕЖДУНАРОДНОГО КОММЕРЧЕСКОГО АРБИТРАЖА

1(14) ЯНВАРЬ – ИЮНЬ 2017 1(14) JANUARY – JUNE 2017

International Commercial Arbitration Review

Учредитель и издатель:

некоммерческая организация
«Ассоциация исследователей международного и частного права»
http://www.iurisprudentia.ru/

Established and published by

Association of Private International and Comparative Law Studies
http://www.iurisprudentia.ru/

при поддержке Торгово-промышленной палаты Российской Федерации, Исследовательского центра частного права имени С.С. Алексеева, а также кафедры международного частного и гражданского права МГИМО МИД России

with support of the Chamber of Commerce and Industry of the Russian Federation, Alekseev Private Law Research Centre under the President of the Russian Federation as well as the Department of the Private International and Civil Law of the Moscow State Institute of International Relations (University) of the Ministry of Foreign Affairs of the Russian Federation

Содержание

Журнал «Вестник международного коммерческого арбитража» выходит два раза в год.

Требования к материалам, представляемым авторами в журнал, изложены на *www.arbitrationreview.ru*.

НОВОЕ В ЗАКОНОДАТЕЛЬСТВЕ

ИНВЕСТИЦИОННЫЙ АРБИТРАЖ

ИЗ ПРАКТИКИ МЕЖДУНАРОДНЫХ ТРЕТЕЙСКИХ СУДОВ

КНИЖНАЯ ПОЛКА

СОБЫТИЯ И ФАКТЫ

Учредитель и издатель:

некоммерческая организация «Ассоциация исследователей международного и частного права».

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П.Д. Савкин.

Дизайн, верстка: В.В. Самойлова.

Зарегистрировано в Роскомнадзоре.
Свидетельство о регистрации СМИ
№ ФС 77-61346 от 07.04.2015.

Подписано в печать 03.10.2017.

Дата выхода номера в свет 20.10.2017.

Формат 70x100 $^{1}/_{16}$.

Бумага офсетная № 1.
Офсетная печать.
Объем 22 печ. л.
Тираж 100 экз.

Отпечатано в типографии:
ОАО «Первая образцовая типография»,
115054, г. Москва, ул. Валовая, д. 28.

Свободная цена.

РОССИЙСКИЙ АРБИТРАЖНЫЙ ДЕНЬ

«Вестник международного коммерческого арбитража» выступит информационным партнером Российского Арбитражного Дня 2018

Российский Арбитражный День (РАД) – одна из самых успешных арбитражных конференций в России – возобновляет свою деятельность при поддержке Арбитражного центра при Институте современного арбитража и образовательного проекта «LF Академия».

«Вестник международного коммерческого арбитража» – российский специализированный журнал, посвященный проблемам международного коммерческого и инвестиционного арбитража, – традиционно поддерживает это важное отраслевое событие.

Возвращение мероприятия такого высокого уровня особенно актуально в контексте текущей арбитражной реформы в России, основной целью которой является качественное развитие арбитража.

Очередной Российский Арбитражный День состоится **30 марта 2018 года**. Организаторы намерены сохранить все преимущества оригинального формата конференции, а также всячески способствовать дальнейшему развитию РАД и превращению его в событие международного масштаба.

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Справка: *Первый Российский Арбитражный День был проведен в 2013 году по инициативе партнера лондонского офиса юридической фирмы «Berwin Leighton Paisner LLP» Р.М. Ходыкина, профессора МГУ им. М.В. Ломоносова А.В. Асоскова и управляющего партнера коллегии адвокатов «Муранов, Черняков и партнеры», доцента МГИМО А.И. Муранова при поддержке МКАС при ТПП РФ и МАК при ТПП РФ. За первые три года проведения РАД конференцию посетили свыше 1 000 участников и спикеров из стран СНГ, Северной, Центрально-Восточной и Западной Европы, США и Канады, Китая, Индии, Сингапура и Австралии. Еще более 500 зрителей следили за конференцией в режиме онлайн. Важной частью каждого РАД был заблаговременный выпуск сборника статей «Новые горизонты международного арбитража» с научно-практическими статьями докладчиков РАД.*

Редакционный совет, редакционная коллегия, учредитель и издатель журнала «Вестник международного коммерческого арбитража» (ранее – «Международный коммерческий арбитраж») поздравляют **Алексея Николаевича ЖИЛЬЦОВА** с десятилетием успешной деятельности в качестве главного редактора журнала, благодарят его за самоотверженный труд и желают ему дальнейших творческих свершений, крепкого здоровья и всего самого наилучшего!

SUMMARY
International Commercial Arbitration Review Issue No. 1 for 2017

Articles

D.A. Khotsanov. **Recognition and Enforcement in the Russian Federation of Foreign Judgements and Arbitral Awards: Selected Practice for 2015 and 2016**

This article constitutes a selection of most interesting rulings issued by Russian state courts in proceedings on recognition and enforcement of foreign judgments and arbitral awards.

In 2014 a similar article was published in this magazine[1] where both "positive" ("favorable") and "negative" ("adverse") approaches to the issue elaborated by Russian courts were considered. This time the author addresses only those arguable rulings where the courts refused to recognize and enforce foreign judgments and awards.

The author determines that many recent rulings contain erroneous statements and findings or the judges just fail to duly specify the reasons for refusal to recognize and enforce the judgments and awards rendered by foreign courts and arbitrations.

N.G. Doronina, N.G. Semilutina, M.A. Tsirina. **Modern Problems Related to the Resolution of Economic Disputes (the Practice of Non-state Adjudicatory Bodies)**

This article represents a retrospective analysis of the resolution of disputes connected with the economic activities in Russia in the 20th century. The post Revolution developments in Russia required new approaches, corresponding to the new tasks of the new state. The old courts did not correspond to the new conditions of the economic activities of the enterprises that became state-owned. The commercial relationships based on the market principles were not possible and the disputes between such enterprises could not be resolved in courts, but rather by means of the arbitration in the specialized arbitration commissions. The further developments in this area led to the creation of the system of state arbitration courts (or "arbitrazh courts") which were rather state economic courts than genuine arbitration courts. The activities of local courts of private arbitration were regulated in the Civil Code and dealt mainly with the disputes between natural persons. After *perestroika* the activities of local courts of private arbitration substantially increased. Authors analyze the evolution of the Russian legislation in this sphere.

The development of foreign trade of Russia with other countries required the use of international commercial arbitration mechanism. As a result, the Foreign Trade Arbitration Commission (FTAC) was created as a specialized permanent arbitration institution which fully corresponded to

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[1] See: *D.A. Khotsanov*, Recognition and Enforcement in the Russian Federation of Foreign Judgments and Arbitral Awards: Selected Practice for 2012–2014, International Commercial Arbitration Review, 2014, No. 2(9), p. 129–144.

the principles of commercial arbitration. Later the FTAC was transformed into the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (the ICAC) acting on the basis of the Law on International Commercial Arbitration of 1993.

The development of investment activities in the middle of the 20th century has led to the preparation of investment legislation with the subsequent increase in the number of investment disputes considered by means of arbitration. Analysis of the practice of resolution of investment disputes with participation of the Russian Federation (*e.g.* cases of Lena Goldfields, NOGA, Mr. Sedelmayer) allows authors to conclude that a uniform approach with respect to the resolution of investment disputes is required. Such an approach would help to achieve more efficient resolution of international investment disputes with balanced awards being rendered taking into account the interests of investors and of states receiving investments.

Klaus Peter Berger, J. Ole Jensen. **The Arbitrator's Mandate to Facilitate Settlement**

The discussion whether an international arbitrator's mandate includes the facilitation of settlement between the parties is not new. For the past decades, it has unfolded between those who believe in settlement facilitation as an efficient means to end the parties' dispute and those who consider such activities incompatible with the arbitrator's judicial role as a "private judge". Up to now, this discussion has remained deeply rooted in domestic conceptions of what the arbitrator's role should and should not be. This Article argues that it is past time to throw these culturally shaped beliefs overboard. In the interest of the much-debated quest for increased efficiency in the arbitral process, international arbitrators should realize and appreciate that settlement facilitation is not incompatible with their mandate and can be a highly useful tool to resolve the parties' dispute in a time and cost-efficient manner. To further this understanding of the arbitrator's mandate, this Article offers tried and tested tools that allow international arbitrators to facilitate settlement without overstepping their mandate or risking a challenge by the parties.

Niels Schiersing. **Construction Contracts in English Law – General Part**

This article describes and analyzes the principles of interpreting and completing contracts in English law with a particular focus on construction contracts, and a number of particularly relevant issues for construction contracts are presented and analyzed subject to English law. The weight of the article is based on the most recent case law of the English courts, especially in relation to FIDIC contracts. The first part gives an account and analysis of a number of common principles for the interpretation and completion of commercial agreements, while the article's second part will contain a review and analysis of jurisprudence and theory regarding defects, delay, extension of time, liquidated damages, termination, claims procedures, issues of quantum etc. This is a translation of an article previously published in a Danish periodical in October 2016 (Tidsskrift for Bygge- og Boligret, 2016.703). No new case law has been considered, including the recent decision in *Wood v. Capita Insurance Services Ltd.*, [2017] UKSC 24.

Interview with Brigitte Stern, International Arbitrator, Emeritus Professor of International Law at the University of Paris I, Panthéon-Sorbonne

An interview with Brigitte Stern, international arbitrator and Emeritus Professor of international law at the University of Paris I, Panthéon-Sorbonne, was prepared by the Arbitration Center at the Institute of Modern Arbitration at the conference "International Arbitration in the Spotlight: From Tokyo to New York" held in Moscow in March 2017. The Russian language version of the interview was published on the web site *Zakon.ru*.

R.V. Makin. **Fiduciary Duties of Shareholders in Corporations and Their Application in Situations of Abuses of Corporate Opportunities**

On the basis of foreign and Russian doctrine, legislation and court practice, the author analyzes regulation of fiduciary duties of shareholders under Russian law. The author considers the legal nature of this concept and its contents. Also, the author substantiates why majority shareholders and minority shareholders in close corporations as well as in open corporations should be bound by fiduciary duties. Additionally, the author analyzes applicability of the shareholders' fiduciary duties concept in case of abuse of corporate opportunities.

A.I. Muranov. **Private International Law and International Commercial Arbitration: Twists of Fate in Both the USSR and Russia as Viewed through the Prism of Amendments in the Nomenclature of Specialties of Academic Workers and the Passports of the Academic Specialties**

It is a long held tradition in Russia that the topics of academic theses required for a candidate of science degree or doctor of science degree (it is worth noting that "science" here means all fields of knowledge including humanitarian ones) should be in compliance with a specific classification system addressing academic research known as "The Nomenclature of Specialties of Academic Workers". Importantly, theses must be submitted for their defense to special councils which are also formed pursuant to such classification system. The Nomenclature is an index that consists of many code numbers and short references to specific sciences. For instance, a thesis involving public international law issues is to be categorized under the code number 12.00.10 and can only be submitted for defense to a corresponding council having the same code. Such councils are granted power to evaluate theses subject to particular codes by Russian authorities who assign these codes to the councils.

This tradition finds its origins in the USSR and is a practice that has been well established since the 1930s. Using Nomenclature as an instrument to regulate academic research arose from the Soviet planned economy and the state authorities' aspiration to exert control over academic research. Currently, this tradition continues to work effectively in modern Russia where the sphere of academic research and its administration remains kept to be quite conservative.

In this article, the author – addressing only private international law and international commercial arbitration – briefly describes the history of the Nomenclature and its development from Soviet times to present day. The author then goes on to discuss the various reasons underpinning the changes in the Nomenclature implemented throughout its development.

Furthermore, the author shows the intense struggle within academic circles regarding the reference to private international law and international commercial arbitration: whether it should have belonged or should belong to the code of the Nomenclature on public international law (12.00.10) or to the code on civil law (12.00.03). This scholar struggle – which began in the 1970's and continued to remain active in modern Russia – presents a compelling narrative of human passion and resolve on this issue. Importantly, after much debate, there has been a provisional end to the struggle, and resolution has been achieved recently since reference to private international law and international commercial arbitration in the Nomenclature's code on civil law was preferred, and is officially prevailing now.

However, the Nomenclature's index on law is disappointedly very short (not more than one page), while it is the only legal document officially recognized in Russia for the classification of academic research in law.

The author takes note of this unfortunate circumstance and demonstrates why such apparent disadvantage of the Nomenclature resulted in a 15-year attempt by the Russian authorities to develop a special, differently formatted, type of classification. The Russian authorities ultimate-

ly tried to reconfigure unofficially the official classification system (the Nomenclature) by approving the so-called "Passports of the academic specialties" (which are much more extensive and detailed documents, each one for every Nomenclature's code).

The author reveals the motivations for such developments and argues why such Passports are not satisfactory documents, *e.g.* due to the fact that their legal status is exceedingly vague and the procedure surrounding their drafting and approval is not fully transparent.

It is also revealed that the Passports substitute the Nomenclature in a creeping and subversive manner which does not comply with Russian law, but, interestingly, functions in a way that is definitely comfortable for the Russian Ministry of Education and Science, as well as for many other administrators involved in academic research.

The author illustrates this by demonstrating that many procedural matters of private international law and international commercial arbitration that were traditionally (and still are) covered by the Nomenclature's code on civil law (12.00.03) were, in fact, for the last three years replaced; they were moved from the Passport for the code on civil law (12.00.03) to the Passport for the code on procedural law which traditionally dealt with only domestic issues (12.00.15).

Such replacement has taken place mostly behind the scenes and without serious discussion between scholars. It was implemented by proponents of procedural law who were, and are, much more active in administrative matters than academics in private international law and international commercial arbitration. Many of such proponents take now a formalistic approach and argue that – since relevant issues of private international law and international commercial arbitration are mentioned now because of such replacement in the Passport in the code on procedural law – the theses on those issues cannot be categorized under the code 12.00.03, but, instead, must fall under the code 12.00.15.

Consequently, the overall competence of the councils for the code 12.00.03 on such issues may drift to the councils for the code 12.00.15 which, from the point of view of academic administration, is a very serious and significant problem in Russian law.

Moreover, concern arises since the structure of legal studies on private international law and international commercial arbitration in Russia may be essentially distorted in future. The basis of this concern comes from the likelihood that such research on those very liberal fields may be subjected to overly conservative domestic requirements and trends determined by the narrow policy of the Russian state in the sphere of procedural law. The free and liberal discussions of a variety of critical and fundamental issues may be replaced by official and traditionalist considerations.

The author considers these problems also in the light of the latest trend in Russia that involves granting the right to award candidate of science degrees or doctor of science degrees to many serious Russian universities and also raise a question for discussion whether the existing Passports should be imposing regulations for such universities.

Throughout the course of his analysis, the author pays special attention to many other unique, narrow, and technical – but yet very significant – aspects of the Nomenclature and the Passports, particularly as they relate to private international law and international commercial arbitration.

M.V. Yakushev, M.A. Rozhkova, D.V. Afanasiev. **On the Legal Nature of the Alternative Dispute Resolution for Domain Name Disputes**[2]

The article is devoted to the analysis of the alternative dispute resolution for domain name disputes. The article touches upon issues related to the legal nature of specialized non-state arbitra-

[2] Summary of presentations made at the round table "The New Rules for Alternative Dispute Resolution for Domain Names" held on 20 February 2017 in the Chamber of Commerce and Industry of the Russian Federation.

tion centers which deal with a special type of disputes related to domain names under the UDRP procedure (Uniform Domain Name Dispute Resolution Policy). The UDPR is a unified strategy of resolving domain disputes which was developed by the Internet Corporation for Assigned Names and Numbers (ICANN).

Sergey A. Kurochkin. **Arbitration Reform in Russia: A General Overview**

September 1, 2016 was the date when the Russian Arbitration Reform started. During its preparation the legislator modernized arbitration laws, the reform affecting all spheres of arbitration. All leading achievements of Russian and foreign jurisprudence were used in the course of the reform as well as the sizeable experience accumulated since 1992 when the first "Provisional Regulations on Arbitration Tribunals for Economic Disputes' Resolution" were adopted as a statute. The fruitful work executed by the leading Russian experts entailed the new high-level arbitral legislation in the Russian Federation.

E.A. Evstigneev. **Article-by-Article Commentary to the Rules of the Russian Civil Code on Retention and Surety through Evaluation of Their Mandatory or Dispositive Nature**

This article presents an article-by-article commentary to the provisions of the Russian Civil Code which regulate retention and surety. This commentary is based on the theoretical division of rules in Russian civil law and civil law of foreign countries into rules of a mandatory or non-mandatory nature. The author presents his opinion on the proper criteria to be used when determining the nature of Russian substantive law rules in present-day practice. The main objective of the commentary is to provide guidance in determining whether a particular rule of the Russian law of obligations is of a mandatory or of a dispositive nature which is often very important in practice. The author considers the Resolution of the Supreme Arbitrazh Court No. 16 of 14 March 2014 "On the Freedom of Contract and Limitations Thereof", but in many instances goes beyond the guidelines contained in this Resolution.

E.S. Burova. **Counterclaims in Investor-State Disputes: Finding Balance in Investment Arbitration**

The counterclaims raised by host states in investment arbitration have rarely succeeded so far, as the practice of ICSID and UNCITRAL arbitration evidences: most of them were rejected either on jurisdictional grounds or on the merits. The main obstacles encountered by states' counterclaims are the following: (i) dispute resolution provisions in investment treaties allowing to submit for arbitration only the disputes related to the violations of host states' obligations; (ii) applicable law provisions in investment treaties designating only the treaty itself and/or international law, rather than domestic law, as applicable; (iii) requiring the same legal instrument underlying both the original claim and counterclaim, rather than factual connection. The author of the article submits that the current arbitral practice indicates an asymmetry between the ways how the inherent rights of investors and states are realized. The article provides some practical suggestions on how to rebalance the system of international investment law with a view to make it friendlier to counterclaims. The author concludes that a friendlier approach to counterclaims can extinguish some points of criticism surrounding the ISDS nowadays.

Arbitral Awards

Award of the ICAC at the RF CCI dated 22 March 2016. Case No. 89/2015

In this case the dispute arose out of an agreement concluded between a retail foreign exchange investor residing in the Czech Republic and a Russian company providing financial services consisting in enabling clients to purchase and sell over the counter Forex contracts for their account. Having unilaterally and without explanations adjusted the results of the trade and having closed the trading account of the Claimant, the Respondent inflicted substantial losses on the Claimant.

This ICAC arbitral award is of interest for a number of reasons. From the perspective of its form this is an example of an award which was rendered by the ICAC in the English language. From the perspective of the conduct of the proceedings, it is interesting to note that the parties have provided in their arbitration agreement that no oral hearing or oral arguments are to be held. From the perspective of the competence of the arbitral tribunal, it is noteworthy that the Claimant in this case was a natural person residing in a foreign country and not possessing the status of an individual entrepreneur. From the perspective of the substance of the dispute the award is of interest due to the fact that despite complex argumentation of the parties in support of their respective positions based on construing the relevant provisions of the Agreement, the arbitral tribunal resolved the dispute by referring to the more general principles of good faith and fair dealing as well as the principle of estoppel.

The award was reviewed and edited by Alexei N. Zhiltsov.

Award of the ICAC at the RF CCI dated 15 April 2016. Case No. 126/2015

This case arose out of the claim to recover the lease payment, the penalty for the late payment and the fine for the termination of the lease contract due to the lessee's fault. The award is of interest because it represents an example of arbitrators using the great extent of discretion afforded to them by the ICAC Rules. Despite the opposing expert opinions and positions presented by the parties, the arbitrators have resolved this case on the basis of their own analysis of the parties' relations, the respective legal rules and court practice. The criteria of reasonableness and fair commercial conduct by the parties were given particular attention by the tribunal in the resolution of this case.

The award was reviewed and edited by Maria M. Demenkova.

Award of the ICAC at the RF CCI dated 20 April 2016. Case No. 109/2015

The dispute arose out of the contract on lease of premises made between two companies incorporated in the Russian Federation and existing under the Russian law. The claimant's sole shareholder was a foreign (Cypriot) company. The respondent had no foreign (non-Russian) shareholders.

Because of the same "nationality" of the parties, the respondent challenged the ICAC's jurisdiction alleging that the claimant did not constitute an "enterprise with foreign interest" which may be a party to the proceedings under the auspices of the ICAC in accordance with the applicable ICAC Rules[3].

The respondent supposed that to determine whether a party has "a foreign interest", the arbitral tribunal should consider not only its shareholding structure but also its primary place of business, the nationality of its beneficial owners and the country with which the party is most close-

[3] The dispute was settled under the ICAC Rules approved by the Order of the Chamber of Commerce and Industry of the Russian Federation No. 76, dated 18 October 2005.

ly connected. The respondent asserted that the claimant was actually controlled from Russia, its ultimate beneficiaries were Russian citizens and it was doing business exclusively in Russia.

As a result, the respondent stated that the claimant should not be treated as an "enterprise with foreign interest" irrespective of the fact that its sole shareholder was a foreign company.

The claimant alleged that the ICAC had jurisdiction to settle the dispute since, *inter alia*, neither the ICAC Rules nor the Law on International Commercial Arbitration provided that the arbitral tribunal should determine the party's ultimate beneficiary owners. However, the claimant voluntarily submitted to the tribunal its corporate structure and disclosed the members of management of the claimant's parent company.

The arbitral tribunal stated that (i) both the Law on International Commercial Arbitration and the ICAC Rules stipulated only "formal criterion" for ascertainment whether a party constituted an "enterprise with foreign interest" (it should have at least one foreign shareholder), (ii) the claimant was not obliged to disclose the persons who actually controlled it, and (iii) the tribunal should not be entitled to determine the claimant's ultimate beneficial owners or "perform any other controlling activities in this respect". Given that the claimant duly proved that its shareholder was a foreign company, the arbitral tribunal found that it was competent to settle the dispute.

Further, the respondent alleged that the claimant had failed to comply with the pre-arbitration dispute resolution procedure provided by the contract because it had increased the amount of the claims after the commencement of the arbitral proceedings but had not firstly proposed to the respondent to settle that issue amicably (by means of negotiations between the parties). The claimant stated that it had observed the pre-arbitration dispute resolution procedure before it had filed the claim with the ICAC and neither the contract nor the applicable law required the claimant to hold the negotiations with the respondent in case of increase of the amount of the claims in the course of the arbitral proceedings. The tribunal upheld that position of the claimant.

Finally, it seems to be interesting to examine the consideration by the arbitral tribunal of the respondent's motion to decrease the amount of penalty to be paid by the respondent. The tribunal addressed in details both parties' numerous arguments and found that the applicable civil law provided no grounds for the decrease of the amount of penalty.

The award was reviewed and edited by Dmitry A. Khotsanov.

Award of the ICAC at the RF CCI dated 1 June 2016. Case No. 258/2014

This award involved claims arising out of two contracts against two defendants, one of which was obliged to refund the overpaid amount under the services contract (hereinafter – primary debtor), while another defendant undertook to pay the plaintiff the said amount in exchange for the transfer to him of the claims against the primary debtor. Under the assignment agreement transfer of all the claims from the assignor to the assignee was dependent on the full payment by the assignee of the amount that was equal to the aggregate sum of the claims to be assigned. During the course of the arbitral proceedings it has been found that the primary debtor was liquidated. This fact made the arbitral tribunal answer the question whether in principle it was possible to meet the claim. Having established that the primary debtor had been wound up, the arbitral tribunal made a conclusion that the respective claim could not be adjudicated. The reasoning was that liquidation of a legal entity presumes termination of its rights and duties without any succession. Since neither the Law on International Commercial Arbitration nor the ICAC Rules considered liquidation of an entity being a party to a dispute as a special ground for the termination of the proceedings, the arbitral tribunal came to the conclusion that the claim could not be heard on the merits based on Art. 32(2) of the Law on International Commercial Arbitration and § 45(2)(c)

of the ICAC Rules ("continuation of the proceedings has become unnecessary or impossible for any reasons"). Correspondingly, the arbitral tribunal terminated the proceedings in the respective part without rendering an award. As regards the claim arising out of the assignment agreement, the arbitral tribunal emphasized the legal nature of this agreement that implied mutual consideration. Believing that making the assignee pay to the plaintiff the money under the assignment agreement would result in unjust enrichment of the latter since there were no possibilities to make use of the claim against the primary debtor, the arbitral tribunal rejected the respective claim. Finally, it is worth noting that the arbitral tribunal also refused to accept the argument by the assignee that the assignment agreement governed suretyship relations between the parties.

The award was reviewed and edited by Dmitry I. Zenkovich.

Award of the ICAC at the RF CCI dated 7 July 2016. Case No. 271/2015

This award was rendered in the case that is very typical for the practice of the ICAC at the Chamber of Commerce and Industry of the Russian Federation. The company with its place of business on the territory of Italy (the claimant) entered into an agreement with the limited liability company with its place of business on the territory of the Republic of Belarus (the defendant) whereby the claimant agreed to deliver some goods to the defendant and the latter undertook to accept the goods and pay for them. The company from the Republic of Belarus failed to perform its duties under the contract. For that reason the Italian company filed a claim with the ICAC which further upheld the claim in full and ruled in favor of the claimant.

Despite the fact that this dispute is not unusual, the resulting award reflects several questions concerning determination of the applicable law by the arbitrators that might be of interest. The author of this commentary highlights some of them that seem to be the most important.

First of all, attention should be drawn to choice-of-law clause included in the contract. The parties agreed to apply the United Nations Convention on Contracts for the International Sale of Goods of 1980 and the Hague Convention on the Law Applicable to Contracts for the International Sale of Goods of 1986. The application of the first document – the UN Convention of 1980 – is a common practice for contracts for international sale of goods while the parties' choice of the Hague Convention is notable. As it is known, this convention does not provide for any substantive rules but includes a certain system of choice-of-law rules that allow determining the law applicable to international sale of goods contracts.

The ICAC considered such party's choice of the Hague Convention and ultimately refused to apply it for two reasons: firstly, the Convention did not enter into force, and secondly, neither Italy, nor Belarus Republic signed or ratified it. The following fact however should be mentioned. While the ICAC refused to apply the Hague Convention it determined subsidiary law governing the transaction. In doing so the arbitrators applied Russian choice-of-law rule (Art. 1211 of the Civil Code of the Russian Federation) prescribing application of the law of the country of the seller (law of Italy in this case). Refusing to apply the Hague Convention, the arbitrators simultaneously noted that its application would lead to the same result as did the application of the Russian choice of law rule. Thus, the non-application of the Convention chosen by the parties did not influence the arbitrators' conclusions on that case.

The second interesting issue in this award is the application by the ICAC of the UNIDROIT Principles on its own initiative while resolving specific issues related to this case. Such application shows the ICAC's flexible approach to the definition of the law applicable to dispute. Flexibility means in particular the readiness to apply the UNIDROIT Principles, even in the absence of reference to them by the parties in the choice-of-law clause in a situation when this is justified by the circumstances of a particular case.

Finally, it is worth highlighting that this decision demonstrates the increasing number of foreign companies' disputes submitted to the ICAC as a neutral permanent arbitration institution and, as a consequence, shows the growing popularity of the ICAC in resolving disputes without participation of a Russian party.

The award was reviewed and edited by Maria V. Radetskaya.

Order of the ICAC at the RF CCI on Termination of Arbitral Proceedings dated 13 July 2016. Case No. 171/2015

This case of the ICAC is interesting for two reasons: because both parties to the dispute were individuals and because the arbitral tribunal considered in detail the issue of its own competence to hear the case. The case arose out of the claim for unjust enrichment, penalty and compensatory interest for the detention of money from the contract of conflict settlement between the owners of several corporate entities. The arbitrators came to conclusion that the disputed relations were of internal nature and did not involve participation of any foreign entities (the subjective criteria of the ICAC competence). It is worth noting that participation of a foreign company in contractual relations, but not in the dispute was correctly considered by the tribunal as not changing the nature of the dispute as being of a purely domestic nature. Moreover, the arbitrators found that parties' relations did not involve any foreign element necessary to characterize such relations as being of a foreign economic nature (an objective criteria of the ICAC competence). Respectively, the arbitrators found that they were not competent to resolve the dispute.

The award was reviewed and edited by Maria M. Demenkova.

Book Review

Michael Leathes. **Review of the Book: Klaus Peter Berger "Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration"**

V.A. Kochetkov. **Review of the Book: E.A. Evstigneev "Mandatory and Dispositive Norms in the Law of Contract"**

Facts and Events

The Meeting of the Leading Arbitration Institutions in Moscow "International Arbitration in the Spotlight: From Tokyo to New York", a conference organized by the LF Academy and Arbitration Centre at the Autonomous Non-profit Organisation "Institute of Modern Arbitration" (Russia).