

# Russia enters new stage in the development of arbitration after ICC and SIAC granted permanent arbitral institution status

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The International Court of Arbitration of the International Chamber of Commerce (ICC) and the Singapore International Arbitration Centre (SIAC) have each been **granted\*** the status of permanent arbitral institution (PAI) in Russia. As PAIs, these institutions are entitled to administer international commercial disputes and certain types of corporate disputes involving Russian companies.

This development indicates arbitration is making progress in Russia since foreign and Russian companies now have access to more reputable arbitration venues.

Given the popularity of the ICC and the SIAC among Russian entrepreneurs and their foreign counterparties, we expect the number of cases submitted to arbitration to increase.

## Background

As a result of the **reform** of the concept of arbitration in Russia in 2016, arbitral institutions with PAI status began to emerge in the country. The Russian Ministry of Justice can grant this status to a subdivision of a non-profit organisation that administers arbitration cases on a permanent basis. Currently, the following Russian arbitration centres enjoy PAI status:

- the International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry;
- the Maritime Arbitration Commission at the Russian Chamber of Commerce and Industry;
- the Russian Arbitration Centre at the Russian Institute of Modern Arbitration;
- the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs, an all-Russian public organisation;
- the National Centre for Sports Arbitration at the Sports Arbitration Chamber; and
- the Arbitration Institution at the Union of Russian Machine-Builders, an all-Russian industry association of employers – the “youngest” PAI that, so far, is only entitled to administer domestic disputes.

Until recently, the Hong Kong International Arbitration Centre and the Vienna International Arbitration Centre were the only foreign arbitral institutions with PAI status in Russia.

## PAI status

Being granted PAI status allows foreign arbitral institutions to administer the following categories of disputes:

- international commercial disputes when the seat of arbitration is in Russia;
- disputes between residents in a Special Administrative Area (currently Russky Island in the Primorsky Krai and Oktyabrsky Island in the Kaliningrad Region) when the seat of arbitration is in Russia or another country;
- certain categories of Russian corporate disputes (except domestic ones), such as disputes arising from share-purchase agreements, share-pledge agreements, corporate agreements, etc.

The ICC and the SIAC now have this right.

The risks associated with the recognition and enforcement of arbitral awards are also reduced. This is certainly an advantage in cases where disputes cannot, as far as Russian law is concerned, be submitted to foreign arbitral institutions which have not been granted PAI status in Russia.

However, the ICC and the SIAC do not yet have the power to administer certain Russian corporate disputes that require PAIs to adopt special rules for corporate dispute proceedings. Such disputes include (and the list is not exhaustive):

- those related to the issue of securities;
- those related to the establishment, reorganisation and liquidation of legal entities;
- lawsuits filed by members of a legal entity to recover losses incurred by the legal entity or to declare invalid

- transactions carried out by the legal entity;
- challenges to the decisions of the management bodies of a legal entity.

At the moment, the ICC and the SIAC have not prepared and deposited their rules for corporate disputes.

The above foreign arbitral institutions are not entitled to administer Russian domestic disputes, which, under Russian arbitration law, cannot be submitted to international commercial arbitration unless these bodies establish a separate subdivision in Russia.

## Comment

When selecting a foreign institution to administer a potential dispute and drafting an arbitration agreement, the parties to a contract must determine the type of potential disputes that should be referred to arbitration and verify the authority of the chosen arbitral institution to administer these disputes.

For further information, please email the authors or your usual contact at CMS Russia.

*\*In Russian*

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