Российский арбитражный центр

при Российском институте современного арбитража

ARBITRATION DIGEST MAY 2021

CASE LAW DEVELOPMENTS

Arbitrator's Impartiality under the ECtHR's Scrutiny

The issue of an arbitrator's impartiality has become the subject of the ECtHR consideration.

The facts of the arbitration concerned the construction of a hydro power plant in Albania and date back to 1996. Being appointed by one of the parties, the arbitrator failed to disclose his ties to that party's parent company. Thus, the arbitrator acted as a counsel to the parent company in a civil litigation during the arbitration and had previously been a member of the board of directors of the parent company during negotiations of the deal. The claimant only became aware of those facts after the award was rendered. It failed either to challenge the arbitrator before the arbitral institution that administered the dispute or to set the award aside before the courts in Rome, which caused it to eventually apply to the ECtHR.

The ECtHR ordered that Italy pay a compensation to the applicant, but dismissed the applicant's request to renew the litigation, stating that renewal fell within the discretion of the ECHR member state.

Read

Chevron Moors to a Settlement

In 2009, the US energy company Chevron entered into an agreement with a consortium comprising the Sydney-based CPB and the Italian company Saipem, to build a 1.7 km-long jetty in a project for the development of liquefied natural gas in Western Australia. Yet, as early as in 2016, CPB brought claims to the courts of California and Texas against Chevron, claiming damages for the delays caused by cyclones and the quarantine introduced to protect flora and fauna (*CPB Contractors PTY Limited v. Chevron Corporation,* C 16-5344 CW). As the agreement contained an arbitration clause, Chevron managed to restrain CPB from litigation until the completion of the arbitration initiated by Chevron.

Ultimately, the tribunal in the USD 1.7 billion Chevron v. CPB Contractors and Saipem arbitration rendered a partial award, ordering a USD 60 million payment to the consortium and a USD 27 million payment to Chevron under the counterclaim. In the final award, the tribunal awarded another USD 8 million to CPB.

Concerned that the consortium would file further claims, in late April, Chevron applied to the US District Court for the Northern District of California seeking recognition of the awards against itself. By then, the consortium had already attempted to renew its claim against Chevron, suspended since 2016 for the duration of the arbitral proceedings. Already in May, however, it became known that the parties managed to settle their differences: thus, CPB voluntarily withdrew its claim, and each party agreed to pay its own legal costs.

Read

A Colombian Family Affair

The Carrizosa family – three brothers and their mother – owned a controlling shareholding in the former state Colombian bank Granahorrar. In 1998, the state re-nationalized the bank. In 2018, the brothers sued Colombia for USD 323 million over measures undertaken by the Colombian banking regulators back in 1998 that, the claimants asserted, resulted in the reduction of the value of the bank's shares, as well as over the subsequent decisions of domestic courts that denied them compensation for the bank's nationalization in 2011 and 2014. The tribunal, however, failed to establish its jurisdiction in the case solely on the ground that the claimants perceived themselves as Americans, given that they were "born and raised" in Colombia and therefore could not be deemed foreign investors from the US under the US-Colombia Trade Promotion Agreement (*Alberto Carrizosa Gelzis, Enrique Carrizosa Gelzis, Felipe Carrizosa Gelzis v. Republic of Colombia*, PCA Case No. 2018-56).

The claimants' mother, on the other hand, was Latvian by origin; hence, later in 2018, she also filed a separate USD 40 million ICSID claim against Colombia concerning the same measures that had been invoked by her sons (*Astrida Benita Carrizosa v. Republic of Colombia, ICSID Case No. ARB/18/5*). She also relied on the US-Colombia Trade Promotion Agreement, as well as the Colombia-Switzerland BIT. Nevertheless, the arbitral tribunal sided with Colombia, concluding that the claim concerned pre-treaty rather than post-treaty conduct (the nationalization took place in 1998, and the judgment of the domestic court was delivered in 2011), and therefore did not fall under the Trade Promotion Agreement that only entered into force in 2012. As to the 2014 judgment on the appeal, the tribunal decided that is was not an independent violation of the Agreement.

Read

Norwich Pharmacal Order in Foreign Proceedings Confirmed by the Cayman Islands Court of Appeal

Norwich Pharmacal Order is a court ruling that may be issued at the request of the claimant on the disclosure by a third party not involved in the case, but innocently involved in the wrongdoing of the defendant, of information that may be useful for the claimant in view of its claim against the defendant (*Norwich Pharmacal Co. & Others v Customs and Excise Commissioners [1974] AC 133*). The principle underlying the Norwich Pharmacal Order was affirmed by the *Cayman Islands Court of Appeal in Essar Global Fund Ltd. et al v. Arcelormittal USA LLC*, (Civil) Appeal No 15 of 2019 in enforcing globally a 2017 ICC award in *ArcelorMittal USA LLC v. Essar Steel Ltd*., ICC Case No. 22187/RD/MK.

According to the award, Essar Steel Limited, held by the Indian conglomerate Essar, was to pay to the steel company ArcelorMittal USD 1.4 billion for breaching a sale and purchase agreement. The award was recognized at the seat of arbitration in Minnesota, England, Wales, and the Cayman Islands, as well as in Mauritius. The English court moreover issued a global freezing order with respect to Essar Steel Limited's assets.

After Essar never complied with the award, ArcelorMittal requested a Norwich Pharmacal Order to locate attachable assets. Essar objected that the Order should not be rendered.

Supporting the 2019 judgment of the court of first instance, the Cayman Islands Court of Appeal held that the conglomerate was deliberately avoiding payment under the award and was to provide to ArcelorMittal

USA the information and documents regarding the assets of its subsidiary – Essar Steel Limited. Furthermore, the court stressed that by seeking a Norwich Pharmacal Order, the appellant was not trying to bring its claim in a foreign jurisdiction or request information on evidence, which is prohibited by the Caymanian statute, but was merely requesting "information about wrongdoing."

Read

On April Fool's Day Don't Trust You Get the Opposing Counsel

A curious conclusion was made by the High Court of Singapore that was considering an application for setting aside a SIAC award due to the failure of the supplier's counsel to understand the questions examined in *CIM v CIN* [2021] SGHC 75.

The initial SIAC dispute concerned a failure to supply clinker (hard-burnt brick) under a long-term contract for supply at a fixed price, as the parties failed to agree on a laycan (the date before which the freighter is not obliged to accept the vessel) and the vessel for supplying clinker. The tribunal ruled in favor of the buyer, CIN, awarding a payment of around USD 1 million in September 2020. The supplier, CIM, disagreed with that decision and applied to the High Court for annulment of the award, arguing that it was not aware of some of the buyer's arguments before the hearing. At the same time, the CIN counsel has not corrected the wrong interpretation of presented arguments by the CIM's counsel. Therefore, CIM was deprived of the opportunity to respond to them.

In its judgment, delivered, amusingly, on 1 April, the Court stated that it would be unfair to impose on the counsel an obligation to correct misinterpretation of presented arguments and expect the counsel to make an inference that the opposing party had indeed not understood the case; after all, it is possible that the party "was deliberately mischaracterizing her opponent's case to make it seem weaker."

Read

Discovery in Arbitration *via* Section 1782 of the US Code: Two Opposite Decisions

Two opposite decisions on whether the US courts may assist international arbitration in obtaining evidence have been rendered in the US. The lack of consensus on this matter in practice has previously served as a reason to refer it to the US Supreme Court.

The opposite judgments illustrate two approaches to whether Section 1782 of the US Code may be used for the purposes of international commercial arbitration. Both were rendered in the *Food Delivery Holding 12 S.A.R.L. v Barnes & Thornburg LLP* case. A US District Court concluded that a DIFC-LCIA-administered arbitration was not a foreign or international tribunal within the meaning of Section 1782 of the US Code, and, consequently, the applicant could not obtain evidence for those proceedings *via* a US court. A week

before that, the US District Court for the District of Columbia, conversely, allowed discovery, finding that the DIFC-LCIA is a state-sponsored arbitral body.

Read

An Award Forces Tyson Fury to Withdraw from One of the Major Fights in the History of Super Heavyweight Fighting

The British boxer Tyson Fury was planning a fight on 14 August with Anthony Joshua – a fight that was to become a major event in the world of sports: the fight itself was estimated to earn the boxers up to USD 75 million each.

Yet, an award that arose from a claim of Deontay Wilder, Fury's former rival, resulted in the cancellation of that event. The arbitrator decided that Fury had contracted to have a fight with Deontay Wilder by 15 September, which cancels out the preplanned fight with Anthony Joshua.

Although the award indicated that the parties could settle their dispute if Wilder was compensated for his financial losses, Fury has categorically rejected that option.

Now, the Fury v Wilder rematch is scheduled to take place on 14 July.

Read

The Russian Supreme Court Sends a Bankrupt to Arbitration

On 13 May 2021, a ruling was rendered refusing to refer an insolvent party's appeal against the decisions of lower instance courts to the Judicial Chamber of the Supreme Court of the Russian Federation for Economic Disputes. The debtor is contesting acts due to the fact that its claims were left without consideration, reasoning that the claimant's insolvency did not rule out arbitration.

When justifying why the dispute could not be arbitrated, the claimant relied on judgments in Case No. A40-16719/19, whereby an arbitration clause with another creditor was declared unenforceable in the same insolvency proceedings. The courts had refused to follow this practice, ruling that the facts of the disputes were different.

Thus, in Case No. A40-16719/19, the claimant sought a deferral of payment of the arbitration fee, which was denied, while the respondent failed to prove that the debtor had funds to cover the arbitration. At the same time in Case No. A40-31546/2020, having been declared bankrupt, the claimant nonetheless did not apply for a deferral of payment of the arbitration fee, and the respondent provided evidence of the claimant's being in possession of sufficient funds, as well as filed guarantee letter, confirming his willingness to cover all the arbitration costs itself.

The role of court-appointed receiver in these two disputes is also worth considering. In the first dispute, the appellate court remanded the case for re-examination, since the claimant was undergoing bankruptcy

supervision. The court was of the opinion that the provisional administrator should have been brought into the arbitral proceedings as a third party, which was not permitted by the ICC Arbitration Rules (applicable, as the ICC was the arbitral institution chosen in the arbitration clause). The court of first instance delivered its decision after the the appointment of the bankruptcy receiver; however, it did not address the issue further and simply pointed out that the arbitration clause was unenforceable, among other things, due to the fact that the receiver could not be joined to the proceedings. At the same time, the dispute in Case No. A40-31546/2020 coincided with the latest stage of insolvency proceedings (receivership), and, therefore, the court-appointed receiver was fully authorized to represent the insolvent claimant, hence the issue of third-party joinder was not relevant.

Read

Public Order and the Prohibition of Re-Consideration of the Identical Claims in Arbitration

After issuing the award on the merits to recover the principal debt and a penalty under the contract, and following an application of the claimant, the arbitral tribunal issued a supplementary award that increased the amounts originally awarded. The state court then overturned this award, finding that it violated the Russian public order.

Later, the arbitral tribunal again considered the dispute and satisfied the claimant's claims, after which both parties, disagreeing with the arbitral award, applied to the state court for annulment.

The state court satisfied the application to set the award aside, since the initial award had been annulled earlier as contrary to the Russian public order, which precluded the parties from resorting to the arbitration again. The parties should have instead applied to an arbitrazh (commercial) court to resolve their dispute (Russian Arbitrazh (Commercial) Procedure Code, Art. 234(4)). According to the state court, the tribunal could not have re-considered the case on the merits under such circumstances.

Read

A Helicopter Crash Triggers a Claim against Airbus

The South Korean aerospace company Korea Aerospace Industries (KAI) has brought a USD 60 million SIAC claim against the subsidiary of Airbus, Airbus Helicopters SAS.

The claim was filed after a crash of a Korean marines helicopter in 2018 during a test flight at an airfield in the South Eastern port of Pohang, resulting in the death of five servicemen.

The investigation revealed that the likely cause of the crash was the defects in the rotor mast. The existing video shows that the rotor's propeller blades fell apart shortly after takeoff.

After establishing the cause of the accident, KAI entered into negotiations with Airbus regarding the relevant compensation, but the parties failed to reach an agreement, which caused KAI to file its SIAC claim.

Read

INVESTMENT ARBITRATION NEWS

A Storm May Knock Mexico Down in Arbitration

One of the world's largest investment banks, Goldman Sachs, has initiated an arbitration against Mexico's state company Comisi'n Federal de Electricidad. The bank seeks to recover USD 400 million of debt incurred after a storm in Texas.

Goldman Sachs and Comisi'n Federal de Electricidad had concluded an agreement for the acquisition of gas, dependent to a great extent on the monthly index of gas prices.

This February, Texas suffered from a winter storm: wind turbines and oil pipelines froze, resulting in a suspension of operation of oil and gas wells. The dire consequences of the storm left Mexican people without electricity for several days, due to the fact that Mexico depends on the import of natural gas from the US, as well as caused gas prices to rise. Mexico refused to pay the increased price for gas and claimed that the storm constituted force majeure. Mexico also relied on the fact that the agreement presumably had been signed by unauthorized representatives.

Read

No Soft Landing: Airlines Lose an Arbitration against the BVI Government

The BVI Government has defeated a claim filed by two airline companies that argued that their unique project to establish direct flights between Tortola and Miami was undercut by the Government's action.

The Government had initially provided a loan of USD 7 million to fund the project, repayable once profit was earned from its implementation. In a few years, however, the Government terminated its agreement with the airline companies, as not a single flight had been executed by that time. In a year, the Government initiated a private investigation and later a litigation, claiming that the airline company had sold the planes bought using the Government's funds.

In turn, the airline company initiated an ICDR arbitration, arguing that the Government had sabotaged the project. The arbitral tribunal dismissed all of the claims, holding, in particular, that the Government had not breached any of the terms of the agreement and was entitled to terminate it. At the same time, the tribunal also dismissed a counterclaim related to a bribe paid to one of the Government's legal counsel involved in the agreement's conclusion.

After the counterclaim's dismissal, the BVI Government announced its plans to continue its attempts to recover compensation of damages before the domestic courts.

Read

Ukraine to Pay for Gambling

A UNCITRAL tribunal has ordered Ukraine to pay EUR 7.5 million as compensation of the losses of an Estonian company over a ban on gambling businesses. The tribunal deemed Ukraine's conduct to constitute indirect expropriation under the 1995 Estonia-Ukraine BIT.

The investor filed the claim after its casinos had to be closed in Ukraine – its four subsidiaries had to be liquidated due to the gambling ban. The state claimed that the company had not obtained a license for its activities that was required under the Ukrainian law. In response, the investor asserted that placing gambling machines in cafes and bars did not require a license. Furthermore, Ukraine had not invoked the illegality of such operations when collecting taxes from the companies.

The tribunal found that although the gambling ban destroyed an entire sector of the economy, Ukraine was entitled to impose it for the protection of "public health and morality." At the same time, according to the arbitrators, the measure was disproportionate, in view of the ban's all-encompassing and immediate effect. The tribunal reasoned that Ukraine's conduct resulted in an indirect expropriation and destruction of investments.

Read

Turkish Investors Failed to Annul an Award in Switzerland

The Turkish investors that prevailed in an ICC dispute against Syria over losses resulting from the civil war in the country, were unable to set aside the arbitrators' decision to award them compensation in Syrian pounds.

In the arbitration, the majority of arbitrators agreed with the investors, finding that Syria should be held liable under the broadly-worded war losses clause. Disappointed by the awarded compensation (which was much lower than they originally claimed), the investors sought to set it aside in Switzerland arguing that the arbitrators failed to take account of the dramatic devaluation of the Syrian pound.

The Swiss court held, however, that despite the currency's devaluation the arbitrators' award on compensation in Syrian pounds did not violate the Swiss public policy.

Read

Ariadne's Golden Thread Leads to ICSID

Kaloti Metals & Logistics has initiated an ICSID claim against Peru after being charged with corruption. Kaloti Jewellery Group was founded in Dubai in 1943, while its subsidiary Kaloti Metals & Logistics is registered in Florida. From 2011 through 2018, the subsidiary operated in Peru, purchasing precious metals for export to the US.

The investor claims that the state's wrongful conduct began with the confiscation by the customs authorities of gold bars that were never returned. This was followed by criminal prosecution on accusations of money-laundering. All that forced the company to wrap up its operations in Peru.

According to the investor, in reality the state's action was due to the concern that the American investor could become a dominant player in Peru's gold mining market.

Read

A Canadian Gold Mining Company Initiates Arbitration against the Kyrgyz Republic

The arbitration was triggered by the Kyrgyz authorities' measures with respect to the Kumtor Mine – one of the largest gold deposits in Central Asia, being developed by the Canadian company.

The Kyrgyz Parliament had passed a law enabling the introduction of "external management" over the mine in view of the danger it potentially presented for the locals and the environment. The Kyrgyz office of the company faces a fine of USD 3 billion, imposed under a private civil claim, for the disposal of production waste on the Davydov and Lysyi glaciers.

The claim will be arbitrated under the UNCITRAL Rules, with a seat in Stockholm, Sweden. The applicable law under the 2009 investment agreement will be the law of the State of New York.

Read

A US Power Company Claims USD 100 Million from Mexico before the ICSID

On 12 May, the ICSID registered a claim by an American energy company against Mexico. The claim, according to the claimant's counsel, consists in all sorts of impediments created by Mexican courts to the efforts of the Finley Resources Inc. group to recover debt for the services it rendered, from the Mexican state corporation Pemex. The state corporation's default on its payment obligations owed to Finley Resources Inc. was likely due to Pemex's enormous debt, which, according to Bloomberg, amounts to USD 113.9 billion and has already caused the state corporation to delay its payments to many counterparties.

In turn, Mexico's President, Andres Manuel Lopez Obrador, has committed to the intention to revive Pemex, and, for that, he is even ready to reverse the energy sector reforms that allowed foreign companies to enter the Mexican energy market.

Finley Resources Inc. filed its claim under the USMCA allowing for the use of the NAFTA mechanism for the resolution of disputes concerning the so-called "legacy investments." Pursuant to those provisions, investors retain the right to refer disputes to ICSID with respect to the investments made from 1 January

1994 until NAFTA's termination date. That right may be exercised within three years after NAFTA's termination.

Read

Procurement of Blue Poppy Seeds Arbitrated

A PCA panel has dismissed a USD 100 million claim by the Dutch company Fynerdale Holdings against the Czech Ministry of Finance.

The Dutch company initiated its arbitration back in 2017 under the 1991 Netherlands-Czech Republic BIT. The company claimed in its statement that it had invested USD 134 million as loans issued to the Czech company YTRIX and a Malta intermediary for funding trade in blue poppy seeds grown in the Czech Republic.

Fynerdale Holdings later discovered that the procurement of blue poppy seeds was not going as planned and that the money was instead misappropriated *via* a scheme involving YTRIX's CEO. The main complaint of the Dutch company related to the inaction of the Czech authorities in prosecuting that fraudulent scheme.

The tribunal found that it had no jurisdiction over that claim, stating that the investments themselves had to do with criminal conduct. Moreover, the arbitrators disagreed with the Czech Republic's arguments based on the *Achmea* (Slovak Republic v. Achmea B.V. (Case C-284/16) award concerning the incompatibility of an intra-EU BIT with the EU law.

Read

India Faces a New Claim over the Retroactive Effect of Its Tax Laws

The Japanese Mitsui & Co filed a USD 324 million investment treaty claim against India over changes in India's tax laws.

The Indian authorities have retroactively applied the tax laws to the sale by Earlyguard in 2007 of shares in the UK company Finsider International Company that held 51% in the Indian iron ore producer Sesa Goa.

We have reported in earlier digests that in similar cases involving claims by Vodafone and Cairn Energy against India, the state was held liable for the retroactive application of its tax laws. India is currently opposing these awards before a Singapore court and a Dutch court.

Read

Ukraine May Face Claims due to Changes in Tariffs for Power Generated by Solar Panels

A Lithuanian renewables company Modus Energy has filed a EUR 11.5 million Energy Charter Treaty claim against Ukraine, seen as just the first in a potential surge of claims that Ukraine may face over reforms of its tariffs regime. The claim will be heard by the Stockholm Chamber of Commerce.

To develop alternative energy sources, Ukraine introduced a “green tariff” that required the state to purchase the power generated by solar panels at a specific price.

Later, however, the “green tariff” rates were cut by 15% due to new laws for solar and onshore wind power plants.

In June 2020, after changes to the legislation, investors informed Ukraine of their intention to resort to arbitration if the tariffs were reduced. It seemed that the crisis was averted after Ukraine had signed a memorandum of understanding with two organizations in the sector, the European-Ukrainian Energy Agency (EUEA) and the Ukrainian Wind Energy Association (UWEA).

According to that memorandum, Ukraine set a new tariff rate, as well as gave the investors its assurances that the state would fulfill all of its obligations for the acquisition of power generated by wind and solar farms.

In October, however, both organizations (EUEA and UWEA) accused Ukraine of failing to make the agreed payments and warned the state that the investors might unfreeze their potential claims.

Read

ARBITRATION NEWS

Publication of Russian Arbitration Center Awards and Orders

Confidentiality is the cornerstone of international arbitration. At the same time, both the parties and legal practitioners need the application of arbitration rules and legal principles to be both transparent and predictable.

Responding to the current trends, RAC is happy to announce the launch of a project for the publication of RAC anonymized arbitral awards (at present moment available only in Russian). The new section of RAC website is now being filled with content and combines convenient search tools with maximum possible transparency – the awards are published in full, with omissions referred to in Article 24(4) of the RAC Arbitration Rules (Confidentiality of Arbitration).

This project is an important step towards heightening interest and trust in arbitration. It allows to see how the relevant versions of the Arbitration Rules apply in practice, as well as to get acquainted with the conclusions of the arbitrators on the key issues of applicable law and the Arbitration Rules.

Read

New Rules, Name, and Structure: Transformation of the Swiss Arbitration Centre

The Swiss Chambers' Arbitration Institution, renamed o the Swiss Arbitration Centre from May 2021, has presented its revised rules. The key amendments concern the multi-party and multi-contract arbitration, remote hearings and electronic document submission.

Especially noteworthy are the provisions of the Rules on third-party joinder that had been the subject matter of heated debates not only in doctrine, but also in the Willem C. Vis Arbitration Moot in 2020-2021. The new version of Article 6 of the Rules covers three groups of cases:

- first, *a cross-claim*, where a party asserts a claim against another party other than a claim in the notice of arbitration or a counterclaim in the answer to the notice of arbitration;
- second, *a joinder*, where a party asserts a claim against an additional party;
- third, *an intervention*, where an additional party asserts a claim against an existing party to the arbitration.

Although the provisions of the new Rules have for the first time distinguished between these three groups of cases, their wording remains flexible: the arbitral tribunal or the Secretariat (depending on the stage of arbitration) shall resolve this issue after consulting with all parties, including those being joined into the arbitration, and taking into account all relevant circumstances.

Read

The Revised Rules of the London Maritime Arbitrators Association Take Effect (The LMAA Terms 2021)

The document currently contains 33 Articles and 6 Sections and applies to any arbitration initiated after 1 May 2021, unless the parties agreed otherwise. The key purpose of the recent revisions is to offer "fair resolution of maritime and other disputes by an impartial tribunal without unnecessary delay or expense." The amendments concern virtual hearings and the awards that from now on may be issued in electronic form.

Read

The Queen Mary University Studies How Arbitration Adapts to a Changing World

This is the twelfth wide empirical survey in international arbitration produced by the School of International Arbitration of the Queen Mary University of London. The 2021 Survey shows how international arbitration has adapted to the changing demands and ways of living. Over 1,200 respondents took part in the Survey, which is the largest number of people ever to participate in the history of such surveys. 90% of the respondents named arbitration as their preferred means of resolving cross-border disputes. London, Singapore, Hong Kong, Paris, and Geneva remain the most frequently chosen seats of arbitration. Furthermore, 79% of all respondents noted that if hearings could not be held in person, they would prefer to hold them virtually rather than postpone them.

Read

Russian Arbitration Center Case Managers Ekaterina Baliuk and Rinat Gareev Publish a Study on Interim Relief in International Arbitration

The study concerns the Russian regulation of interim relief in arbitration, as well as the issues of enforceability of such relief. For the purposes of their study, the authors analyzed the effective provisions of the Russian laws on arbitration, the current case law, and arbitration rules. The authors have also shared their vision of the prospects of development of interim relief in arbitration in Russia.

Read

EVENTS ON ALTERNATIVE DISPUTE RESOLUTION

From Pitching to Enriching: Costs in Arbitration

On 10 June 2021, Arbitral Women and Under 40 Section of Arbitration Association (Serbia) will hold a webinar, dedicated to topical issues of arbitration costs that may arise at several stages of arbitral proceedings. Speakers will discuss, in particular, how to anticipate costs of the arbitration, how to claim costs and enforce awards regarding the costs. Yulia Mullina, Executive Administrator of the RAC, will be a moderator of the webinar.

Read

The Russian Arbitration Center's Events at the St. Petersburg International Legal Forum 2021 (SPBILF 9 ¾)

This year, the RAC has organized three sessions as part of SPBILF 9 ¾: "Arbitration in Russia: Forum In Favorem Arbitri", the Arbitration Battle Online, and the workshop "Plead Bright like a Diamond: Key Components of Successful Pleadings in Arbitration."

During the "Arbitration in Russia: Forum In Favorem Arbitri" session, the speakers summed up the interim results of the recent arbitration reform. The participants talked about Russia as a jurisdiction with the developing pro-arbitration approach, discussed the role of courts and arbitral institutions in this process, and outlined the key areas of focus for the future.

The discussion was moderated by Andrey Gorlenko (Partner, Ivanyan & Partners), and the speakers included Sarah Grimmer (Secretary General, HKIAC), Alexander Zamaziy (Managing Director – Chief of Staff of the Arbitration Centre, RSPP), Alexey Kostin (President, the ICAC and MAC at the RF CCI), Yulia Mullina (Executive Administrator, RAC at the RIMA), Alice Fremuth-Wolf (Secretary General, VIAC), Inga Melikyan (Deputy Director of the Department of Legal Advice and Cooperation with the Judicial System at the Ministry of Justice of the Russian Federation, member of the Council for the Improvement of Arbitration).

Arbitration Battle Online was a unique moot virtual hearing based on a real event – fire in the St. Petersburg's Winter Palace in 1837. The participants discussed the possibility of filing a claim by a non-signatory to the arbitration agreement, as well as defined the scope of disputes falling within that arbitration agreement.

The event's participants included Patricia Shaughnessy (Professor of Law, Stockholm University), James Dingley (Partner, Ivanyan & Partners), Sebastiano Nessi (Counsel, Schellenberg Wittmer (Geneva)), Olga Tsvetkova (Co-Founder, Guide to Next Generation of Russian Arbitrators), and Francis Xavier (Regional Head of Dispute Resolution, Rajah & Tann (Singapore)).

Watch the recorded livestream here.

At the "Plead Bright like a Diamond: Key Components of Successful Pleadings in Arbitration" workshop, Patricia Shaughnessy (Professor of Law, Stockholm University) and Francis Xavier (Regional Head of Dispute Resolution, Rajah & Tann (Singapore)) discussed the best methods and ways to present the case in arbitration following a moot hearing, as well as talked about techniques of cross-examination and secrets of preparation to it.

Watch the recorded livestream here.

Read

The CIS Arbitration Forum – CIS-Related Disputes: Treaties, Sanctions, Compliance and Enforcement

On 25-26 May 2021, the CIS Arbitration Forum united practitioners, scholars, and arbitrators to discuss the most complex issues that lawyers face in the resolution of disputes related to Russia, Ukraine, Kazakhstan, and other countries of the region.

Prominent arbitration specialists talked about the USSR's and the CIS countries' bilateral investment treaties, sanctions, and their impact on the resolution of disputes by way of international arbitration and domestic proceedings, as well as discussed the issues of enforcement of foreign arbitral awards.

Read

Resolution of Business Disputes: Mediation and Arbitration

On 13 May 2021, the Russian Institute of Modern Arbitration, the Commission on Mediation with the Association of Lawyers of Russia, and the Kamchatka Regional Department of the Association of Lawyers of Russia held a discussion panel on "Resolution of Business Disputes: Mediation and Arbitration."

The panel's speakers discussed the potential for resolution of domestic and international contractual disputes by mediation and arbitration (in comparison with commercial litigation), as well as for the use of hybrid means of dispute resolution.

The Russian Arbitration Center was represented by Yulia Mullina (Executive Administrator) and Andrey Panov (Counsel at Allen & Overy, member of the RAC Board).

Read

Workshops on “Private Law and Arbitration”

On 11-14 May 2021, the Russian Institute of Modern Arbitration organized a series of workshops on “Private Law and Arbitration” at the Law Institute of the Kant Baltic Federal University.

During the workshops, together with the students, the speakers considered the issues of corporate governance, liability in corporate law, foundations of commercial arbitration as a means of dispute resolution, arbitration agreements and the issues of arbitrability of separate categories of disputes, including corporate disputes, etc.

Students were also offered a unique opportunity to discuss the recent case law on matters of corporate liability, as well as participated in a short moot proceeding.

The event’s speakers included Alexey Garenko (Deputy Manager, LOYS Kaliningrad), Maria Lyubimova (Head of International Arbitration & Cross Border Disputes, Regionservice, Attorneys-at-Law), Alexey Petrov (Associate, Regionservice, Attorneys-at-Law), Sabina Ganieva (Legal Counsel, RAC), and Ekaterina Baliuk (Case Manager, RAC).

Read

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