

ICC and SIAC Granted the Status of Permanent Arbitration Institutions in Russia

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On 18 May 2021, the Russian Ministry of Justice granted the International Court of Arbitration of the International Chamber of Commerce (“ICC”)¹ and the Singapore International Arbitration Centre (“SIAC”)² the right to operate as permanent arbitration institutions (“PAI” or “PAIs”), in addition to other Russian and foreign institutions that were granted this right earlier.³

PAIs in Russia – The New Landscape. As a result of arbitration reforms introduced in 2016, only PAIs can administer most arbitrations seated in Russia and certain corporate arbitrations with a seat abroad.⁴

Only five Russian arbitration institutions have qualified as PAIs:

- 1) the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation (“ICAC” or “MKAS”);
- 2) the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation (“MAC”);
- 3) the Russian Arbitration Center at the Russian Institute of Modern Arbitration (“RAC”);
- 4) the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs (“AC RUIE”); and
- 5) the National Center of Sports Arbitration at the Sports Arbitration Chamber (“NCSA”).

¹ Press release of ICC is available [here](#).

² Press release of SIAC is available [here](#).

³ According to reports of the Council for the development of the Arbitration Process, SIAC applied for the permission in 2019 and ICC applied for it in 2020.

⁴ See Article 52(13) of the Federal Law No. 382-FZ On Arbitration in the Russian Federation dated 15 December 2016 and Article 225.1(5) of the Commercial (*Arbitrazh*) Procedure Code of the Russian Federation. We discussed the results of the arbitration reform in detail in our earlier client update on 16 February 2016, available [here](#).

Further, prior to the recent announcement, only two foreign arbitration institutions had obtained PAI status, both in 2019:

- 1) the Hong Kong International Arbitration Centre (“HKIAC”)⁵ and
- 2) the Vienna International Arbitral Centre (“VIAC”).⁶

The options for parties wishing to arbitrate corporate disputes involving Russian entities in a seat outside of Russia were therefore limited. The announcement that the ICC and SIAC are now to join the HKIAC and the VIAC is a welcome development, providing parties with access to a wider variety of respectable arbitration institutions, both in Europe and Asia.

Disputes That Foreign PAIs Are Able to Administer. Similar to other foreign institutions with the PAI status, ICC and SIAC will have the right to administer:

- international commercial arbitrations⁷ seated in Russia;
- disputes seated in Russian or abroad (including domestic disputes) between residents of a special administrative district (“SAD”) and arising out of agreements between SAD residents and the SAD management company for conducting business in the SAD;⁸ and
- certain types of Russian corporate disputes (excluding domestic disputes), in particular those related to ownership of shares or interests in the capital of Russian companies (including those arising out of share or interest purchase agreements), disputes arising out of management agreements in respect of Russian companies (shareholders’ agreements)⁹ and disputes related to registration and maintaining a

⁵ We discussed granting of PAI status to HKIAC in our earlier client update of 16 April 2019, [available here](#).

⁶ We discussed granting of PAI status to VIAC in our earlier Debrief of 26 June 2019, [available here](#).

⁷ Disputes may be referred to *international* commercial arbitration (i) if at least one of the parties has its business located abroad or if the agreement between the parties is mainly performed abroad, or the dispute is most closely linked to a place outside of Russia and (ii) if such disputes arise out of foreign investments in Russia or Russian investments abroad (Article 1(3) of Law of the Russian Federation No. 5338-1 on International Commercial Arbitration, dated 7 July 1993).

⁸ See Articles 44(6.2) and 44(12) of the Arbitration Law.

⁹ The right of SIAC and ICC to administer disputes arising out of management agreements (shareholders’ agreements) follows from the recent amendments to the Arbitration Law (Article 45(7.1) of the Arbitration Law). However, the necessary amendments have not been made yet to Article 225.1(3) of the Commercial (Arbitrazh) Procedure Code of the Russian Federation, which still provides that a PAI is required to have special rules in place for the resolution of such corporate disputes. This inconsistency has been to great extent resolved by the Response of the Council for the Development of the Arbitration Process to a joint request of HKIAC and VIAC, [available here](#).

register of rights to shares in Russian companies. Disputes arising out of management agreements must be referred to an arbitration seated in Russia, but the other corporate disputes that the ICC and SIAC are now entitled to administer can be seated in any jurisdiction.¹⁰

Disputes That Foreign PAIs May Not Administer. PAI status does not, however, permit the ICC, SIAC, HKIAC and VIAC to administer Russian domestic disputes, *i.e.* disputes which are not regarded as international commercial arbitration according to Russian law (*see footnote 7*), unless they establish registered offices in Russia.¹¹ However, these foreign PAIs can administer Russian domestic disputes (i) between residents of a SAD or (ii) arising out of agreements for conducting business in a SAD).

In addition, the ICC and SIAC will not yet be able to administer certain arbitrable Russian corporate disputes for which the PAI is required by Russian law to develop special rules and register them with the Russian Ministry of Justice. The ICC and SIAC have not yet prepared such rules for the time being, and it is not clear if or when they will put such rules in place. In particular, these disputes include:

- disputes related to the incorporation, reorganization and liquidation of legal entities;
- disputes in respect of claims brought by the participants of a legal entity seeking compensation for losses caused to the legal entity or invalidation of a transaction entered into by a legal entity;
- disputes related to the appointment or election, termination or suspension of the powers and liability of persons who are members of the governing bodies or internal audit bodies of a legal entity, and disputes arising from the civil law relations between such persons and the legal entity in connection with the performance, termination or suspension of their powers;
- disputes related to the issuance of securities;
- disputes related to a challenge to corporate resolutions adopted by the management bodies of a legal entity;
- disputes that are not expressly listed in the Commercial (*Arbitrazh*) Procedure Code of the Russian Federation arising between the legal entity and its members, including

¹⁰ This interpretation has been confirmed by Response of the Council for the Development of the Arbitration Process to a joint request of HKIAC and VIAC, available [here](#).

¹¹ See Article 44(6.2) and 44(12) of the Arbitration Law.

disputes with respect to claims brought by the members in connection with the relations of such legal entity with a third party, where the law so provides.

When drafting an arbitration clause, it therefore remains important to consider what potential disputes the arbitration clause will cover, and whether the potential disputes are ones that the ICC, SIAC, HKIAC and VIAC can administer under the Russian arbitration laws.

A Long Awaited Development. The ICC has long been a popular venue among Russian parties, having a long-standing presence in and ties to Russia. After the imposition of sanctions on Russia by the United States and the EU, Russian parties began to turn to Asian arbitration centers, such as HKIAC and SIAC, where the centers' home jurisdictions have not introduced any restrictive measures against Russia. However, while these arbitration centers were highly regarded and had a strong reputation for effective administration among Russian parties, the absence of the PAI status and the limitations that caused on the Russia-related disputes that the ICC and SIAC could administer made them a less attractive choice for dispute resolution clauses in contracts with a Russian nexus.

Now both the ICC and SIAC can reinforce their presence in the Russian market, providing both foreign and Russian businesses access to a greater range of prominent arbitration institutions. This development provides hope that the increasing availability of reputable arbitration institutions to Russian market participants will increase the popularity of arbitration as a dispute resolution method in general, provide Russian parties and their foreign partners with efficient and reliable methods for dispute resolution, and continue to build on reforms in Russian law to make the Russian jurisdiction more arbitration-friendly overall.

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