

Recognition and Enforcement of  
Foreign Arbitral Awards in Russia  
and Former USSR States



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Edited by  
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 Wolters Kluwer

*Published by:*

Kluwer Law International B.V.  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
E-mail: [international-sales@wolterskluwer.com](mailto:international-sales@wolterskluwer.com)  
Website: [lrus.wolterskluwer.com](http://lrus.wolterskluwer.com)

*Sold and distributed by:*

Wolters Kluwer Legal & Regulatory U.S.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@wolterskluwer.com](mailto:customer.service@wolterskluwer.com)

*Printed on acid-free paper.*

ISBN 978-94-035-3290-5

e-Book: ISBN 978-94-035-3291-2  
web-PDF: ISBN 978-94-035-3292-9

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Printed in the United Kingdom.

## Editor

**Roman Zykov** is the Managing Partner at Mansors Law Firm (Russia), and is recognized by the peers and global rankings as a leading arbitration lawyer in Russia and the CIS. His particular emphasis is on the construction, energy, mining, oil & gas, international trade, M&A and shareholders disputes.

He represents clients in arbitrations under major arbitration rules, and frequently acts as sole and co-arbitrator under ICC, SCC, VIAC, and UNCITRAL Rules. He also serves as a member of FIDIC Dispute Adjudication Boards.

Roman Zykov's previous roles included the Head of international arbitration and litigation group of a publicly listed gold mining company, a member of the dispute resolution groups in the leading law firms in the Netherlands and Scandinavia. Roman seconded in the Arbitration Institute of SCC. Since 2013 he is the Secretary General of RAA, and also heads several of its Working Groups: RAA WG on the Application of the New York Convention in Russia and CIS; WG on the Impact of Economic Sanctions on Arbitration; WG on RAA Index of Russian Legal Terms; and RAA Observers' Delegation to UNCITRAL's WG II (Dispute Settlement) and WG III (Investor-State Dispute Settlement Reform).

Roman is a lecturer at the Institute of Mining and Energy Law of Gubkin Russian State University of Oil and Gas, and the author of several books on arbitration and numerous law publications.



## Contributors

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**Alexander Korobeinikov** is a partner at Baker McKenzie (Kazakhstan). He specializes in dispute resolution, energy and natural resources, and antitrust and competition issues. Alexander has wide experience participating in litigation in Russia, Belarus, Kazakhstan and Central Asia, as well as in international arbitration cases under the arbitration rules of ICAC, UNCITRAL, ICC, SCC, LCIA and other arbitration institutions, as both a counsel and arbitrator. Alexander graduated with honours from the Belarusian State University with a Degree in Law and obtained Master of Laws from the School of Law of Queen Mary University of London.

**Alexander Sysoev** is an associate in the dispute resolution practice of White & Case (Russia). He has experience in both litigation and arbitration matters representing major Russian and foreign companies. He has advised clients on a number of complex

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finance, construction, insolvency, labour and other disputes, including those involving multiple jurisdictions.

**Alexandra Chilikova** was a litigation and arbitration associate in Kulkov, Kolotilov & Partners (Russia) till 2018 and is currently reporter at ICAC RF and a lawyer in the human rights project OVD-Info (Russia).

**Aleksandra Gerasimova**, PhD in Law, is the Head of FBK Legal practice (Russia). Alexandra specializes in representing clients in commercial, corporate and labour disputes, as well as real estate and construction disputes. She coordinates cross-border projects and liaison with foreign partners. She is recommended by ratings *Best Lawyers 2021* in litigation practice, *The Legal 500 EMEA 2020* in employment practice, *Pravo.ru-300 2019* in labour and migration law practice.

**Alexandre Khrapoutski** is a partner at Lex Torre Law Office (Belarus), advocate, MCI Arb, vice-chairman of RAA, board member of the Ukrainian Arbitration Association, founder and organizing committee co-chairman of the Eastern European Dispute Resolution Forum. He has participated in more than 50 arbitral proceedings as chairman of the tribunal, sole arbitrator, party-appointed arbitrator and counsel under the arbitration rules of ICC, SCC, VIAC, Belarusian CCI, Ukrainian CCI, Russian CCI. He is included in recommended lists of arbitrators in ICSID, IAC at the BelCCI, VIAC, AIAC, Vilnius Court of Commercial Arbitration, 'Lewiatan' and CAC at the Ukrainian CCI.

**Alexey Belykh** is an associate in the dispute resolution and bankruptcy & restructuring practices at Lidings (Russia), who works on a range of commercial disputes and focus on bankruptcy and restructuring. Alexey is particularly familiar with the enforcement of foreign judgments in Russia and enforcement of Russian court judgments abroad.

**Alexey Vyalkov** is an associate at Aitkulov & Partners (Russia). Prior to that he was an associate at Clifford Chance, Moscow. He specializes in Russian and cross-border litigation, as well as international arbitration and public international law. He has experience in oil and gas, construction, corporate and banking sectors. He is an author of a number of publications in the area of international arbitration and public international law, for which he has been awarded the 2017 Gillis Wetter Memorial Prize by LCIA and the 2017/2018 International Law in the XXI Century Prize by ICLRC.

**Alexey Yadykin** is a counsel in the dispute resolution practice of Freshfields Bruckhaus Deringer LLP (Russia). He specializes in arbitration, court proceedings and internal investigations. He has represented major Russian and foreign clients in numerous cross-border litigation proceedings and commercial arbitrations in Russia and abroad and published extensively on the new Russian arbitration legislation in Russian and international legal media.

**Anastasia Rodionova**, MCI Arb, is the Director for Commerce (Legal) in Eurasian (ERG) Group (diversified mining and smelting group) (Russia). She has over 18 years



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**Anastasia Shashkova** is a senior lawyer of FBK Legal team (Russia) and specializes in PPP, corporate law, M&A as well as in due diligence. She has graduated from the Moscow State Law Academy in 2010 with honours. Since then she has been working in such fields of law as transportation law, maritime law, corporate law. Ms Shashkova also has a profound experience in PPP. Anastasia also holds a degree in translation.

**Andrei Kopytin** is a Russian-qualified associate in dispute resolution practice at Linklaters (Russia). He has wide experience in advising and representing leading international and Russian corporations on a wide range of disputes. His experience includes representing and advising clients in arbitration cases under various rules, as well as in commercial and construction disputes, complex technology disputes, bankruptcy, and debt recovery cases and enforcement proceedings.

**Andrey Panov** is a counsel in Allen & Overy's dispute resolution practice (Russia). He has over 12 years of experience representing his clients before Russian and foreign courts, as well as before international arbitral tribunals. Andrey has acted as lead counsel and conducted his own advocacy in numerous commercial, construction, joint venture, post-M&A and investment arbitration cases under ICC, SCC, LCIA, SIAC, and ICAC Rules. He also sits as an arbitrator in domestic and international cases under various sets of rules, including ICC rules.

**Andrey Zelenin** is Lidings' Managing Partner (Russia), advocate, with 15+ years of experience in supporting international business in Russia. As the firm's founding partner he is involved in corporate and M&A, dispute resolution and IP practices of the firm. Primarily focused on energy, pharmaceutical, FMCG and automotive sectors, he is particularly good in complex negotiations regarding local or cross-border transactions, niche corporate and regulatory advice, general support and oversight of client's investment activities in Russia. Andrey has great experience in litigation in the Russian courts, international arbitration and cross-border disputes, particularly in intellectual-property contentious matters, in disputes involving financial institutions, companies from FMCG, IT/TMT and life sciences sectors.

**Anna Grishchenkova** is a partner at KIAP Law Firm (Russia). Anna has 17 years of experience in dispute resolution and is recommended by major legal rankings *Chambers Europe*, *Chambers Global*, *Legal 500 EMEA* and *Best Lawyers*. Anna is a vice-chairman of arbitration commission of ICC Russia and included in a list of arbitrators in VIAC, AIAC, HKIAC, and KCAB. Anna's core specialization: commercial, construction, corporate disputes. Anna has participated in 400+ legal proceedings, including representation of clients in Russian and international arbitration institutions. Anna is an author of the book *Psychology and Persuasion Skills in Dispute Resolution*, co-editor and co-author of the *Commentary on Russian Arbitration Laws* (RAA).

**Anton Alifanov** is a senior associate at Dentons Law Firm (Russia). Anton has an LL.M. Anton focuses on litigation and international commercial arbitration and has extensive

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experience in dispute resolution and legal advising for Russian and foreign clients. For the past 15 years, Anton has advised and represented clients in court, in resolving commercial, corporate and labour disputes, and also in out-of-court settlement. Anton represents clients in Russian state courts, at all levels including the RF Supreme Court, as well as in international commercial arbitration under ICC, LCIA, SCC and ICAC Rules. Anton is admitted to practise in Russia and is a member of the Moscow Bar Chambers.

**Aram Orbelyan**, PhD in Law (MGIMO University, Russia), is a senior partner at Concern Dialog Law Firm (Armenia). He served as Deputy Minister of Justice of Armenia from 2011 to 2014, where he was responsible for promotion of mediation and development of arbitration, civil and civil procedure legislation, as well as the implementation of e-gov systems in Armenia. He lectures at the French University of Armenia, the School of Advocates and the Justice Academy, and is consulting a number of international organizations and state agencies on reform issues (mostly justice sector, human rights, good governance issues). He has been included in *The Legal 500 CIS and Caucasus Arbitration Powerlist*, *Chambers*, and *WWL Arbitration Future Leaders*. Aram Orbelyan is the President of the Association of Arbitrators of Republic of Armenia, arbitrator at Yerevan Arbitration Institute, panel member of ICSID and ad hoc arbitrator.

**Ardak Idayatova** is a partner and Head of infrastructure & PPP practice in AEQUITAS Law Firm (Kazakhstan). She represents and renders expert assistance to clients in foreign commercial arbitrations mainly in connection with construction disputes arising out of different contracts based on FIDIC models. She participated in arbitrations seated in Stockholm, Paris and London under ICC, UNCITRAL, LCIA and SCC rules, and domestic arbitrations. For several years, Ardak has been ranked by *The Legal 500* as a 'rising star' and the 'next generation lawyer' in dispute resolution.

**Asiyat Kurbanova** is a managing director at State Development Corporation VEB.RF, legal department (Russia). Asiyat has considerable experience in handling a wide range of complex cross-border disputes in various areas of law (commercial, corporate, bankruptcy and restructuring, land and construction) including the disputes concerning the enforcement of arbitral awards and foreign judgments. Asiyat has graduated from the Russian State University of Justice.

**Asko Pohla** is a partner at Pohla & Hallmägi Law Firm (Estonia). He is specialized in domestic and international arbitration, maritime law, transport law, contract law, property law, law on obligations. Mr Pohla is an expert in domestic and international arbitration law. He is Chairman of the Arbitration Court of Estonian Chamber of Commerce and Industry from 1997, Member of ICSID Panels of Conciliators and Arbitrators from 2013 and Member of ICC Commission on Arbitration and ADR from 2018. He was Member of ICC International Court of Arbitration from 2012 to 2018. He has acted as arbitrator in cases under ICC, ICAC RF, ICAC UCC, Court of Arbitration of Latvian CCI, Arbitration Court of Estonian CCI.

**Aykhan Asadov** is a partner at BM Morrison Partners (Azerbaijan). Aykhan has been practising law for more than 20 years, having started at one of the Big Four accountancy firms in Baku. In 1997, he joined one of the international law firms at its Almaty office prior to transferring to the newly opened Baku office in April 1998. In 2009, Aykhan became the first Azerbaijani partner in the same firm and, as of 2013, joined BM Morrison Partners as a managing partner. Aykhan advises on taxation and customs law as well as on specific industry aspects of oil and gas, infrastructure, and mining projects.

**Cristina Martin** is a founding partner of ACI Partners (Moldova). Cristina has advised international clients in relation to opening and managing their businesses in Moldova. She extensively assists clients on such matters as incorporation, legal structuring and arrangement of mergers & acquisitions, corporate governance and restructuring. Cristina is involved in significant foreign investment projects and corporate acquisitions, advising clients on commercial contracts. Cristina is also actively involved in legal reform initiatives of the Moldovan Government. In particular, she consulted on drafting Moldovan laws and regulations, with a special contribution to mortgage and leasing operation reforms in Moldova. Cristina is an active contributor to World Bank, IFC, EBRD researches related to the Moldovan regulatory, doing business and judiciary reforms.

**Daria Kuznetsova** is an associate of dispute resolution at international law firm Freshfields Bruckhaus Deringer LLP (Russia).

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**Dmitry Malukevich** is a partner at Aitkulov & Partners (Russia). Before that, he was a senior associate at Clifford Chance, Moscow. He specializes in Russian and cross-border litigation, administrative cases and arbitration. His sector experience includes real estate, construction, industrials, oil and gas and banking disputes.

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**Dmitry Samigullin** is a managing partner at RBL Law Firm (Russia). Dmitry's specialization includes arbitration and litigation, tax law, insolvency and corporate law. Dmitry is recognized by *Best Lawyers* and *Chambers and Partners* in 2019 and 2020. Dmitry's clients include both Russian and international companies in construction, oil production, agriculture, energy, consumer goods manufacturing, catering. Dmitry regularly participates at round-table discussions and conferences on legal issues as a moderator and expert and appears in media as an expert on issues related to corporate law, tax law, insolvency and litigation.

**Diora Ziyaeva** is a senior associate at Dentons (USA) and an experienced international arbitration specialist. She has spent over a decade representing clients in investor-state and commercial arbitration proceedings, successfully handling cases ranging in value from USD 10 million to USD 20 billion. Licensed in New York and Uzbekistan and fluent in seven languages, she advises clients in international litigations and has represented parties before US Supreme Court. Ziyaeva serves as an adjunct professor at Fordham Law School. She was recognized as one of the American Bar Association's On the Rise – Top 40 Young Lawyers and named a Future Leader by GAR's *Who's Who Legal 2021*.

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**Egor Kosarev** is the Head of the Legal Department of a Russian construction company. Professional interests: dispute resolution, arbitration, bankruptcy, real estate and construction. He is an author of articles and comments on civil law and process. Egor is an arbitrator of the Arbitration Center at the Russian Union of Industrialists and Entrepreneurs.

**Evgeny Rashevsky** is a partner at Egorov Puginsky Afanasiev & Partners (Russia). Evgeny practises international commercial arbitration and litigation. He is experienced in the arbitration proceedings under ICAC RF (MKAS), ICC, LCIA, SCC, Swiss Rules and Indian Arbitration Law. His practice areas include energy & natural resources, insolvency regulation, commercial contracts, shipping, pharmaceutical regulation and life science. Evgeny is a member of MCI Arb, ICCA, KCAB International, vice president of IAC of Qingdao Arbitration Commission. Evgeny is a lecturer at the Moscow State University and has authored numerous articles and commentaries in Russian and international legal publications in his areas of practice.

**Farhad Mirzayev** is a senior partner at BM Morrison Partners international law firm (Azerbaijan) since 2011; graduate of the Baku State University; holds LLM from the University of Nottingham, MBA from the University of Cambridge and PhD in Law from the University of Leicester. He did an executive education at Harvard University. He is a practising international lawyer with over 20 years of experience in public and private international law in Azerbaijan, UK, Russia and the Middle East. He has an extensive experience in international arbitration. He is author of over a hundred articles and papers and ranked as one of the top leading lawyers in Azerbaijan by *Chambers*, *The Legal 500*, *IFLR1000*.

**Firuz Chorshanbieva** is a senior associate at Centil Law (Tajikistan). Her practice focuses on commercial litigation, mergers and acquisitions, complex commercial and corporate transactions, labour and employment matters. Firuz has graduated from Tajik National University, and also has studied Comparative Law at the University of Delaware. Before joining Centil Law, Firuz worked as an associate for one of the leading Dushanbe law firms, where she gained practical legal skills. Also, for a certain period, Firuz worked for a law firm in Russia, which means that she has experience in more than one jurisdiction.

**Inga Kačevska** is a partner of Law Office of Inga Kačevska (Latvia). She regularly acts as arbitrator, counsel and expert in international and domestic arbitrations. Dr Kačevska is acknowledged as the best arbitration practitioner in Latvia by *Who's Who Legal* in 2010-2019. In 2014, the Government of Latvia appointed Dr Kačevska to the Panel of Arbitrators at ICSID. She is also MCI Arb, a member of Latvian Sworn Advocates Collegium and of Women in Sports Law. She was elected in Special Committee attached to 1961 European Convention on International Commercial Arbitration. She is an associate professor at the University of Latvia and coaches Vis team for the past 18 years. She has graduated from University of Latvia (PhD, Master of Orientalistics, Lawyer's Diploma) and Chicago Kent College of Law (LLM).

**Irina Suspitsyna** is a senior lawyer at MIRATORG Group (Russia). Irina obtained her LLM in International Commercial Arbitration from Stockholm University. She also acts as a mediator. Irina also has a degree in Psychoanalysis and Psychoanalytical Business Consulting from Higher School of Economics (HSE).

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**Ksenia Khanseidova** is a deputy chief legal officer at a major Russian industrial group. She previously worked as an associate at Cleary Gottlieb from 2006 to 2018, where her

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practice focused on corporate and financial transactions, particularly securities offerings and M&A, as well as on international arbitration. Ms Khanseidova received a J.D. equivalent, *summa cum laude*, from Moscow State University Law School in 2005.

**Lilia Klochenko** is a partner at Klochenko & Kuznetsova Law Firm (Russia). Lilia Klochenko, PhD jur., FCIArb, holds a law and PhD degrees from Moscow State Institute of International Relations, is certified for international arbitration from ICC Advanced Arbitration Academy and qualified for IMI. She focuses her practice on dispute resolution, including international and domestic arbitrations and litigations where she acted as a party representative and arbitrator under DIS, ICC, LCIA, VIAC, ICAC, MAC, UNCITRAL Rules and as mediator in corporate, civil law, labour and family multicultural and multi-jurisdiction cases.

**Lilit Karapetyan** is a senior associate at Concern Dialog (Armenia). Lilit is a part of Concern Dialog's team advising clients on complex M&A transactions, including due diligence of target companies, assistance in negotiations and drafting of commercial contracts. Prior to joining Concern Dialog, Lilit has undergone internships in a number of companies in Armenia. Prior to completing her LLB, Lilit has worked at Financial System Mediator's office as a lawyer (2013-2014), after successfully completing her internship therein. While at Exeter University, she has been an Associate Editor for Exeter Student Law Review (2015-2016).

**Marina Akchurina** is an associate at Cleary Gottlieb (Russia). Her practice focuses on litigation and arbitration, with an emphasis on international disputes, including those involving states and state-owned entities. She has taken part in a number of complex commercial and investment disputes before a variety of judicial and arbitral bodies, including international arbitrations before tribunals formed under ICC, LCIA, SCC and UNCITRAL Rules, and litigation matters before Russian state courts. She is a fellow at CIArb and an ICC Young Arbitrators Forum Representative for Europe and Russia.

**Marina Zenkova** is a senior associate in the White & Case Dispute Resolution Practice (Russia) focusing on commercial litigation and international arbitration. She has represented clients in contractual, corporate, financial and other commercial disputes, often complex and multi-jurisdictional, as well as in insolvency proceedings – another area where Marina has solid experience and expertise. Marina is a member of YSIAC Committee and SIAC Users Council.

**Maryana Batalova** is an associate at Dechert (Moscow) and focuses on litigation and arbitration in RF. She advises clients on various types of disputes, including multijurisdictional disputes. She holds a PhD and is a senior lecturer at the 'National Research University – Higher School of Economics', teaching the course 'International Civil Procedure' at the Master's programme 'Private International Law' of the Law Faculty. *The Legal 500 EMEA 2020* recognizes her experience in arbitration, mediation and litigation. Since 2020 she has also been listed in *Best Lawyers* for her litigation focus.

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Before joining Freshfields, Maxim worked in major US and UK law firms in Moscow.

**Mikhail Samoylov** is Head of a litigation department at a Russian bank. He has vast experience both as an in-house lawyer and as a counsel. He holds a Russian law degree and was awarded a Master of Advanced Studies (LLM) in International Dispute Settlement from University of Geneva and the Graduate Institute of International and Development Studies. Since 2016, Mikhail has been contributing to ICCA Yearbook Commercial Arbitration.

**Nata Ghibradze** is a senior associate at Hogan Lovells' International Arbitration practice group (Germany). Using the experience she gained while working at the Ministry of Justice of Georgia, Nata focuses on international arbitration with particular attention to disputes in the Eastern European and CIS regions. She regularly represents clients in the energy (oil & gas, renewables), construction, infrastructure, and engineering industries in complex arbitration disputes. Nata has experience in handling arbitrations under the major sets of arbitration rules seated in various jurisdictions. Nata also serves as Member of the Arbitration Council of the Georgian International Arbitration Centre.

**Natalia Andreeva** is an associate in Egorov Puginsky Afanasiev & Partners arbitration practice (Russia). During her career, she has participated in several arbitrations under ICC, SCC, ICSID Additional Facility and ICAC at RF CCI arbitration rules as a counsel. Apart from international disputes, Natalia is experienced in advising on Russian litigation projects. In 2017, Natalia graduated with honours from the National Research University Higher School of Economics. During her studies, Natalia received awards from prestigious international student competitions in international commercial arbitration.

**Natalia Dvenadtsatova** is Managing Partner and a co-founder of VLawyers Law Firm (Russia). For more than 15 years, Natalia has successfully represented Russian and international clients in complex commercial disputes both in the state courts and in arbitration. Natalia has extensive experience in supporting complex bankruptcy proceedings both on the side of the debtor and on the side of creditors. Natalia was included in the 12th Edition of *The Best Lawyers 2021* in Russia in the field of litigation.

**Natalia Kisliakova** is a senior associate in KIAP Law Firm (Russia). Natalia specializes in international arbitration, commercial litigation and private international law. Natalia's arbitration and litigation practical experience spans over a variety of sectors,



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including real estate, oil and gas, banking, sports, construction, foreign trade. Previously Natalia was actively involved in public law interstate disputes. Natalia teaches Arbitration and Sports Law at MGIMO University; she also has the experience of being appointed as an arbitrator.

**Natalia Kuznetsova** is a partner at Klochenko & Kuznetsova Law Firm (Russia). Natalia is a Russian-qualified advocate practising in the field of international private law, international commercial arbitration. She has over a 20-year professional experience in international projects in various spheres with complex cross-border implications, advising multinational companies on various questions of Russian law, representing clients in Russian state commercial and criminal courts of all levels, including the Russian Supreme Court. *The Best Lawyers* has named her in Arbitration and Mediation in 2015-2020.

**Nodir Yuldashev** is a partner at GRATA International (Uzbekistan). Before joining GRATA Nodir Yuldashev worked at Uzbekistan Chamber of Commerce and Industry and at Insolvency Committee. During the last 12 years with GRATA Nodir advised clients on a wide array of Uzbekistan investment, construction and general commercial and business law matters. Nodir is an active arbitrator at Arbitration Court under Chamber of Commerce and Industry of Uzbekistan. Nodir has significant experience in representing clients before international commercial arbitration centres, including in European, Middle Eastern and South-East Asian arbitration tribunals in cases arising from construction, investment, financing projects as well as hiring top football players by local sports clubs.

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**Oleg Todua** is a partner in the White & Case Dispute Resolution Practice (Russia), admitted in England & Wales and Russia. He focuses on investment and commercial arbitration and litigation. Oleg has had experience in arbitrations conducted under the auspices of leading arbitration institutions. He currently serves as a co-chair of RAA 40 and RAA's working group on amicus curiae briefs. Oleg also features in *Who's Who Legal: Arbitration – Future Leaders* list.

**Olena Perepelynska** is a partner and Head of CIS Arbitration at INTEGRITES (Ukraine). She serves as the President of the Ukrainian Arbitration Association, Member of ICC International Court of Arbitration, Member of TIAC Court of Arbitration, Member of the Global Steering Committee of ERA-PLEDGE. Olena is a fellow of the Chartered Institute of Arbitrators and Member of CI Arb Approved Faculty List. She



has participated as counsel and arbitrator in over 130 arbitrations in various jurisdictions.

**Pavel Boulatov** is a counsel at White & Case (Russia). He focuses on international arbitration (both commercial and investment) involving Russia and other CIS countries, litigation before Russian commercial courts in various regions and at all levels and insolvency proceedings. He represents global corporations in a wide range of construction, finance, corporate and other business-related often multijurisdictional disputes. He advises on conflicts of laws, jurisdictional and enforcement issues, and acts as an expert on Russian law in non-Russian court proceedings. He is frequently published in legal journals and is a sought after speaker at many landmark conferences.

**Ramūnas Audzevičius** has been a partner and the co-head of dispute resolution practice at Motieka & Audzevičius (Lithuania) since 2003. Ramūnas is highly experienced in business, commercial and regulatory disputes. His practice involves representation of the clients under ICSID, UNCITRAL, ICC, SCC, LCIA, MKAS, GAFTA, FOSFA, Vilnius Court of Commercial Arbitration rules and others. Ramūnas also frequently sits as an arbitrator or acts as expert in international arbitrations. Ramūnas studied at Harvard Business School, Said Business School, University of Oxford, Queen Mary University of London, King's College London, Vilnius University as well as Moscow School of Social and Economic Sciences.

**Rustam Akramov** is a senior associate at GRATA International (Uzbekistan) with the primary focus on commercial and corporate law matters, including commercial contracts, import-export activities, customs, establishing, reorganization, liquidation of legal entities, and other matters. Prior to joining GRATA International in 2015, Rustam worked as Head of the legal department of the Foreign Trade Activities Department under the Ministry for Foreign Economic Relations, Investments and Trade of Uzbekistan. Rustam has graduated from Durham University with an LLM in 2010. Rustam has been in practice since 2010.

**Sergey Lysov** is a senior associate in KK&P Law firm (Russia). His domestic and international practice focuses on defending multinational corporations in complex civil litigation and regulatory matters, with a particular focus on construction, sales of goods, corporate cases and bankruptcy.

His experience includes international arbitration proceedings under ICC, SCC and ICAC RF Rules. Sergey is recognized by *Best Lawyers* in international arbitration and litigation categories.

**Sergey Petrachkov** is a partner at ALRUD Law Firm (Russia), heading its dispute resolution and restructuring/insolvency groups. Sergey has a considerable experience in representing clients in complex business and corporate disputes, before state courts. He often acts in arbitration proceedings, under the rules of the leading Russian and foreign arbitration institutions (ICC, LCIA, SCC). Sergey also has an extensive practical knowledge learned in his participation in arbitration-related matters and matters

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involving the recognition and enforcement of court judgments (including bankruptcy judgments).

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### 3.11

## The Possibility of Setting Aside Arbitral Awards in a Country That Was Not the Place of Arbitration

*Yuri Makhonin & Maryana Batalova*

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In present times, the national courts in many states demonstrate an ever-increasing willingness to recognize and enforce foreign arbitral awards. According to Article III of the New York Convention, each contracting state ‘shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon’.

On the face of it, this provision guarantees the parties a transparent and predictable regime for the enforcement of foreign arbitral awards, which is vital for international business. However, in reality, due to national laws and practice, application of the Convention turns out to be not so straightforward.

For example, until 1 September 2016, Russian law included a vague provision (Article 230(5) APC RF),<sup>1</sup> pursuant to which ‘a foreign arbitral award that *has been made under the laws of the Russian Federation* may be set aside ...’ (emphasis added) by Russian courts. Despite the fact that this was rescinded, this rule is of particular interest in the context of the creation and development of the Russian court practice regarding the possibility of setting aside an arbitral award in a country that was not the seat of arbitration. Apparently, this rule was based on Article IX(1) of the European Convention on International Commercial Arbitration (1961) that reads: ‘The setting aside in a Contracting State of an arbitral award covered by this Convention shall only

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1. Repealed on 1 January 2016 due to enactment of Federal Law No. 409-Φ 3 ‘On amending certain regulatory acts of the Russian Federation and repealing Art. 6(1)(3) of the Federal Law “On self-regulating organizations” in connection with the enactment of the Federal Law “On arbitration in the Russian Federation”” dated 29 December 2015. Any references hereinafter to Art. 230(5) APC RF shall mean references to the version of APC RF that was in force prior to 1 January 2016.

constitute a ground for the refusal of recognition or enforcement in another Contracting State where such setting aside took place in a State in which, or *under the law* of which, the award has been made and for one of the following reasons ...' (emphasis added).<sup>2</sup>

Article V(1)(e) of the New York Convention also stipulates that 'Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or *under the law of which*, that award was made' (emphasis added).

The cited provisions of the New York Convention, the European Convention and APC RF are ambiguous enough to raise a question whether they refer to the substantive or procedural laws. The old vague wording of Article 230(5) APC RF opened it to various interpretations by the national courts. One of the key questions arising out of this uncertainty was whether it was possible to set aside an arbitral award in a country that was not the place of arbitration, however which law applied to the award.

On the one hand, ICAL RF, which is based on UNCITRAL Model Law, states that an arbitral award may only be set aside by the state courts at the seat of arbitration. For example, the impossibility of setting aside an arbitral award was confirmed by the Supreme Court of RF in 2001: 'Russian courts do not have jurisdiction to set aside an award by an international arbitration tribunal of another state; they are only entitled to refuse to recognize and enforce such awards in the territory of the Russian Federation ...'.<sup>3</sup>

Meanwhile, the old provision of Article 230(5) APC RF was further elaborated in Information Letter No. 96 of the Presidium of the Supreme Arbitrazh Court of RF, in the Summary of Cases on the Recognition and Enforcement of Foreign Awards, Challenging Arbitral Awards and Issuing Writs to Enforce Arbitral Awards. The Supreme Arbitrazh Court analysed one of the high-profile enforcement cases.<sup>4</sup> An ad hoc award was rendered in Stockholm (Sweden) over a dispute governed by Russian substantive law applicable to the merits, and Swedish procedural law, as the law at the seat of arbitration. The Russian respondent submitted an application to the Arbitrazh Court of the Belgorod Region seeking to set aside the foreign arbitral award. The respondent asserted that Russian court has effective jurisdiction to set aside the award based on Article IX(1) of the European Convention and Article 230(5) APC RF, because Russian material law applied to the dispute. Both the Court of First Instance and the court of cassation ruled to set aside the arbitral award issued in Stockholm. Specifically, the court of cassation held: 'in setting aside the arbitral award dated 22 February 2002, the arbitrazh court has correctly applied Part 5 of Article 230 of the Arbitrazh Procedure Code of the Russian Federation and Article IX of the European Convention on International Commercial Arbitration. By virtue of Part 5 of Article 230 of the Arbitrazh Procedure Code of the Russian Federation, in cases provided for by an international

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2. European Convention on International Commercial Arbitration 1961.

3. Ruling of the Supreme Court of the Russian Federation No. 5-G01-76, dated 13 July 2001.

4. Resolution of the Presidium of the Supreme Arbitrazh Court of the Russian Federation, No. 15359/03, Case No. A08-7941/02-18.

### 3.11: The Possibility of Setting Aside Arbitral Awards in a Country

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treaty to which the Russian Federation is a party, a foreign arbitral award may be set aside if such award was made under the laws of the Russian Federation.

Therefore, in the process of making a foreign arbitral award, specific provisions of national legislation of the seat of arbitration always apply. Application of such mandatory provisions of the national legislation of the state selected as the seat of arbitration does not exclude the application of Part 5 of Article 230 of the Arbitrazh Procedure Code of the Russian Federation and Article IX of the European Convention. By implication of the mentioned provisions, the determining criterion for their application is that the arbitral award was made on the basis of the substantive law of the Russian Federation'.<sup>5</sup>

According to the court, the European Convention provides that a foreign arbitral award may be set aside by a court of the state under the laws of which the award was made. Therefore, if the law (substantive law) of RF was applied to the subject matter of the foreign arbitral award, it would permit Russian courts to seize jurisdiction over the setting aside proceedings. As stated in the Resolution, 'when rendering the arbitral award dated 22 February 2002, Russian law was applied ... The Arbitrazh Court of the Belgorod Region has come to the right conclusion, that the arbitrators' referring to the Swedish Arbitration Act of 1999 as an act regulating the arbitration proceedings does not prevent the respondent from filing a petition with a Russian arbitrazh court to set aside the foreign arbitral award ... In the process of making a foreign arbitral award, specific provisions of national legislation of the seat of arbitration always apply. Application of such mandatory provisions of the national legislation of the state selected as the seat of arbitration does not exclude the application of Part 5 of Article 230 of the Arbitrazh Procedure Code of the Russian Federation and Article IX of the European Convention. By implication of the mentioned provisions, the determining criterion for their application is that the arbitral award was made on the basis of the substantive law of the Russian Federation'.

It is obvious that the lower courts arrived to a wrong conclusion that 'by implication of the mentioned provisions, the determining criterion for their application is that the arbitral award was made on the basis of the substantive law of the Russian Federation'. The position taken by the courts was heavily criticized by the arbitration community because the 'law under which the award is made' shall be read as the *lex arbitri* only.<sup>6</sup> This is the only appropriate way of reading the New York Convention and the European Convention, and it has been universally endorsed by legal experts in the

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5. Resolution of the Federal Arbitrazh Court of the Central District. Case No. A08-7941/02-18, dated 2 September 2003.

6. R. Zykov. Setting Aside an Arbitral Award in a State That Was Not the Seat of Arbitration, *New Horizons of International Arbitration*. Vol. 1 (Moscow, Infotropic Media. 2013), pp. 123-138; A.S. Komarov. Certain Topical Matters Regarding the International Commercial Arbitration in the Russian Federation, *International Commercial Arbitration*. 2004, No. 1, pp. 17-20. *Arbitrazh Proceedings: A Textbook*. Editor-in-chief: Professor V.V. Yarkov. 2nd revised and updated edition (Moscow. Wolters Kluwer. 2003), pp. 740-744.

area.<sup>7</sup> The decisions of the lower courts were eventually overturned by the Supreme Arbitrazh Court.<sup>8</sup>

As it will be discussed below, Article 230(5) APC RF only applies to foreign arbitral awards made under Russian procedural law (*lex arbitri*) but not under Russian substantive law. Notably, all subsequent attempts by parties to use that legal ambiguity have not been successful.<sup>9</sup>

This approach is uniformly applied by the contracting states as referring to the procedural law of the seat of arbitration (*lex arbitri*). This is linked to the long-standing arbitration principles, customs and good practices that preceded the adoption of the European Convention.<sup>10</sup> According to UNCITRAL Guide: ‘Although the [New York] Convention does not provide guidance as to the meaning of the expression “under the law of which”, with very few exceptions, courts have generally rejected arguments that these terms referred to the law applicable to the merits. Courts have decided that it referred instead to the procedural law governing the arbitration.’<sup>11</sup>

French legal doctrine also supports such interpretation: ‘The possibility of setting aside an arbitral award in a country that was not the seat of arbitration deprives the regulation of the benefits arising out of the New York Convention of 1958. This Article does not mean that the New York Convention of 1958 endorses the theory of delocalization of arbitral awards; instead, it recognizes the critical importance of *lex arbitri*. It determines how the recognition of arbitral awards is connected with the state legislation by governing the courts’ competence over the setting aside of arbitral awards. Only the courts of the country that was the seat of arbitration, i.e., the law of which governs the arbitration proceedings, or the courts of the country the law of which was chosen by the parties to govern arbitration proceedings, have jurisdiction to set aside the arbitral award.’<sup>12</sup>

French scholars Jean Claude Dubarry and Eric Loquin also believe that ‘after an arbitral award has been annulled in a “sensitive” country, i.e., the country in which the arbitration took place or the law of which governs the arbitration proceedings, the award may not have any other effect in any of the signatory countries of the New York

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7. See: M. McIlwrath and J. Savage. *International Arbitration and Mediation: A Practical Guide* (Kluwer Law International. 2010), pp. 327-366; A.N. Zhiltsov. *Setting Aside Awards of International Commercial Arbitration under Russian Law*, *International Commercial Arbitration*. 2005, No. 1, p. 18; B.R. Karabelnikov. *Enforcement of Awards of International Commercial Arbitration. Commentary to the 1958 New York Convention and Chapters 30 and 31 of the Arbitrazh Procedure Code of 2002 of the Russian Federation*. Moscow, 2003, p. 179.

8. Resolution of the Presidium of the Supreme Arbitrazh Court of the Russian Federation No. 15359/03, dated 30 March 2004.

9. Resolution of the Federal Arbitrazh Court of the North-West District, Case No. A05-4271/2007 and Case No. A05-4274/2007, dated 25 July 2007.

10. Zykov, *supra* n. 6.

11. *Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, UNCITRAL Secretariat, by E. Gaillard and G. Bermann (Koninlijke Brill NV. Leiden. The Netherlands. 2017), p. 233.

12. *Juris Classeur Droit international*, Fascicule 586-11, *Arbitrage commercial international*, Sentence arbitrale, Contrôle étatique. Droit conventionnel, par Emmanuel Gaillard, 1 octobre 1992, mise à jour 1 avril 2014, para. 26 (a source in the French language translated by the authors of this chapter).



### 3.11: The Possibility of Setting Aside Arbitral Awards in a Country

Convention of 1958',<sup>13</sup> in other words, such arbitral award shall be deemed to be set aside.

French court practice endorses a similar approach. For example, in a claim considered by the Court of Appeal of Paris on 20 June 1980, the applicant sought to enforce an arbitral award made in Geneva in accordance with ICC Arbitration Rules. The arbitral tribunal applied French substantive law to the merits, and Swiss PILA as *lex arbitri*. The Court of Appeal of Paris refused to enforce the arbitral award on the basis of Article V(1)(e) of the New York Convention and concluded that it was irrelevant that French law was the applicable substantive law. Since Switzerland was the seat of arbitration, it is Swiss law that was the applicable procedural law in this case. Therefore, the arbitral award could only be set aside under Swiss law as the law of the country that was the seat of arbitration.<sup>14</sup> Moreover, as made clear by more recent court practices, French courts are generally prohibited from revising arbitral awards on merit at the recognition and enforcement stages.<sup>15</sup>

Nevertheless, there are examples of the opposite interpretation of the expression 'under the law of which'. For example, in *Oil & Natural Gas Commission v. Western Company of North America*, 1987, and in *National Thermal Power Corporation v. The Singer Corp. et al.*, 1993 (i.e., before Indian arbitration reform in 1996), the Supreme Court of India ruled that it was possible to set aside a foreign arbitral award if the substantive law of India was applied in the arbitration proceedings. Currently, a similar approach is used in the court practice of Indonesia (*see*, for instance, *Karaha Bodas Company LLC v. Pertamina Minyak Dan Gas Bumi*),<sup>16</sup> Pakistan and Saudi Arabia.<sup>17</sup>

This approach fundamentally contradicts the correct and prevalent interpretation. Moreover, it leads to negative political and economic consequences; since any state which follows this approach likely falls into the category of arbitration-hostile countries, this results, at the very least, in an unwillingness by foreign counterparties to apply the law of such a state as applicable substantive law (if the question of setting aside an arbitral award abroad might potentially arise in the course of dispute resolution), which, in turn, negatively impacts international business with these countries.

Fortunately, as a result of the Russian arbitration reform, certain provisions of APC RF were amended. More specifically, Article 230(5) APC RF, which the Russian courts tended to construe too broadly, was excluded from APC RF. There have been no

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13. Jean Claude Dubarry and Eric Loquin, Arbitrage International. Exequatur en France d'une sentence rendue à l'étranger, Décision étrangère ayant rejeté le recours en annulation contre cette sentence, RTD Com. 1993, p. 645 (a source in the French language translated by the authors of this chapter).

14. Paris, 20 June 1980 [1981] Revue de l'arbitrage, p. 424 (a source in the French language).

15. Cour de cassation, Chambre civile 1, 12 février 2014, n°10-17.076; Cour de cassation, Chambre civile 1, 29 juin 2011, n°10-16.680; Cour de cassation, Chambre civile 1, 11 mars 2009, n°08-12.149 (a source in the French language).

16. *Karaha Bodas Company LLC v. Pertamina Minyak Dan Gas Bumi et al.*, Defendants, perusahaan Pertamina Minyak Dan Gas Bumi Negara. United States Court of Appeals, Fifth Circuit. 335 F.3d 357 (2003), dated 18 June 2003.

17. H.G. Gharavi. The International Effectiveness of the Annulment of an Arbitral Award (Kluwer Law International. 2002), pp. 17-18.

new cases since the arbitration reform because there is no more legal ambiguity on this subject anymore.

In that Russia has made another step towards arbitration-friendly countries club, in which an arbitral award may be set aside by a court of the state which procedural law (not material) applied to the dispute. This approach allows for greater measures against procedural abuse and makes arbitration more predictable and efficient.