

ICC and SIAC secure Russian licences

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Moscow (Credit: iStock.com/yulenochekk)

UPDATED. The ICC International Court of Arbitration and Singapore International Arbitration Centre have been awarded coveted licences to administer Russia-seated arbitrations.

The two leading arbitral institutions are understood to have been awarded the licences yesterday, 18 May. While SIAC has yet to announce the news, the ICC put out a press release this afternoon stating that the court has been granted the status of “Permanent Arbitration Institution” by the Council for the Development of the Arbitration Process of the Ministry of Justice of the Russian Federation.

As a permanent arbitration institution, it will be able to “administer Russian-seated international arbitrations, enabling parties to seek enforcement of ICC arbitral awards in Russia without risk of the enforcement being recognised only as an ad hoc award, or other obstacle.”

It will also be able to “administer Russia-related arbitrations arising from certain categories of corporate disputes as specified by Russian legislation, notably those arising from share purchase agreements and share pledge agreements relating to Russian companies.” Post M&A disputes would be among those it could handle.

The ICC press release notes that just “a handful of arbitral institutions” have this status, having met a “range of criteria” required by the Russian Ministry of Justice and been recognised as an arbitral institution with “a widely recognised international reputation”. GAR understands that the publications consulted to establish that applicants for the licence have such a reputation include the GAR Guide to Regional Arbitration.

ICC Court president **Alexis Mourre** welcomes the development as further bolstering the court’s “global expansion and outreach efforts” that have so far

seen the Paris-based secretariat open case management offices in New York, São Paulo, Singapore and Abu Dhabi.

Mourre says: “This recognition marks our latest achievement in bringing the gold standard services of the ICC Court closer to arbitration users and professionals. As the world’s preferred arbitral institution, we are delighted to provide recourse to our trusted and efficient process as a recognised Permanent Arbitration Institution of Russia.”

The court was represented in the application process by **Dmitry Dyakin** of Rybalkin Gortsunyan & Partners in Moscow, who is deputy chair of the ICC Russia Commission on International Arbitration. Dyakin tells GAR that the ICC International Court of Arbitration "will definitely benefit from the licensing in Russia. It's also the perfect timing as the interest in ICC and international arbitration more broadly has been progressively increasing in Russia in recent years."

The requirement for arbitral institutions operating in Russia to be licensed was introduced by the Russian Ministry of Justice in 2015, as part of a wholesale reform of Russian arbitration. The measure was partly in response to concern over the growing number of "pocket arbitration centres" in the country, so called because they were seen as acting in the interests of leading Russian corporations that had a hand in their creation.

In December 2015, the state enacted the Federal Law On Arbitration (Arbitral Proceedings) in Russia, which said that tribunals constituted under the rules of the permanent arbitration institutions, or parties agreeing to arbitration under those rules, could enjoy certain advantages not available otherwise.

For example, tribunals were able to request (or authorise a party to request) assistance from a Russian state court in obtaining evidence, while parties could waive their right to apply to the Russian state court to set aside the award.

These rights are not available to tribunals or parties under the auspices of unlicensed arbitral institutions and the arbitrations they conducted are regarded in Russia as ad hoc.

The 2015 federal law named two domestic arbitration institutions that would automatically gain a licence: the Russian Federation Chamber of Commerce and Industry’s International Commercial Arbitration Court (ICAC) and the Maritime Arbitration Commission (MAC).

In 2017, two more licences were granted, to the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs (of which Dyakin is vice chair) and the Russian Arbitration Centre at the Russian Institute of Modern Arbitration.

In 2019, the National Centre of Sports Arbitration at the Sports Arbitration Chamber, an autonomous non-profit organisation, became the fifth Russian arbitral institution to obtain a licence.

Until now, the only international institutions to have been awarded the licences are the Hong Kong International Arbitration Centre and Vienna International Arbitration Centre, in April and June 2019 respectively. The ICC International Court of Arbitration and SIAC are the third and fourth international institutions to gain a licence.

The development is expected to be a positive one for both institutions, leading to them securing more Russian work. It comes after the ICC International Court of Arbitration was identified as the most popular international arbitration institution in most regions of the world in the latest Queen Mary University of London/White & Case survey, released this month, with SIAC pipping it to the post in the Asia-Pacific region.

The HKIAC and VIAC have been promoting themselves heavily in Russia since gaining their licences, though the effect on their caseload is not yet known.

International arbitral institutions that have yet to apply for licences include the LCIA and the Arbitration Institute of the Stockholm Chamber of Commerce, which are both traditionally associated with cases that are Russia-related (though not seated in Russia). This means awards rendered under their auspices are treated as ad hoc in Russia, in line with the 2015 law, and their fate is unclear when it comes to enforcement in the country.

Jacomijn van Haersolte-van Hof, the LCIA's director general, tells GAR the number of Russia-related cases submitted to the LCIA "does not suggest an immediate need for a licence" but the institution "continues to monitor the situation".

The latest LCIA annual report, released earlier this week, states that in 2020, 6.8% of parties to LCIA arbitrations were from Russia, up from 2019, when the percentage was 6.6%. The institution also handles a growing number of cases

with parties registered in the British Virgin Islands and Cyprus, many of which have Russian ownership.

Together, these three jurisdictions account for 18% of parties to LCIA cases.

Speaking at London International Disputes Week, van Haersolte-van Hof said many of the Russia-related disputes concern loan agreements or banking and finance. She said Russian parties to such disputes tend to opt for English law to resolve their dispute, with the seat and institution chosen in alignment.

Until this month, the LCIA had one London-based Russian among its court members, **Julia Zagonek** of White & Case. Recently it added another London-based Russian, **Artem Doudko** of Osborne Clarke.

According to the latest published statistics of the SCC Arbitration Institute, in 2019 parties from 44 different countries appeared in SCC disputes, with parties from Russia being by far the most common, featuring in 26 of the 175 new cases registered (of which half were international).

Kristin Campbell Wilson, acting secretary general of the institute following the departure of **Annette Magnusson**, tells GAR it "has long-standing and well renowned experience in East-West disputes, including in cases involving Russian parties. Currently, we do not plan to seek the licence."

*Since this article was published, SIAC has published a press release confirming the news. CEO **Lim Seok Hui** says: "SIAC's permanent arbitration institution status in Russia will further enhance the benefits to parties who choose to resolve their Russia-related international disputes at SIAC. SIAC is firmly committed to continuing to engage and work closely with users and stakeholders in the Russian arbitration community to jointly promote and develop international arbitration."*

The press release notes that the SIAC secretariat includes counsel fluent in Russian and able to administer cases in the language (among many others). The SIAC 2016 arbitration rules are available in Russian.