

HONG KONG INTERNATIONAL ARBITRATION CENTRE WINS APPROVAL TO BECOME THE FIRST FOREIGN ARBITRAL INSTITUTION TO ADMINISTER DISPUTES IN RUSSIA

Following the important development of the new arrangement between Hong Kong and Mainland China which means that parties can apply to Mainland courts for interim measures in support of Hong Kong arbitral proceedings¹, the Hong Kong International Arbitration Centre (HKIAC) has now enhanced its position in relation to Russian related disputes. The HKIAC has become the first foreign arbitral institution to be designated as a "permanent arbitral institution" (PAI) in Russia following approval granted by the Russian Ministry of Justice. Most significantly, this means that the HKIAC can now administer international commercial arbitrations seated in Russia as institutional rather than ad hoc arbitrations and certain corporate disputes relating to Russian legal entities.

Following Russian arbitration law reforms in 2015, an arbitral institution must be approved as a PAI in order to administer certain types of disputes in Russia. To date, only four domestic Russian arbitral institutions have been designated as PAIs. We recently reported that the Russian Council for the Development of Arbitration recommended that the HKIAC be granted permission to operate as a PAI on 4 April 2019.² The Russian Ministry of Justice has announced that it granted approval on 25 April 2019. The HKIAC is thus the first foreign arbitral institution to be designated as a PAI.

This means that the HKIAC can now administer:

1. international commercial arbitrations seated in Russia as institutional rather than ad hoc arbitrations. An international commercial dispute is defined under Russian law as "*disputes between the parties arising out of civil law relationships in the course of carrying out foreign trade and other types of international economic relations, if the place of business of at least one of the parties is abroad, or any place where a substantial part of the obligations out of the relationship of the parties is to be performed or the*

Key issues

- The HKIAC is the first foreign arbitral institution to be approved as a permanent arbitral institution in Russia
- The HKIAC will be able to administer international commercial arbitrations seated in Russia as institutional rather than ad hoc arbitrations
- The HKIAC can also administer certain disputes concerning Russian companies
- Parties who opt for HKIAC arbitration in Russia can expressly agree to exclude the jurisdiction of the Russian courts with respect to arbitration

¹ See our client alert [here](#).

² See our client briefing [here](#).

place with which the subject matter of the dispute is most closely connected is located abroad, as well as disputes arising in connection with foreign investments in the territory of the Russian Federation or Russian investments abroad".³ The HKIAC will not be able to administer arbitrations concerning Russian domestic disputes as, amongst other things, the HKIAC does not meet the requirement of having a separate division in Russia; and

2. international commercial arbitrations concerning certain disputes over Russian companies. This includes disputes relating to (i) the ownership of shares in Russian companies, the encumbrance of such shares and the exercise of rights arising from them (for example disputes arising out of share purchase agreements), (ii) participation interests in Russian companies (for example disputes arising out of shareholders' agreements), and (iii) the registration of shares or securities by registrars. The HKIAC will not be able to administer arbitrations concerning (a) derivative claims and certain other corporate disputes which must be heard under special rules for corporate disputes, or (b) corporate disputes which are non-arbitrable under Russian law.⁴

The HKIAC's designation as a PAI confers practical benefits to its users. Parties who opt for HKIAC arbitration in Russia are permitted to expressly exclude the jurisdiction of the Russian courts over certain aspects of arbitration including the appointment and challenge of arbitrators, termination of arbitrators' powers and preliminary review of a tribunal's decision as to jurisdiction. Parties can also expressly agree to exclude the right to appeal against the merits of an award to the Russian courts, resulting in efficiency and certainty from a procedural and enforcement perspective. The HKIAC is also well placed to administer any Russia-related arbitrations. There are currently more than 30 Russian-speaking arbitrators on the HKIAC's panels of arbitrators, and the HKIAC Administered Arbitration Rules are available in Russian.

As a result, this development presents an attractive new option in Russia-related cross border deals, particularly where the parties are seeking to agree on Russian arbitration as the dispute resolution forum.

³ Article 1 of Russian Federation Law No. 5338-1 of 7 July 1993 on International Commercial Arbitration.

⁴ Article 225.1 of the Arbitral Procedure Code of the Russian Federation. For further details on the three categories of corporate disputes, see our previous client briefing [here](#).

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