



CONTACT US:
 Association for International Arbitration
 146, Avenue Louise
 B-1050 Brussels
 Belgium

Fax : +32 2 646 24 31
 Tel : +32 2 643 33 01

December 2008



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Arbitration in Russia

In Russia, State commercial courts (arbitrazh State courts), have jurisdiction over commercial claims, which judicial system is multi-tier and hierarchical. This judicial system should be distinguished as different, despite its confusing terminology, from private arbitration on commercial issues (so called "treteysky sudy"). These judicial bodies are both *ad hoc* and institutional and these serve as an alternative to the State economic courts. Let us examine briefly this private arbitration mode, concerning foreign parties' participation to the disputes, particularly, with respect to the procedural matters, including the involvement of the State 'arbitrazh' courts.

International commercial arbitration is mainly regulated by [the Law of the Russian Federation, "On International Commercial Arbitration"](#) (further – the Arbitration Law), dated July 7, 1993, which is very close to the Model UNCITRAL Law. The most known and long-standing institutionalized commercial arbitration courts in Russia are the so-called [International Commercial Arbitration Court](#) and the [Maritime Arbitration Commission](#) at the Chamber of the Commerce and Industry of the Russian Federation.



There are a number of other private arbitration centers, which are springing up over recent years across the country. They are established by virtue of the Law "On Arbitration Courts (Treteyskie sudy) in the Russian Federation", dated July 4, 2002. One can cite here the arbitration courts, that have been established by the Chambers of Commerce and Industry of the cities of Moscow and St. Petersburg, the Moscow Stock

Exchange arbitration court, the 'arbitration' court of the International Union of Metallurgists, the interregional 'arbitration' court of the Social Council of Privatisation, the arbitration court of the Russian Union of Industrialists and Entrepreneurs.



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There are also some regional arbitration courts like Siberian arbitration court, the Urals arbitration court, the Northern arbitration court, the Eurasian arbitration court and many others. The recent recounting of such dispute-resolution tools across the country in Russia showed no less than 500 private arbitration courts.

Both international commercial courts and domestic private arbitration courts established in the Russian Federation are empowered to examine the cases involving foreign jurisdictions' issues. However, the specificities of examining such cases by domestic arbitration courts are that they are governed by the special above-mentioned Law "On International Commercial Arbitration", dated July 7, 1993, that derogates to some extent from the Law "On Arbitration Courts in the Russian Federation" dated July 4, 2002.

Generally, the arbitration proceedings in Russia may cover a wide range of issues, with the exception of disputes arising from administrative relations (e.g. tax and customs) and disputes which fall within the exclusive jurisdiction of the Russian 'arbitrazh' (economic) State courts (e.g. disputes relating to title and other proprietary rights to real estate, located/registered in the Russian Federation, disputes arising from bankruptcy proceedings, or other disputes specifically enumerated in the Arbitrazh Procedural Code and other Russian laws).

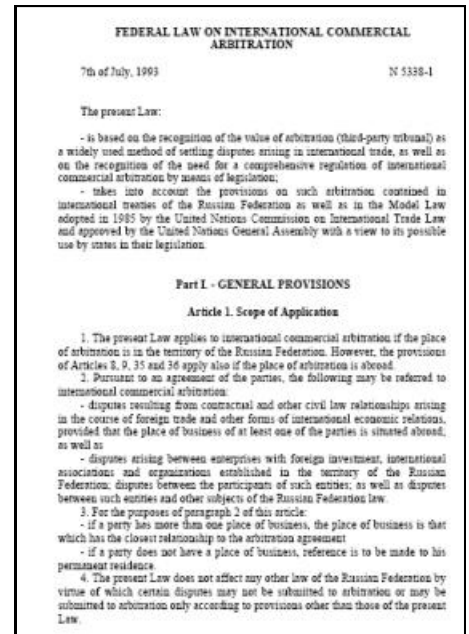
Under the Arbitration Law, the arbitration panel is free to decide all matters relating to procedure and evidence, subject to the right of the parties to agree any matter. For example, the panel can decide, if the parties agree, that the entire arbitration should be on a document-only basis or on a part-oral or part-written basis. There are no provisions either in the Arbitration Law that provide for how witness evidence is to be provided. In practice, witness evidence is usually given orally. However, the parties can provide the arbitration panel with written witness statements which must have been duly notarised. Expert evidence is usually presented in writing. It may be presented orally, with a cross-examination of the expert witness by the other side.

Provisional and interim measures can be ordered in support of arbitrations, including decisions of foreign arbitrations. It is also possible to apply for pre-judicial provisional measures or security measures. The following provisional measures (depending on the circumstances of the case) may be available either from the arbitration panel or from the 'arbitrazh' (economic) State courts:

- injunctive relief, including freezing orders;
- security for the amount in dispute;
- preservation of property and evidence;
- compelling witnesses.

An 'arbitrazh' (economic) State court may take other measures (or few of them simultaneously).

The Arbitration Law provides that an arbitral award may be appealed in the Rus-





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sian arbitrazh State court on procedural grounds, on grounds of public policy or on the basis of whether it was in fact a proper subject for arbitration. Article 233 of the Arbitrazh Procedural Code of the Russian Federation dated 24 July 2002 N 95-FZ allows for appeals in the following situations:

- the arbitration agreement is invalid under federal law;
- the party was not duly notified about the appointment of the arbitrators or the arbitral proceedings (treteysky sud);
- the award deals with a dispute not contemplated by the arbitration agreement or not falling within its terms, or contains decisions on matters beyond the scope of the submission to arbitration;
- the composition of the tribunal or the procedure for the arbitration does not correspond to the parties' agreement, or to federal law;
- the dispute examined by the arbitration cannot be subject to arbitral proceedings under the federal law;
- the arbitral award violates the fundamental principles of Russian law.

Therefore, it is obvious that the arbitration award cannot be appealed on the merits of a dispute.

A set of diverse international treaties to which the Russian Federation is a party, in particular, the European Convention on International Commercial Arbitration of 1961 and the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, apply in Russia. The latter one is applicable with a reservation that it will only recognise and enforce awards from non-contracting States to the extent to which these States grant reciprocal treatment. Article 35 of the Arbitration Law provides for recognition and enforcement of foreign arbitral awards, irrespective of the country in which the award was made, subject to obtaining the permission of the Arbitrazh (economic) State court. To obtain permission, the party seeking enforcement must provide an original of arbitral award (or a duly certified copy), the document confirming that the award entered into force and a document confirming that the defendant was duly notified of the arbitral proceedings. Each document must be accompanied with a duly certified Russian translation. The party seeking to challenge the enforcement carries the burden of proving that grounds for refusal exist. The Arbitrazh (economic) State court may only refuse permission if one of the grounds set out in article 36 of the Arbitration Law applies (these are similar to the grounds set out in the article 5 of the New York Convention).

Russia has being longer considered a difficult country for enforcement of foreign arbitral awards, especially those made against Russian entities. Nevertheless, increasing numbers of foreign arbitral awards are being enforced before the Russian courts.

Dr. Sergey A. Belyaev

Member, Court of Arbitration for Sport (Lausanne)
Chair of International and European Law, International Center of Moscow State University (Geneva)

Personal and Professional WebSite <http://www.sergey-belyaev.com/>

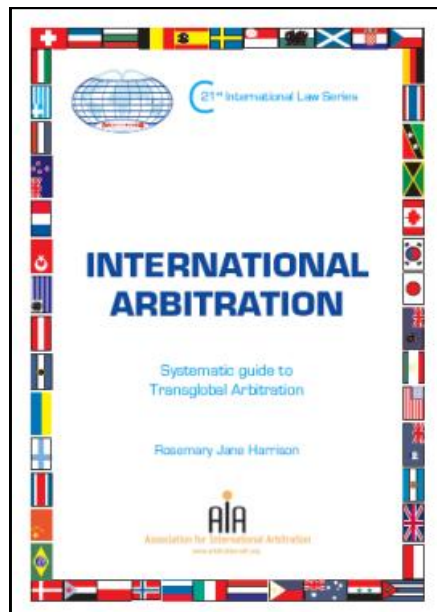


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Preview of Maxim's « International Arbitration: Systematic guide to Transglobal Arbitration »

The Association for International Arbitration is thrilled to report on the arrival and upcoming publication of Maxims Global Ltd brand new 2008 edition of "International Arbitration – Systematic Guide to Transglobal Arbitration", written by Ms. Rosemary Jane Horison and Published in Association with the Association for International Arbitration.

When first published in 2007, "[International Arbitration](#)" already covered a wide variety of international arbitration organisations with locations around the globe and ranging from commercially based arbitration to diplomatic/peace based arbitration. The publication excelled in comprehensively informing legal professionals, business entrepreneurs and those with a lesser pertained knowledge in the field of arbitration.



Building on these strengths and assets, the 2008 Edition includes several new additions to the contents of the publication including Commodities arbitration. The publication also includes several international arbitration organisations arbitration cases and decisions published to promote the strengths of arbitration and provide arbitration with the concept of precedent. As a common and shared interest, both Ms. Harrison's book and the Association for International Arbitration promote the peaceful settlement of disputes. "International Arbitration" uses the jurisprudence of the "Essence of Peaceful Settlements" as its core and basis for the Maxims Global 21st Century International Arbitration publications.

Just like the 2007 Edition, the new version of "International Arbitration" will be published in loose-leaf form with an accompanying encrypted CD-Rom.

The publication is divisible into five parts. Part one deals with the International Arbitration Organisations that specialise in commercial disputes, such as the ICC, WIPO, ICSID, GMAA, CDP and many more. Part two governs the specific subject of public international arbitration and international diplomatic/peace based arbitration. In part three an extensive analytical review is given on several International Arbitration Courts such as LCIA and ICC. The fourth part reserves special attention on various historic and significant Conventions, Protocols and Agreements in International Arbitration. For informative purposes, the fifth and last part lists an A-Z directory of international arbitration organisations and various other directories.

The Association for International Arbitration strongly recommends purchasing Maxims "International Arbitration – Systematic Guide to Transglobal Arbitration". As of December 1st 2008, this long anticipated edition will be made available paying customers. For more information on this publication and purchase details, please click on the book cover icon on the former page. To obtain contact details of the



In next month's issue:

- **Mediation in employment harassment disputes**
- **Pan-Ukrainian League of Arbitration**
- **And much more...**

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The Association for
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The Permanent Court of Arbitration (Ukraine)

In September 2005, the juridical corporation "Principe" with its primary seat in Kiev, Ukraine founded a new arbitration organisation called the "Permanent Court of Arbitration". After just three years of activity, it became one of the largest and most dynamically developing courts of arbitration in the Ukraine with over 150 qualified and permanently trained arbitrators, working at the court and over 50 branches scattered all over the Ukraine. As they cover the entire country, it prevents individuals and enterprises from spending precious time in travelling to courts, and provides them with both close-to-home legal and judicial assistance and the possibility to have their disputes settled in locations near their place of residence.

Under the aegis of [the Permanent Court of Arbitration](#) permanent qualification courses for candidates for arbitrator posts are established. Furthermore, specialised round tables and seminars devoted to arbitration proceedings, judicial practice, and urgent legislative matters are conducted on a regular basis to keep arbitrators up-to-date in the field of alternative dispute resolution. In order to familiarise the Ukrainian public of the existence and benefits arbitration can offer for the settlement of people's and companies' disputes, active work is being conducted to cooperate with specialised and business mass media, TV channels and radio stations in order to keep the people and representatives of the business elite in touch with the world of alternative dispute resolution.



In addition to the more general Permanent Court of Arbitration, Gennadiy Pampoukha, President of the Ukrainian Arbitration League and General Director of JC "Princip", founded the more specialised "Tribunal for Real Estate Arbitration" in 2008, equipped with both highly experienced arbitrators and expert lawyers in the field of real estate law. Furthermore, by forming the "Ukrainian Independent Institute of forensic examination" in 2007, the Princip Law Corporation continuously promotes and supports legal scientific research in the Ukraine.

To expand their territorial interests and by way of promoting the Permanent Court of Arbitration to the rest of the world, the JC "Princip" actively co-operates with the UN International Committee for Human Rights, the International Committee on Fight against Terrorism, organized crime and corruption (ICOCRIM), the World Association of Detectives (WAD), the European Business Association (EBA), The American Chamber of Commerce and the Association of International Arbitration (Belgium).