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Arbitration reform

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Subject. This informational article highlights recent changes to the Russian legislation on arbitration.

Purpose. To highlight the most important aspects of arbitration law reform, and examines the effects they will have on the development of arbitration in Russia

Methodology. The author uses a formal-legal method.

Results, scope of application. The author distinguishes the difference between constantly acting arbitration courts and arbitration courts ad hoc). The special status of a number of arbitration institutions (the ICAC and MAC at the Russian Chamber of Commerce and Industry), is contrary to the constitutional principle of equality under the law. A major achievement of the new legislation on arbitration courts is expanding the range arbitrarily disputes.

Conclusions. The new legislation more clearly prescribed the interaction of arbitration and state courts, including requiring the latter to promote the arbitrators, acting under the regulations of the permanent arbitration institutions in obtaining evidence.

In addition, the reform of the arbitration law have left aside the problem of improving the quality of judicial control over arbitration decisions.

The arbitration law will still be able to improve the arbitration, to enhance its credibility and attractiveness for the participants of civil turnover.

Keywords: arbitration, arbitration reform, arbitration proceedings, arbitration court ad hoc, arbitrability.

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Introduction.

In recent years Russia has been actively discussing the issue of reforming the system of arbitration courts, which has significant flaws. The topic was supported by the President of the Russian Federation, who pointed to the need to improve legislation in the field of arbitration. In December 2015, the following Federal laws were adopted in this area: December 29, 2015, No. 382-FZ "On Arbitration (Arbitration) in the Russian Federation" (hereinafter - the Law, Arbitration Law) and December 29, 2015 No. 409-FZ "On Amendments to Certain Legislative Acts of the Russian Federation and on the Annulment of Paragraph 3 Part 1 Article 6 of the Federal Law" On Self-Regulating Organizations" in connection with the adoption of the Federal Law" On Arbitration (Arbitration Proceedings) in the Russian Federation" (hereinafter - Law No. 409 -FZ), which came into force on September 1, 2016.

The new regulation contains a significant number of changes and innovations: it is possible to highlight key points that affect the relationships of participants of civil procedure.

1. Separation of arbitration courts

One of the key and most discussed innovations of the Arbitration Law is the division of arbitration courts into permanent arbitration institutions and arbitration tribunals established by the parties to resolve a particular dispute (the so-called ad hoc courts). What is the difference between them?

The term "arbitration courts" now has a narrower meaning. The term "permanently operating arbitration institution" means a subdivision of a non-profit organization performing the functions of organizing the arbitration, including securing procedures for selecting, appointing or withdrawing arbitrators, conducting clerical proceedings, organizing the collection and distribution of arbitration fees, with the exception of the arbitration tribunal spore. The "Arbitration Court" is now either a sole arbitrator, who is an individual elected by the parties or elected (appointed) in an order agreed by the parties or established by federal law to resolve the dispute by an arbitral tribunal or a panel of arbitrators. It should be noted immediately that the conceptual apparatus has significantly expanded, earlier this aspect also required significant improvements.

The appearance in the Russian legal reality of permanent arbitration courts established a number of new requirements for the system of arbitration courts:

- the right to exercise the functions of a permanent arbitration institution is granted by an act of the Government of the Russian Federation;
- The non-profit organization under which this institution should have a reputation and resources that will ensure a high level of organization of the activities of the arbitration institution;
- the existence of a recommended list of arbitrators in the standing arbitration institution that complies with the requirements of the Arbitration Law;
- to resolve corporate disputes, the arbitration institution necessarily requires rules for the arbitration of corporate disputes;
- the availability of your own website.

These measures should ensure maximum independence and objective impartiality of the system of arbitration courts, and a complicated admission procedure helps to strengthen the confidence of business entities and state courts in the system of alternative dispute resolution. It is also worth noting that the arbitral tribunal formed by the parties to resolve a particular dispute, the so-called ad hoc arbitration, is not abolished, but its activities are substantially limited: corporate disputes can not be considered; The parties can not foresee the finality of the decision of such a court; arbitration judges can not apply to the court for assistance in collecting evidence.

2. The special status of a number of arbitration institutions

From the rule on the need to establish an arbitration institution in a non-profit organization, two exceptions have been made with respect to the International Commercial Arbitration Court (ICAC) and the Maritime Arbitration Commission (IAC) at the Chamber of Commerce and Industry of the Russian Federation (RF CCI), which exercises the functions of an arbitration institution without the need for the Government of the Russian Federation to exercise the functions of an arbitration institution, which, in fact, contradicts the constitutional principle of equality of everyone before the law. Meanwhile, such an approach means another danger for arbitration courts, and namely, state regulation when they are created, which has been termed "nationalization" of arbitration proceedings, which is unlikely to provide them with full confidence among participants in civil circulation.

3. Features of the name of the courts

It is important to note an innovation about the ban on the establishment of arbitration institutions in Russia, the names of which include the words "arbitration court" and "arbitral tribunal", if the full name of the institution is similar to the degree of confusion with the name or otherwise is able to introduce participants in the civil turnover into a delusion about the legal nature and powers of the arbitration institution. In addition, the name of the arbitration institution shall contain an indication of the full or abbreviated name of the non-profit organization under which it was established.

4. The circle of arbitration disputes

A serious achievement of the new legislation on arbitration courts is the expansion of the range of arbitration disputes. The Arbitration Act amended the agrarian and Arbitration Procedural Code of the Russian Federation and the Civil Procedural Code of the Russian Federation and defined arbitrability of cases to arbitration institutions (arbitration courts). Now the following disputes can not be transferred to arbitration courts, namely: insolvency (bankruptcy) cases, part of corporate disputes (exception: disputes on the convocation of a meeting, on certification of transactions with shares of a notary related to challenging non-normative legal acts, decisions and actions (inaction) of state bodies, disputes over major transactions and transactions with interest in the joint-stock companies related to the exclusion from the list of participants), disputes related to the state registration of legal entities and individual entrepreneurs, disputes arising from the activities of depositaries, disputes related to public procurement, as well as those arising from the activities of public law and state disputes, disputes on the protection of intellectual property rights and on the protection of business reputation, disputes arising from family relations, except for divisions between spouses of co-acquired property; disputes arising from labor relations, disputes arising from hereditary relations, disputes related to the privatization of state and municipal property, disputes over compensation for harm caused to life and health, disputes about the eviction of citizens from residential premises. A big step on the way of development of arbitration proceedings was the direct consolidation in the legislation of the possibility of considering corporate disputes in an arbitration court. Now, as a general rule, corporate disputes will become arbitrageous, with the exception of several categories of disputes, directly named in part 2 of Article 225.1 of the APC of the RF. Corporate disputes can be submitted to the arbitration court only if the legal entity, all participants of the legal entity, as well as other persons who are plaintiffs or defendants in such disputes, have entered into an appropriate arbitration agreement. Also, such disputes can be transferred only to a permanent arbitration institution (arbitration court), if it has registered (deposited) the rules for the resolution of corporate disputes, they are posted on the site, and the place of arbitration is the territory of the Russian Federation. Thus, a certain systematization of non-arbitrage disputes has now appeared.

5. Features of the arbitration agreement.

The arbitration agreement must be in writing, including through an exchange of letters, telegrams, telex and facsimile numbers, and other documents, including electronic documents transmitted via communication channels that allows reliably establish that the document comes from the other side. In addition, the arbitration agreement is also considered to be concluded in writing if it is through the exchange of procedural documents (including the statement of claim and the withdrawal of the statement of defense), in which one of the parties claims to have an agreement, and the other is not against it.

If the arbitration agreement is contained in the contract, it also extends to any disputes related to the conclusion of the contract, its entry into force, change, termination, validity, including with the parties returning everything under the invalid or unconcluded contract, unless otherwise follows from the arbitration agreement.

An important innovation in relation to the order of appointment of arbitrators is worth noting. In a number of cases the law provides an appeal to the state court with a statement on assistance on the appointment of an arbitrator. In particular, an appeal to the state court is possible if one of the parties does not elect an arbitrator within one month upon receipt of a request from the other party or if two arbitrators do not agree on the election of a third arbitrator within one month from the moment of their election, or if the parties do not come to an agreement on the candidature of the arbitrator in arbitration with a sole arbitrator. These provisions allow us to break the impasse in the situation with ad hoc arbitration, when the parties can not agree on the candidature of the arbitrator. If the procedure for appointing arbitrators is stipulated in the agreement of the parties or in the rules

of arbitration, then in the event of failure to reach agreement on the candidature of the arbitrator, the above documents must be guided first. The law on arbitration introduced the concept of "direct agreement". In the cases provided for by law, the parties have the right, by their direct agreement, to change the general rules of arbitration established by the Law, and this agreement will take precedence over the rules of arbitration. Such an opportunity should be borne in mind when formulating an arbitration agreement. In particular, the Law provides that the parties may, by their direct agreement, exclude the following powers of the state court:
- on the appointment of an arbitrator;
- to consider a petition for challenge, if such an application was not satisfied by the arbitrator or the arbitral tribunal;
- to consider an application for termination of the arbitrator's powers, if he finds himself legally or actually unable to participate in the consideration of the dispute or for other reasons for an unreasonably long period does not participate in the consideration of the dispute;
- if the arbitration court issues a preliminary ruling on this issue.

But since their unfair use may lead to a significant delay in the arbitration proceedings, lawyers say that in most arbitration clauses special rules will appear that exclude the aforementioned powers of state courts. Also, in a direct agreement, the parties can agree not to hold oral hearings, to select arbitrators only from the recommended list and to provide that the arbitral award is final for the parties and can not be canceled.

Conclusions

The new legislation more clearly regulates the interaction of arbitration and state courts, including obliging the latter to assist arbitrators acting under the regulations of permanent arbitration institutions in obtaining evidence. This reform of the arbitration legislation left the problem of improving the quality of judicial control over decisions of arbitration courts behind the brackets. It is planned that the Law on Arbitration will nevertheless improve the institution of arbitration proceedings, increase its authority and attractiveness for participants in civil circulation.

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