

Russia Practice

March 2017

New opportunities to resolve corporate disputes in arbitration

Why is it important to read this newsletter?

Corporate disputes may paralyse the work of investors in Russia. It is extremely important for business that such disputes be resolved quickly and efficiently. Russian legislators have now provided additional opportunities related to corporate disputes and have enshrined in law the possibility that these disputes may be considered in a forum familiar to business: the arbitration tribunal.

Since 1 February 2017, Russian legislation offers the opportunity to refer a broad range of corporate disputes to arbitration, by concluding arbitration agreements¹.

Among other things, the following categories of corporate disputes may now be considered in arbitration:

- disputes on the management of a legal entity, including disputes arising from shareholder agreements, and also disputes regarding the foundation, reorganisation and liquidation of the legal entity;
- disputes on the ownership of shares (equity interests) in Russian companies, their encumbrances and exercise of their associated rights, the sale and purchase of shares (equity interests), and levies of execution on them;
- disputes on claims by participants of the legal entity on compensation to the latter for losses, invalidation of transactions by the legal entity, and application of the consequences of this invalidation;
- disputes on the appointment or election, termination, and suspension of powers and responsibilities of persons in the management and control bodies of the legal entities;
- disputes on the appeal of the decisions of the management bodies of the legal entity, and certain other disputes.

However, certain categories of corporate disputes cannot be sent to arbitration: convocation of the general meeting, expulsion of participants in the legal entity, purchase and buyout of outstanding shares by the company, and purchase of more than 30 per cent of the shares of a publicly traded company, and other disputes mentioned in the law.

Corporate disputes may be considered only by arbitration tribunals

that are administered by permanent arbitration institutions. These institutions should approve, place and publish on their website the rules for corporate dispute arbitration². The relevant rules are currently held by the ICAC at the RF CCI,³ Russian Arbitration Association⁴ and the Arbitration Center at the Institute of Modern Arbitration⁵; among foreign institutions – the German Institution of Arbitration (DIS)⁶.

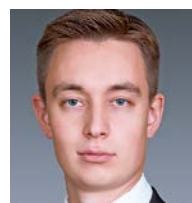
The arbitration institution must publish information on the corporate dispute on its website, notify the legal entity that is the subject of the dispute of the submission of a statement of claim (request for arbitration), and send it a copy of the statement of claim. Each participant in a legal entity may join the corporate dispute at any stage. For the majority of corporate disputes, the seat of arbitration should be within the Russian Federation.

In order to transfer the majority of corporate disputes to arbitration, an arbitration agreement should be concluded by the legal entity, its owners, and other parties that are claimants or respondents in the disputes. Such an arbitration agreement may be included in the charter of a legal entity, except the charters of publicly held joint-stock companies and joint-stock companies in which the number of participants with voting shares exceeds one thousand.

Compared to state courts, there are both pros and cons of the consideration of corporate disputes in arbitration. A careful assessment should be made of whether disputes related to a Russian company should be transferred to arbitration. If it appears advisable, an arbitration agreement may be concluded either by preparing a separate document or by including an arbitration clause in an agreement or charter.



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¹ Federal Law No. 409-FZ dated 29 December 2015 "On Amending Certain Legislative Acts of the Russian Federation and Repealing Clause 3 of Part 1 of Article 6 of the Federal Law 'On Self-Regulating Organisations' in Connection with the Adoption of the Federal Law 'On Arbitration (Arbitral Proceedings) in the Russian Federation'".

² The existence of special rules for corporate dispute arbitration are not required for disputes on the activities of the holders of securities registers or in connection with the ownership of shares (equity interests), their encumbrance and the exercise of rights associated with them.

³ <http://mkas.tpprf.ru/ru/materials/?search%5BNAME%5D=&search%5BSECTIONS%5D=%7B%22materials%22%3A%7B%2223454%22%3A%2223454%22%7D%7D&search%5BFROM%5D=27.01.2017&search%5BTO%5D=01.02.2017> (as of 14 March 2017).

⁴ http://arbitrations.ru/upload/medialibrary/b7d/raa_corporate-rules_01.02.pdf (as of 14 March 2017).

⁵ http://www.centerarbitr.ru/files/PAKS_Arbitrazhnyi_centra.pdf (as of 14 March 2017).

⁶ <http://disarb.org/de/16/regeln/dis-supplementary-rules-for-corporate-law-disputes-09-srcold-id15> (as of 14 March 2017).

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Imprint

This publication is issued by
BEITEN BURKHARDT Rechtsanwaltsgesellschaft mbH

Ganghoferstrasse 33, D-80339 Munich
Registered under HR B 155350 at the Regional Court Munich /
VAT Reg. No.: DE811218811

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