

## **Dentons and Vedomosti Praktika hold “International commercial arbitration today” conference**

Moscow, June 2019 – How to get interim relief in arbitration proceedings within one week, how to freeze the assets of a state corporation to secure the claim in an investment dispute, how to prevent pressure with a criminal case on the outcome of arbitration proceedings and what is most useful in the Prague Rules—experts from Russia, the United Kingdom, France, Belgium, the United States, Singapore and Hong Kong spoke about this and much more at the conference organized and held by Dentons global law firm together with Vedomosti Praktika with support from Legal Insight magazine on June 5, 2019.

### **A turn to the East?**

The lawyers noted the growing number of contracts that have an arbitration clause providing for dispute resolution with a Russian party at Asian rather than European arbitration centers. So far, since 2015 such a clause has resulted in only nine disputes in Singapore’s SIAC (five of which were in 2018) and six disputes in Hong Kong’s HKIAC. It is worth noting by way of comparison that in 2018 the ICC (not only in Asia but globally) heard 16 disputes involving a Russian party, down from 26 cases in 2015. Dentons Partner Lawrence Teh noted that the SIAC and HKIAC offer the possibility of emergency interim relief within a week and expedited hearing of disputes within six months of when the tribunal is constituted.

Discussing the impact of sanctions against Russia, Dentons Partner Dominic Pellew said that, so far, the European sanctions have not generally reduced the number of cases being filed for hearing with European arbitration centers. He also expressed the doubt that contracts affected by the sanctions will be “saved” from their impact if they are disputed in a non-European arbitral tribunal.

### **Arbitration clause with reference to the Prague Rules**

Dominic Pellew spoke of the pluses and minuses of the Prague Rules and recommended using their most useful innovation relating to disclosure: the parties may request to produce a specific document, not a category of documents. Dominic recommends considering this in the arbitration clause regardless of the arbitration institution chosen, adding the following wording to the clause: “the arbitral tribunal will follow the Prague Rules regarding document production.”

### **Criminal law as a tool for putting pressure on the outcome of arbitration proceedings**

Partner and Head of Dentons’ Russian White Collar Crime practice Konstantin Tretyakov noted the connection between international arbitration and criminal proceedings—a connection that is not obvious at first glance. A verdict in a criminal case does not constitute a precedent for an international court of arbitration, in contrast to the Russian courts, which consider the verdict newly discovered facts and a possible basis for reviewing previously issued judgments. The widespread practice in Russia of furnishing the court with evidence from an ongoing criminal case is unacceptable for international arbitration: it could be seen as a sign of corruption. Nevertheless, initiating a criminal case in Russia is increasingly a way of exerting pressure when disputes are considered in international arbitration.

### **What can be recovered in an investment dispute?**

Dentons Partner Anna Crevon talked about cases where it was possible in international investment arbitration to get a freezing order not only for state property used for business purposes and directly owned by the state, but also for the foreign assets of a state corporation. Partner Mikhail Ivanov noted that in the next three years we will see how investment arbitration awards affecting Russia in one way or another are enforced. We currently have 24 cases against Russia and 23 cases brought by investors from Russia against other states.

### **Arbitration reform in Russia**

The conference featured representatives of Russian arbitration institutes Alexey Kostin from the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (the ICAC) and Andrey Gorlenko and Yulia Mullina from the Russian Arbitration Center (the RAC). The joint presentation given by Dentons Partner Roman Zaitsev and the RAC's Andrey Gorlenko touched on the arbitrability of disputes with a public element. The speakers mentioned the continued turn toward expanding the competence of the arbitration (*treteisky*) courts both on the statutory level and at the level of the Russian Supreme Court's case law. Participants in the discussion appreciated the greater readiness for arbitration in Russia.

### **The opinion of in-house counsel and market researchers**

Representatives of the legal departments of Severstal Management, Sistema Venture Capital, EuroChem and UniCredit Bank shared their experience and view of international arbitration. Alisa Mityaeva from Severstal Management spoke of experience with mediation under the new rules of Austria's VIAC and named cases where mediation is more appropriate than arbitration and the factors that make that tool more efficient. Shahen Melikyan from Sistema Venture Capital said that dispute resolution in the state courts predominates in venture capital projects but some countries have seen a steady trend toward use of the arbitration clause.

Editor of *Legal Insight* magazine Margarita Gaskarova presented the results of a major study of international commercial arbitration. She focused on the cost of advisers' services in her presentation. Valery Sidnev from EuroChem and Natalia Okuneva from UniCredit Bank shared their opinions on whether it is cost effective to examine a dispute in a commercial (*arbitrazh*) court. Valery Sidnev noted the need to involve advisers with a proven reputation in international proceedings.

Other issues discussed at the conference were WTO dispute resolution and third-party financing of arbitration proceedings.

The event was attended by 85 representatives of Russian and international business in natural resources, metals, investments, technologies, transport, pharmaceuticals, finance and construction.

### **About Dentons**

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\* The American Lawyer 2018 – Ranking of 100 international law firms by number of lawyers (Global 100).