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# Russia

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## A. Legislation and rules

### A.1 Legislation

Russia is a party to the New York Convention and Geneva Convention. Laws governing international arbitration<sup>3</sup> and domestic arbitration<sup>4</sup> in Russia were passed in 1993 and 2002, respectively. No major changes to these laws were introduced until the end of 2015. At the same time, the preceding years saw the Constitutional Court give important clarifications on certain issues related to arbitration proceedings. Thus, in May 2011 the Constitutional Court clarified that legal rules on competence of Russian *arbitrazh* (state commercial) courts (including those on exclusive competence) cannot be used as rules limiting the competence of international commercial arbitrations.<sup>5</sup> The Court further noted that the public law nature of disputes that makes them non-arbitrable depends not on the type of property that is the subject matter of the dispute,<sup>6</sup> but on the specifics of legal relations giving rise to the dispute and the parties involved.

At the end of 2015, major changes were made to the Law On International Commercial Arbitration (the “ICA Law”),<sup>7</sup> and the

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<sup>3</sup> Russian Federation Law N 5338-1, adopted on 7 July 1993.

<sup>4</sup> Federal Law N 102-FZ: “On arbitration courts in the Russian Federation,” dated 24 July 2002. At present, the provisions of this law are applied only to arbitrations that were commenced and pending as of 29 December 2015.

<sup>5</sup> See Constitutional Court Resolution No. 10-P of 26 May 2011.

<sup>6</sup> In this particular case, the request to clarify the provisions was made in connection with a dispute involving real estate.

<sup>7</sup> Russian Federation Law No. 5338-1, adopted on 7 July 1993.

procedural codes.<sup>8</sup> Also, a new law on domestic arbitration was enacted<sup>9</sup> (the “Law on Domestic Arbitration”) (which we refer to jointly as the “New Laws”). Arbitration agreements entered into before 1 September 2016 continue in effect and cannot be found invalid due to their failure to comply with the new rules, unless the New Laws expressly state that such agreements are invalid and/or are to be amended in accordance with the new rules.<sup>10</sup> There are several significant changes introduced by the New Laws.

#### A.1.1 Introduction of licensing of arbitral institutions resolving disputes in Russia

The New Laws provide that non-commercial organizations<sup>11</sup> that establish arbitral institutions will need to obtain a special “license” from the Russian government.<sup>12</sup> This “license” is issued by the Russian government provided the institution complies with certain requirements.<sup>13</sup> Foreign arbitral institutions will also need to obtain the license to administer disputes in Russia; however, they are exempt from these formal requirements and have only to prove they have “a reputation recognized worldwide.”<sup>14</sup> If a foreign arbitral institution

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<sup>8</sup> The Code of *Arbitrazh* Procedure (the CAP) and the Code of Civil Procedure.

<sup>9</sup> Federal Law No 382-FZ: “On arbitration (arbitration proceedings) in the Russian Federation,” dated 29 December 2015.

<sup>10</sup> See Article 13(13) and 13(14) of Federal Law No. 409-FZ. The special regulation, *inter alia*, concerns arbitration agreements for corporate disputes and arbitration agreements referring to arbitral institutions that would fail to obtain the license.

<sup>11</sup> The New Laws limit the type of organizations able to establish arbitral institutions to non-commercial organizations only, and provide further restrictions. See Article 44 of the Law on Domestic Arbitration.

<sup>12</sup> The International Arbitration Court and the International Maritime Commission at the Russian Chamber of Commerce and Industry are exempt from the licensing requirement.

<sup>13</sup> Of the four requirements, two concern arbitral institutions themselves, namely: (1) requirements regarding the rules of such institutions; and (2) the recommended arbitrators list of such institutions must meet the statutory requirements. Two more requirements concern founding organizations: (1) to disclose correct information on its participants; and (2) to have adequate reputation and financial standing to ensure a high organizational level of proceedings and to pursue the goals of promoting arbitration. See Article 44 (8) of the Law on Domestic Arbitration.

<sup>14</sup> See Article 44 (8) of the Law on Domestic Arbitration.



fails to obtain the license, the awards issued by such institution in Russia-seated arbitrations will be considered to have been issued in *ad hoc* proceedings for the purpose of the New Laws.<sup>15</sup>

#### A.1.2 Introduction of arbitrability of certain types of corporate disputes

Lack of express regulation in the earlier versions of the procedural codes led to uncertainty as to whether corporate disputes involving a Russian legal entity were arbitrable in Russia or not. Russian courts, in several cases, stated that such disputes were mostly non-arbitrable.<sup>16</sup> Currently, the CAP stipulates which corporate disputes are non-arbitrable.<sup>17</sup> The New Laws also impose certain conditions on the arbitrability of corporate disputes. For the first type of corporate disputes<sup>18</sup> there are two such conditions: (i) Arbitration agreements on corporate disputes may be entered into only after 1 February 2017 and those entered into earlier are considered incapable of being performed;<sup>19</sup> and (ii) All arbitrable corporate disputes are to be resolved only by permanent arbitral institutions licensed by the

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<sup>15</sup> See Article 44 (3) of the Law on Domestic Arbitration.

<sup>16</sup> We reported on one of the landmark cases in this regard, namely, *Novolipetsk Steel Works OJSC v. Maksimov Nikolay Victorovich* in the 2012-2013 *Yearbook* (pp. 365-370).

<sup>17</sup> See para. 4 of Article 33(2) of the CAP and Article 225.1(2) of the CAP. These are disputes: (a) on convening general meetings of a legal entity's participants; (b) related to a notary's actions on certifying transactions with stakes in LLC charter capitals; (c) in respect of "strategic" companies (except for disputes out of ownership of shares if the sale does not require approval in accordance with the federal law: "On the procedure for making foreign investments into the commercial companies of strategic importance for protecting national defense and security"); (d) related to application of provisions on the acquisition and buyout of outstanding shares by the company and out of the acquisition of over 30% of shares in public joint stock companies; (e) related to the exclusion of participants of a legal entity; and (f) on challenging decisions of state agencies on issues related to the establishment, reorganization and liquidation of a legal entity, as well as those in connection with the issuance of securities.

<sup>18</sup> For example, disputes arising out of share purchase agreements with regard to shares of a Russian company.

<sup>19</sup> See Article 13(7) of Federal Law N 409-FZ.

Russian government. For the second type of corporate disputes<sup>20</sup> there are three further conditions: (i) a legal entity, all participants of the legal entity, and all other claimants or respondents in a potential arbitration are to have entered into an arbitration agreement (the arbitration agreement may be entered into by incorporation into the legal entity's charter<sup>21</sup>); (ii) such disputes must be resolved under special rules for corporate disputes, which are to be approved, published on the institution's website, and deposited with the Russian Ministry of Justice; and (iii) the place of arbitration must be in Russia.<sup>22</sup>

#### A.1.3 Change of the scope of application of international commercial arbitration in Russia

Before 1 September 2016, one could refer to international arbitration in Russia not only international disputes (disputes between Russian and foreign entities), but also disputes where the sole connection to a foreign jurisdiction was the fact that one of the parties to a dispute was a Russian company with foreign investments.<sup>23</sup> Starting from 1 September 2016, such disputes will be subject to domestic arbitration proceedings.

#### A.1.4 Functions of assistance and supervision in arbitrations seated in Russia

Under the New Laws, the parties will be entitled to apply to a state court for assistance in resolving issues regarding: (1) the appointment of an arbitrator; (2) the challenge of an arbitrator; and (3) the

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<sup>20</sup> For example, disputes arising out of shareholders' agreements with regard to a Russian company.

<sup>21</sup> Except for joint-stock companies with over 1,000 shareholders and public joint-stock companies, provided that the charter and amendments thereto containing such arbitration agreement shall be approved unanimously by the legal entity's all participants meeting and provided the third party has expressly consented to be bound by an arbitration agreement contained in the legal entity's charter. See Article 45(7) of the Law on Domestic Arbitration.

<sup>22</sup> See Article 45(7) of the Law on Domestic Arbitration and Article 225(1) of the CAP.

<sup>23</sup> See Article 1 of the ICA Law in effect before 1 September 2016.



termination of an arbitrator's authority in case they are unable to perform their functions.<sup>24</sup> Parties to institutional arbitration are entitled to exclude, by their direct agreement,<sup>25</sup> the possibility of asking a Russian state court for assistance in these cases, as well as the challenge of a resolution confirming the arbitrators' jurisdiction and the setting aside of the final arbitral award.

## A.2 Institutions, rules and infrastructure

Before the changes in September 2016, almost any entity could establish an arbitration court<sup>26</sup> and only few requirements were stipulated.<sup>27</sup> There were a lot of violations and the phenomenon of a "pocket arbitration court" appeared, denoting an arbitration court controlled by one of the counterparties and frequently engaging in corrupt dealings. The licensing of arbitral institutions, introduced in September 2016, is aimed at preventing the further abuse of the arbitral process.

Despite there being numerous arbitral institutions in Russia, there are three arbitral institutions worth mentioning: the ICAC, the MAC<sup>28</sup> and the Russian Arbitration Association (RAA). These institutions are, at

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<sup>24</sup> In arbitrations administered by the International Arbitration Court and the International Maritime Commission at the Russian Chamber of Commerce and Industry, these functions will continue to be administered by the president of the Russian Chamber of Commerce and Industry.

<sup>25</sup> A concept introduced by the New Laws to mean an express agreement of the parties that needs to be set out in an arbitration clause or other agreements, as opposed to that contained in the arbitration rules.

<sup>26</sup> Federal and constituents' state authorities as well as municipal authorities could not establish arbitration courts as per the previous law on domestic arbitration. See Article 3 of 102-FZ dated 24 July 2002: "On arbitration courts in the Russian Federation."

<sup>27</sup> Thus, the founding legal entity's duties were to: 1) take a resolution on establishment of an arbitration court; 2) approve regulations on such arbitration court; and 3) approve a list of arbitrators of such arbitration court. Upon establishing the court, the organization was to notify the relevant commercial court of that by forwarding to the court copies of these documents. See Article 3 of 102-FZ dated 24 July 2002: "On arbitration courts in the Russian Federation."

<sup>28</sup> International Commercial Arbitration Court and the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation, respectively.

present, drafting new arbitration rules to comply with the requirements of the New Laws.<sup>29</sup> The ICAC and the RAA will also have special rules for the arbitration of corporate disputes.<sup>30</sup>

## B. Cases

### B.1 Asymmetric dispute resolution clauses<sup>31</sup>

The Russian Telephone Company (RTC) and Sony Ericsson Mobile Communications Rus LLC (“Sony Ericsson”) were parties to a general supply agreement with a dispute resolution clause providing for arbitration in London under the ICC Rules and entitling only one party, Sony Ericsson, to submit disputes for the recovery of funds owed to it by the RTC to a competent court. RTC filed a claim for specific performance with the Moscow *Arbitrazh* Court, arguing that the arbitration agreement could not be performed as the parties had failed to agree on the rules to govern arbitration proceedings. The lower courts left the case without consideration due to the existence of a valid arbitration agreement. The Supreme *Arbitrazh* Court reversed this decision and found the arbitration agreement invalid. It pointed out the violation of the procedural equality principle because the right to submit a dispute to a competent court belonged to Sony Ericsson only.<sup>32</sup> This inequality would, in the court’s view, make the agreement invalid as it violated the balance of the parties’ rights. At the same time, however, the Supreme *Arbitrazh* Court reasoned that the other party would be entitled to refer to the competent court as well, thus eliminating the inequality of procedural rights. Upon retrial, the courts resolved the case on the merits; thus, the arbitration clause was not given effect. The decision led to fears in the arbitration community

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<sup>29</sup> ICAC and MAC are required by the law to approve, publish on its website and deposit the rules that comply with the New Laws by 1 February 2017. See Article 52(12) of the Law on Domestic Arbitration.

<sup>30</sup> The RAA published the first draft of the rules on corporate disputes in November 2016.

<sup>31</sup> *Russian Telephone Company v. Sony Ericsson Mobile Communications Rus LLC*, case file at: <http://kad.arbitr.ru/Card/ba6c1357-a64f-4b5c-a959-c50580c6a60a>

<sup>32</sup> Resolution of the Supreme *Arbitrazh* Court of the Russian Federation VAS-1831/12 of 19 June 2012.



that Russian courts will not enforce unilateral dispute resolution clauses.

## B.2 Non-arbitrability of a corporate dispute<sup>33</sup>

Novolipetsk Steel Works OJSC (NLMK) and Mr. Maksimov were parties to a share purchase agreement of 22 November 2007 (the “SPA”). Mr. Maksimov was obliged under the SPA to transfer ownership of 50% plus one share of OJSC “Maxi-Group” to NLMK against payment of the purchase price. The SPA provided for arbitration under the Rules of the ICAC. NLMK failed to pay for the shares and the ICAC granted Maksimov’s claims for the recovery of the purchase price plus interest. NLMK successfully challenged the award<sup>34</sup> alleging, *inter alia*, the non-arbitrability of the dispute resolved by the ICAC.

The courts held that the dispute in question was not arbitrable. In so doing, the courts relied on the provisions<sup>35</sup> of the CAP establishing special jurisdiction of state *arbitrazh* (commercial) courts over corporate disputes.<sup>36</sup> However, in 2011, the Constitutional Court, when resolving the question of arbitrability of real estate disputes,<sup>37</sup> interpreted a similar provision of the CAP<sup>38</sup> as aimed at differentiating between the jurisdiction of *arbitrazh* (state commercial) courts and

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<sup>33</sup> Case A40-35844/11-69-311, case file at: <http://kad.arbitr.ru/Card/b808f500-dab4-43d7-ad6c-422080163f0e>

<sup>34</sup> Ruling of Moscow City *Arbitrazh* Court of 28 June 2011; resolution of the Federal *Arbitrazh* Court of the Moscow Circuit of 10 October 2011.

<sup>35</sup> Article 33 of the CAP; Article 225(1) of the CAP.

<sup>36</sup> The special jurisdiction, in the courts’ view, was justified due to the special registration procedures for the ownership, transfer and issuance of shares, as well as involvement of issues of the establishment, participation and management of a Russian legal entity.

<sup>37</sup> See Constitutional Court Resolution No. 10-P of 26 May 2011.

<sup>38</sup> See Article 248 of the CAP (on exclusive jurisdiction of Russian *arbitrazh* courts in cases with foreign parties).



foreign courts, and not as precluding the referral of disputes to arbitration.<sup>39</sup>

On the facts of the case, the court concluded that a private law arbitrable dispute regarding the payment for the shares could not be separated from public law non-arbitrable disputes regarding the transfer of ownership to the shares as a result of performing pre-sale conditions that involved corporate management issues and issuance of additional shares. Therefore, the court found that the dispute could not be resolved by arbitration. In contrast to the case with arbitrability of real estate disputes, in this case the Constitutional Court decided not to express its view on the arbitrability of corporate disputes and did not take a clear position on arbitrability in its rulings upon Maksimov's applications.<sup>40</sup> As a result, Russian courts mainly took a position that corporate disputes are not arbitrable. This issue was resolved by the New Laws.

### B.3 Moscow Convention on Investments does not sufficiently identify arbitral forum

In three cases, the Kyrgyz Republic filed to set aside investment awards<sup>41</sup> or jurisdiction decisions<sup>42</sup> of the tribunals issued under the

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<sup>39</sup> Following this logic, Article 33 of the CAP on the special jurisdiction of corporate disputes was meant to differentiate between disputes falling under the jurisdiction of state *arbitrazh* (commercial) courts and those under the jurisdiction of state courts of general jurisdiction, and not between arbitrable and non-arbitrable disputes.

<sup>40</sup> See RF Constitutional Court Ruling No. 1804-O-O of 21 December 2011 (also the "First Ruling") and RF Constitutional Court Ruling No. 1488-O of 17 July 2012 (also the "Second Ruling").

<sup>41</sup> Award of 21 November 2013 in *The Republic of Kyrgyzstan v. OcOO OKKB et al.* (the *OKKV* case), available in Russian at: <http://italaw.com/sites/default/files/case-documents/italaw3258.pdf>; Case file at: <http://kad.arbitr.ru/Card/5faa0c68-c627-4bda-803b-460d42b5fbcc>. Award of 13 November 2013 in *The Republic of Kyrgyzstan v. Lee John Beck and Central Asian Development Corporation* (the *Lee John Beck* case), available in Russian at: <http://italaw.com/sites/default/files/case-documents/italaw3256.pdf>. Case file at: <http://kad.arbitr.ru/Card/d112dd3b-8cf2-4a3c-a3d9-e56e8827a84e>.



Rules of the Arbitration Court at the Moscow Chamber of Commerce and Industry (“Moscow Chamber”) that ruled in favor of investors. The Tribunals found they had jurisdiction based on Article 11 of the 1997 Moscow Convention for the Protection of Investors’ Rights (“Moscow Convention on Investments”). As the Moscow Convention on Investments did not specify a particular arbitration court to resolve disputes,<sup>43</sup> the investors successfully argued that this constituted an open offer to arbitrate in any international arbitration court competent to resolve international investment disputes. The trial court in the *Stans Energy* and *John Lee Beck* cases refused to set aside the arbitral awards, whereas proceedings in the OKKV case were stayed pending the decision of the CIS Economic Court.

The Kyrgyz Republic applied to the CIS Economic Court,<sup>44</sup> asking it to clarify whether: (1) a dispute based on the Moscow Convention on Investments may be heard by any international court or international arbitration court not specified either in the relevant BIT, national law or contract; and (2) Article 11 contains an open offer to arbitrate.

The CIS Economic Court disagreed with the interpretation of the investors and the tribunals and stated that the reference in Article 11 to international arbitration cannot form a sufficient basis for jurisdiction of an international arbitration tribunal.<sup>45</sup>

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<sup>42</sup> Decision on Jurisdiction of 31 March 2014 in *The Republic of Kyrgyzstan v. Stans Energy Corp., Kutisay Mining* (the *Stans Energy* case). Case file at: <http://kad.arbitr.ru/Card/b99ab17b-160f-41d9-921b-a252dbfd0dd6>.

<sup>43</sup> Article 11: Procedure for resolving disputes arising in connection with making investments.

“Disputes about making investments within the framework of this Convention are resolved by courts or arbitration courts of the state parties to the disputes, by the Economic Court of the Commonwealth of Independent States and/or other international courts or international arbitration courts.”

<sup>44</sup> Under Article 28 of the Moscow Convention on Investments, the CIS Economic Court is competent to resolve issues in relation to interpretation of the Convention.

<sup>45</sup> Decision of the CIS Economic Court of 24 September 2014 is available at: [http://sudsng.org/download\\_files/rh/2014/rh-01-1\\_14\\_23092014.pdf](http://sudsng.org/download_files/rh/2014/rh-01-1_14_23092014.pdf)

Following this decision, claims for setting aside were granted in all three cases. Taking into consideration the decision of the CIS Economic Court, the courts ruled that the tribunal and the procedure did not correspond to the agreement of the parties, as there had been no such agreement. Moreover, the courts found that the challenged acts of the Moscow Chamber violated the principle of respecting the sovereignty of states, which is the foundation principle of Russian law and part of Russia's public policy.<sup>46</sup>

#### B.4 Recognition of an arbitral award based on an invalid transaction is contrary to Russia's public policy<sup>47</sup>

On 7 December 2010, an ICC arbitral tribunal, with its seat in Istanbul, ruled in its partial award<sup>48</sup> that Ciments Français had duly exercised its right to terminate a share sale-purchase agreement of 26 March 2008 between Sibirsky Cement, Ciments Français and Istanbul Cement (the "SPA") and that it had the right to withhold the initial payment of EUR 50 million made by Sibirsky Cement under the SPA. In anticipation of the ICC partial arbitral award, Sibconcorde LLC, a minority shareholder in Sibirsky Cement, filed a claim for the invalidation of the SPA as lacking the approval of Sibirsky Cement's General Shareholders Meeting, which was required for a major transaction under the Russian joint stock companies' law.<sup>49</sup> On 13 August 2010, the court invalidated the SPA and ordered Ciments

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<sup>46</sup> Ruling of the *Arbitrazh* Court of Moscow of 19 November 2014 (the *OKKB* case); ruling of the *Arbitrazh* Court of Moscow of 5 June 2015 (the *Lee John Beck* case); ruling of the *Arbitrazh* Court of Moscow of 25 May 2015 (the *Stans Energy* case). Cassation court upheld the judgments of the trial court in the last two cases; no challenge was brought in the first case.

<sup>47</sup> *Ciments Français (France) v. Holding Company Sibirsky Cement OJSC (Russia) and İstanbul Çimento Yatırımları Anonim Şirketi (Turkey)*, Case A27-781/2011. Case file at: <http://kad.arbitr.ru/Card/e641ebf6-ad9b-48ca-916f-5daf9d49a449>

<sup>48</sup> Case No. 1624/GZ.

<sup>49</sup> The decision of this meeting approving the SPA had been declared invalid in earlier court proceedings initiated by Sibconcorde LLC, *inter alia* alleging that the power of attorney to represent it in the meeting had been revoked 2 days before the meeting. Ciments Français was not party to these proceedings. See Decision of Kemerovo Region *Arbitrazh* Court dated 4 February 2009 in Case No. A27-16841/2008-3.



Français to return EUR 50 million to Sibirsky Cement.<sup>50</sup> As Sibconcorde LLC was not party to the arbitration agreement, it was, in the court's view, not bound by it. Following a number of rounds of review, the decision on the invalidation of the SPA became final and the courts reversed the decision for recognition of arbitral award.<sup>51</sup> The court reasoned that the rules on the mandatory nature of Russian state courts' decisions and their execution represent part of Russia's public policy and thus, the existence of equally valid court acts with mutually exclusive findings in Russia would contradict Russia's public policy.<sup>52</sup>

**B.5** In recognition and enforcement of a foreign arbitral award, the protection of third parties' rights is an element of the public policy of the enforcing state<sup>53</sup>

On 10 December 2012, the *Arbitrazh* Court of the Moscow region granted the claims of Gartic Limited for recognition and enforcement of an award issued in *ad hoc* proceedings in Riga, whereby Murmansk Multiservice Networks (the "Debtor") was ordered to pay royalties, damages under a licensing agreement as well as arbitration costs, in an approximate amount of RUB 1.5 billion (approximately USD 25 million).<sup>54</sup> In August 2013, bankruptcy proceedings were initiated with regard to the Debtor, followed by the opening of the

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<sup>50</sup> Decision of Kemerovo Region *Arbitrazh* Court dated 13 August 2010, in Case No. A27-4626/2009.

<sup>51</sup> Ruling of Kemerovo Region *Arbitrazh* Court, 20 July 2011, Case No. A27-781/2011.

<sup>52</sup> Resolution of the Federal *Arbitrazh* Court of West-Siberian Circuit dated 5 December 2011 in Case No. A27-781/2011. The decision was subsequently reversed based on new facts, which were the reversal of the decision for the invalidation of the SPA and of the Turkish set-aside decision (Resolution of the Federal *Arbitrazh* Court of West-Siberian Circuit dated 27 September 2012 in Case No. A27-781/2011). However, after several rounds of proceedings, as the decision for invalidation of the SPA was finally upheld, the court again applied the same reasoning and refused to recognize the partial award.

<sup>53</sup> *Gartic Limited v. Murmansk Multiservice Networks*, Case No. A41-36402/12. Case file at: <http://kad.arbitr.ru/Card/5ccf28e5-2ad6-460c-b7eb-b745a65a3183>

<sup>54</sup> Ruling of *Arbitrazh* Court of Moscow region of 10 December 2012 in Case No. A41-36402/12.

administration of the estate in December 2013.<sup>55</sup> On 28 October 2013, the claims of Gartic Limited were included in the register of creditors' claims of the Debtor, based on the ruling of 10 December 2012.<sup>56</sup>

Another creditor, Eltechmontazh, challenged the ruling of 10 December 2012, alleging that it had been effectively deprived of an opportunity to obtain evidence in order to substantiate its objections against the arbitral award, not having been a party to the arbitration proceedings.<sup>57</sup> After two rounds of proceedings, the Supreme Court granted the claims of the creditor and ordered a retrial.<sup>58</sup> At that retrial, the Supreme Court noted that the protection of third parties' rights in view of a debtor's bankruptcy is subject to judicial control as part of public policy of the enforcing state. The courts exercise this control, *inter alia*, by applying general law principles, principles of a particular area of legal relations (such as insolvency) as well as specific legal rules of this area. In the case at hand, the courts failed to apply such legal rules.<sup>59</sup> The Supreme Court expressly upheld the right of creditors to challenge, in a general procedure, any court acts

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<sup>55</sup> Bankruptcy proceedings of Murmansk Multiservice Networks, Case No. A42-3776/2012. Case file at: <http://kad.arbitr.ru/Card/be5ec6c0-f2a1-4d85-8d8f-3bbdd2f1f631>

<sup>56</sup> Ruling of *Arbitrazh* Court of Murmansk Region dated 28 October 2013 in Case No. A42-3776/2012.

<sup>57</sup> Resolution of Federal *Arbitrazh* Court of the Moscow Circuit of 21 January 2014, Resolution of the Supreme *Arbitrazh* Court Presidium of 13 May 2014, Resolution of Moscow Region *Arbitrazh* Court dated 8 December 2014 upheld by Resolution of *Arbitrazh* Court of Moscow Circuit dated 3 March 2015 in Case No. A41-36402/12.

<sup>58</sup> See Ruling of the Supreme Court dated 9 October 2015 in Case A41-36402/12.

<sup>59</sup> See para. 28 of Resolution of the Supreme *Arbitrazh* Court Plenum No. 35 dated 22 June 2012: "On certain procedural issues of resolving bankruptcy cases" on the restrictions introduced in the course of supervision, namely, consideration of claims filed before the supervision, either in bankruptcy proceedings or, if the claimant decides otherwise, in separate proceedings; but in any case, without the issuance of a writ of execution (except current payments). Also see para. 34 of Resolution of the Supreme *Arbitrazh* Court Plenum No 35 on restrictions after the adjudication order of debtor's bankruptcy has been made, such as the submission of claims in bankruptcy administration proceedings (with the exception of current payments, claims for recognition of ownership, moral damages, vindication claims, etc.)



that serve as basis for a claim filed in bankruptcy proceedings.<sup>60</sup> Further, the Supreme Court noted the shift in the burden of proof in such cases: it is not the creditor who is to provide proof that the arbitral award was invalid, but the party relying on the existence of the debt owed based on the award to provide proof of the authenticity of arbitration proceedings and the resulting award.

### C. Trends and observations

The last 10 years saw Russian courts improve their understanding of arbitration-related matters and thus, refusals to enforce arbitral awards based on public policy grounds that concealed the review of awards on the merits became increasingly rare. This period can also be characterized by a heightened interest in arbitration from both the business community and the Russian government, which culminated in the reform of arbitration laws in 2015 to 2016.

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<sup>60</sup> See para. 24 of Resolution of the Supreme *Arbitrazh* Court Plenum No. 35 dated 22 June 2012 “On certain procedural issues of resolving bankruptcy cases.”