



**Russian
Arbitration
Center**

at the Russian
Institute
of Modern
Arbitration



ANNUAL REPORT

2018

Chronology



THE BEGINNING OF 2018

First cases submitted to RAC



JANUARY 2018

Opening of the Western Division of RAC



APRIL 2018

The change of name to the Russian Arbitration Center

MARCH 2018

Russian Arbitration Day 2018



JUNE 2018

The commencement of the 100th arbitration



JULY 2018

The launch of the version 2.0 of Online System of Arbitration

AUGUST 2018

RAC and Chartered Institute of Arbitrators (CI Arb) started organizing CI Arb courses on international commercial arbitration.

SEPTEMBER 2018

Opening of Ural Division of RAC

SEPTEMBER 2018

Cooperation Agreement with Government of Primorskiy Krai

DECEMBER 2018

II Corporate Arbitration Moot Court named after Professor V.P. Mozolin

CONTENTS

- 04. Moving Into a New Status
- 06. International Cooperation
- 08. Young IMA
- 14. Russian Arbitration Center: First Results
- 16. Arbitrators of Russian Arbitration Center
- 20. Gender Balance and Promotion of Women in Arbitration
- 24. Discussing Arbitration within Special Administrative Regions during the Eastern Economic Forum
- 26. Dispute Resolution in the Digital Era: Online System of Arbitration
- 28. Events of Russian Arbitration Center
- 30. Plenary Session “Future of the Legal Profession”
- 36. Russian Arbitration Day
- 38. Arbitration in the Spotlight: Enforcement of Arbitral Awards and Interaction with State Courts after the Arbitration Reform
- 40. Modern Arbitration: LIVE
- 42. Prof. Mozolin Corporate Arbitration Moot Court
- 44. Supporting Moot Courts Community
- 48. Promoting Arbitration Throughout Russia
- 51. Courses by Chartered Institute of Arbitrators (CI Arb)
- 51. Interview with Gary Born



Dear colleagues!

We are glad to present the 2018 Annual Report of the Russian Arbitration Center. It covers the key milestones, developments and events of the RAC. Previously, we used to issue the Annual Report in autumn since the establishment of the RAC dates back to August 2016. However, today we have prepared for the first time statistics report "RAC in figures" containing information regarding the cases examined in 2018. In this regard, we believe that it would be appropriate to issue annual reports as a result of each calendar year.

2018 was very active for us: we organized and supported more than 35 events!

In 2018, the RAC, together with educational project LF Academy, relaunched one of the most successful arbitration conferences – Russian Arbitration Day.

We organized and participated in the events in Moscow as well as far beyond its borders: in Vladivostok, Yekaterinburg, Krasnoyarsk, Kemerovo, Yuzhno-Sakhalinsk and other Russian cities. Information about these events is available in our Annual Report.

In 2018, the RAC significantly expanded its representation in Russian regions to promote arbitration and ensure its efficient administration. RAC office in Yuzhno-Sakhalinsk joined the Far Eastern Division in Vladivostok and Kamchatka. The RAC also opened its Western Division in Kaliningrad and Ural Division in Yekaterinburg.

In 2018, we moved to the new office in Moscow that meets modern requirements and provides with all necessary conditions for holding oral hearings as well as for work of the Administrative Office. Our team has significantly expanded, allowing not only to administer arbitration professionally and efficiently, but also to continue active work on the development of arbitration and organization of substantial and practically useful events.

Moreover, during the previous year the RAC has continued its cooperation with foreign arbitral institutions (such as Singapore International Arbitration Centre (SIAC), Hong Kong International Arbitration Centre (HKIAC), Korean Commercial Arbitration Board (KCAB) etc.) with a view to have fruitful exchange of knowledge and experience of administrating arbitration.

I would like to thank all arbitrators, members of the Board, all team of the RAC and all volunteers that help us to organize our events. I am sure that ahead of us lies exciting and tremendous work that is significantly important for the Russian jurisdiction and for all of us!

Andrey Gorlenko,
General Director of RIMA



Dear colleagues!

This year, the Russian Arbitration Center celebrates its 3-year anniversary.

3 years is certainly a very short term for such a large-scale and complex project as the RAC. Nevertheless, we have done our best for the development of professional and high-quality arbitration in our country.

In 2018, the RAC administered more than 200 disputes, organized dozens of conferences and round tables, competitions for law students and workshops for potential users. I am very happy that during the previous year the Board of the Russian Arbitration Center, which I have an honor to lead, was actively involved in the appointment of arbitrators, consolidation of claims, as well as performing other functions that the Arbitration Rules vest in the Board by. It was an exciting team experience and I am grateful to all my colleagues for their attention, expertise and contributions.

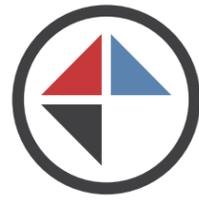
During the last year, we have expanded the geography of our activities and established the Ural division in Ekaterinburg and another office in Yuzhno-Sakhalinsk. We have witnessed that the activities of the RAC and events held in these and many other regions attract growing attention of the legal community.

In 2018, we also signed cooperation agreements with colleagues from Hong Kong and South Korea and actively popularized arbitration within and outside our country. We are glad that foreign arbitrators are becoming more interested in the RAC, pointing the professionalism and quality of our work. We are also happy that more and more foreign colleagues highlight the expertise of Russian arbitrators and practitioners.

You can read more about all this in our annual report.

We are extremely grateful to those who is holding the report and is interested in the RAC's activities. Thanks to you, the Russian Arbitration Center continues to improve day-by-day and to pursue our main goal – development of impartial, good faith and professional arbitration in Russia. Three years is an age when a child usually acknowledges his or her personality and the world around. Hopefully, we have passed this stage successfully. The myriad of upcoming achievements is waiting for us in the future and we will happily share them with you!

With kindest regards,
Yury Pilipenko
President of the RAC's Board
President of the Russian Federal
Chamber of Lawyers



MOVING INTO A NEW STATUS

Since 12 April 2018, Russian Arbitration Center at the Russian Institute of Modern Arbitration officially operates under a new name.

An organization can employ in its name the word "Russian" only after an authorization from the Ministry of Justice upon a positive recommendation from a special governmental commission.

RIMA received such authorization on 13 March 2018 by the Order of the Russian Ministry of Justice №288-p.

This is not a mere formality. The authorization to be named "Russian" is granted only to the organizations which activities are unique and socially important. This is exactly what we do. We develop and promote arbitration all around Russia.

*Andrey Gorlenko,
General Director of RIMA*

This news is hard to underestimate. This is indeed a new step in the development of the Arbitration Center that is now even more responsible for the future of the Russian arbitration. We will certainly do our best.

*Yuriy Pilipenko,
President of the Board of the Russian Arbitration Center
and President of the Federal Chamber of Lawyers*

The Russian law has a fascinating history, of which every Russian lawyer should be proud. The classic approach elaborated during the late period of the Russian empire is a major achievement in the Russian legal science. The judges of the period of the Great court statutes are examples of utter professionalism, impartiality and independence, which is almost extinct today. I desperately wish that the Russian lawyers are able to say proudly: "I am a Russian lawyer; I practice the Russian law and I trust the Russian dispute resolution system". The fact that the arbitral institution that I have honor and privilege to be listed as an arbitrator received a right to be named "Russian" is a modest step to this major goal.

*Roman Bevzenko,
Member of the Board of the Russian Arbitration Center,
Partner of Pepeliaev Gourp law firm*

INTERNATIONAL COOPERATION

Among the main goals of the Russian Institute of Modern Arbitration is international cooperation aimed at promoting ADR throughout the world.



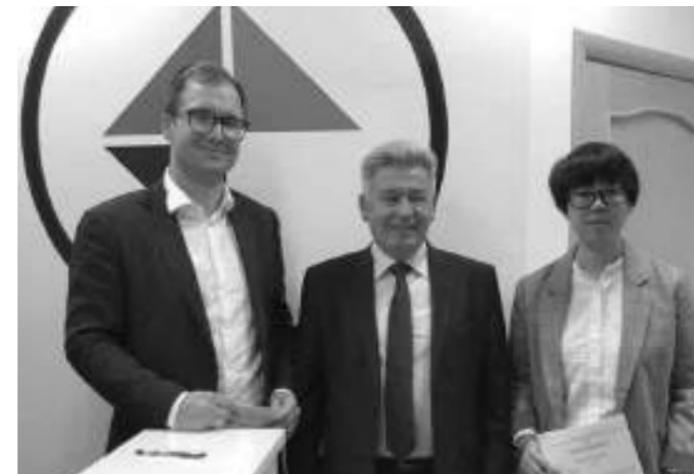
Hong Kong International Arbitration Center (HKIAC)

Signing of Cooperation Agreement
6 March 2018
Hong Kong



Japan Arbitrators Association (JAA)

Signing of Cooperation Agreement
6 September 2017
Eastern Economic Forum 2017



Benchmark Chambers International

Signing of Cooperation Agreement
27 September 2018
Vladivostok

Singapore International Arbitration Center (SIAC)

Signing of Memorandum of Understanding
17 October 2017
Russia-Singapore High Level Intergovernmental Commission



Korean Commercial Arbitration Board (KCAB)

Signing of Memorandum of Understanding
24 December 2018
Seoul



YOUNG IMA

Professional platform for young specialists in arbitration and ADR based on the Russian Institute of Modern Arbitration

Young IMA intends to unite young practitioners who are eager to develop arbitration in Russia. For the past half of a year more than 100 specialists joined the organisation. They participate in the conferences organised by the RIMA, coach teams for international mediation competitions and publish reports on arbitration case law. Members of the Young IMA are the future of the RIMA as well as law firms. They will soon represent the interests of Russian arbitration community in general and those of clients in proceedings administered by the RIMA in particular.

*Dmitry Andreev,
Co-Chair of Young IMA*

Practical orientation

The results of work by the Young IMA members (scientific and practical researches, constructive proposals for improving the practice of administering arbitration and forming pro-arbitration approaches in legislative and court practice) can be applied in the arbitration and ADR practice.



Institutional cooperation

For a young practitioner, it is not always an easy task to receive a speaking engagement during a large-scale arbitration event or publish an article in a reputable magazine. That is why the Russian Institute of Modern Arbitration believes that it is important to support young generation and prioritizes youth-oriented activities.

Regional integration

In arbitration, territorial borders do not matter. What matters is your role in developing arbitration in the regions of Russia as well as your perspective on how to promote Russian arbitration.

- 

Education
Conferences, lectures, courses, workshops, moot courts, round tables, discussions
- 

Committees
For work on various aspects of ADR
- 

Platform for blogs
About topical issues of modern arbitration

The creation of the Young IMA is a landmark event in the life of the Russian arbitration community. Now the most active, energetic and lust for knowledge young practitioners have a real possibility to contribute to the development of arbitration in Russia with support from the leading Russian arbitration institution. Regular workshops, meetings with the stars of international arbitration organised by the Young IMA as well as regular publications in leading journals enable the students to be aware of the most recent tendencies in ADR. With the help of the Young IMA they will soon join the arbitration universe as lawyers or arbitrators.

*Sergey Morozov,
Co-Chair of Young IMA*

Co-Chairs of Young IMA



Sergey Alekhin
Associate, Willkie Farr & Gallagher LLP, Paris



Dmitry Andreev
Lawyer, Monastyrsky, Zyuba, Stepanov & Partners, LL.M



Elena Burova
Legal Counsel, Russian Arbitration Center at Russian Institute of Modern Arbitration, LL.M



Evgeniya Chervets
Head of practice, Regionservis, LL.M



Sergey Morozov
Associate, Beiten Burkhardt, LL.M



Olga Tsvetkova
Counsel, Egorov, Puginskiy, Afanasyev and partners, LL.M



young.modernarbitration.ru

Committees of Young IMA

Committee on moot courts



Elena Mazetova
Associated partner, Petrol Chilikov law firm

Committee on investment arbitration



Sergey Alekhin
Associate, Willkie Farr & Gallagher LLP

Committee on sports arbitration



Nataly Kislyakova
Associate, KIAP

Committee on corporate arbitration



Julia Mikhalechuk
Counsel, Saveliev, Batanov & Partners

Committee on the interaction between state courts
and arbitration



Dmitry Andreev
Lawyer, Monastyrsky, Zyuba, Stepanov & Partners, LL.M

Committee on the topical issues of arbitration



Vadim Kolomnikov
Associate, Debevoise & Plimpton LLP

Committee on mediation and ADR



Sergey Morozov
Associate, Beiten Burkhardt, LL.M



Olga Tsvetkova
Counsel, Egorov, Puginskiy, Afanasyev and partners, LL.M

Committee on the regional development



Sergey Morozov
Associate, Beiten Burkhardt, LL.M



Evgeniya Chervets
Head of Practice, Regionservis, LL.M

Arbitration Library



Yan Kalish
Associate, Rybalkin, Gortsunyan & Partners

RUSSIAN ARBITRATION CENTER:

RESULTS 2018

On 1 November 2017, the transitional period envisaged by the new law on arbitration in Russia, enacted in September 2016, expired.

As of that date, only those arbitral institutions that comply with the high standards of the new law and that have obtained an authorization from the Russian Government can administer arbitration in Russia.

Russian Arbitration Center at the Russian Institute of Modern Arbitration is one of the first arbitral institutions in Russia that obtained the status of the permanent arbitral institution (PAI).

253
disputes

20 BLN
Aggregate amount
in dispute (RUB)



21
Expedited arbitration
proceedings

232
Standard arbitration
proceedings

151
Arbitral awards
rendered in 2018

ARBITRATORS OF RUSSIAN ARBITRATION CENTER

The Russian Arbitration Center is actively engaging into the list of arbitrators and databases high profile legal practitioners from Russia and abroad.

 **>100**
international arbitrators in the international arbitration database

 **20**
countries are represented in the list and databases of arbitrators

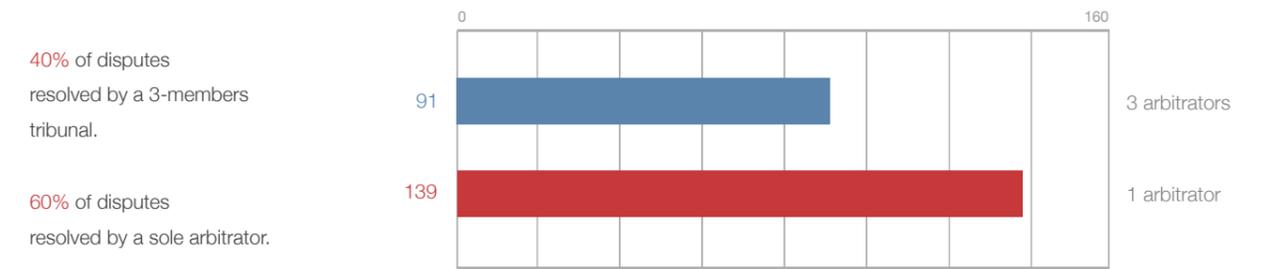
 **43**
arbitrators hold an academic degree (Ph.D., LL.D or equivalent)

 **254**
specialists in the list and databases of arbitrators of the Russian Arbitration Center

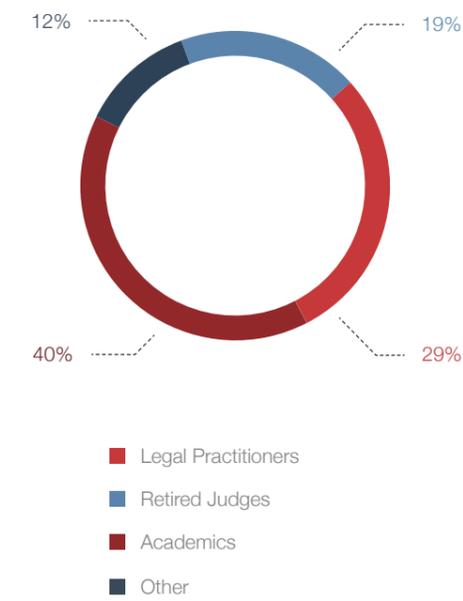
 **118**
arbitrators are included in the united recommended list of arbitrators of the Russian Arbitration Center

 **5**
specialized databases of arbitrators: international arbitration, corporate disputes, financial disputes, nuclear industry disputes, IP disputes

Arbitrators of the Russian Arbitration Center



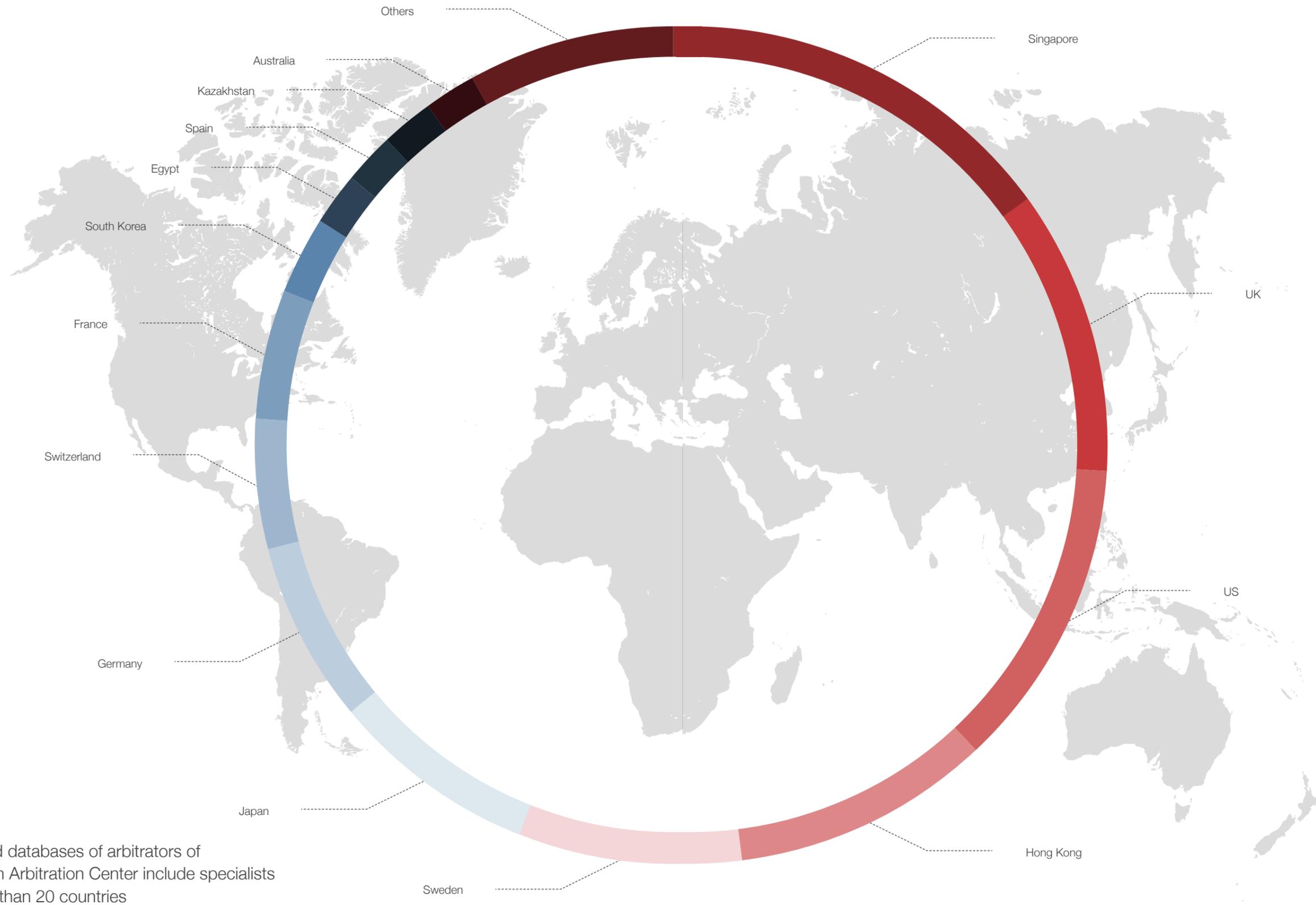
Professional activities of arbitrators



Recommended List of Arbitrators and Databases of the RAC include leading Russian and international lawyers, including legal consultants, attorneys, academics and retired judges.

During the appointment process, the Board takes into account primarily the sphere of professional interests of candidates and their expertise in the issues arising in the dispute.

GEOGRAPHY



The list and databases of arbitrators of the Russian Arbitration Center include specialists from more than 20 countries

GENDER BALANCE AND PROMOTION OF WOMEN IN ARBITRATION



Among the principles of the operation of the Russian Arbitration Center is ensuring equal opportunities for all professionals, irrespective of their nationality, age or gender.

In 2017, the Russian Arbitration Center has become the first Russian permanent arbitral institution to join the international initiative Equal Representation in Arbitration Pledge, aimed at the promotion of gender balance and supporting female legal practitioners in international arbitration.

This principle also guides us in appointing the arbitrators:

- Among 63 disputes, where the arbitral tribunal was constituted according to the Arbitration Rules of the Russian Arbitration Center, females were appointed as sole arbitrators in 24 disputes, which makes up 37% of all arbitrators' appointments;

Women constitute

1/3

of the Board
of the Russian
Arbitration Center

Women comprise

67%

Women comprise of the
Administrative Office of the
Russian Arbitration Center

GEOGRAPHICAL EXPANSION OF RUSSIAN ARBITRATION CENTER



Far Eastern Division

Far Eastern Division was established in Vladivostok in September 2017 and provides all necessary facilities for the efficient administration of arbitration, including modern premises equipped with audio- and videoconference.

Russian Arbitration Center has also formed the database of arbitrators for Far Eastern Division that includes 23 arbitrators from Asia-Pacific region.

Far Eastern Division has another office in Petropavlovsk-Kamchatskiy and Yuzhno-Sakhalinsk. .



Western Division

Western Division was established in Kaliningrad at the end of 2017 with a goal to ensure comfortable framework for doing business in Kaliningrad region by providing developed infrastructure for resolution of commercial disputes.

Western Division can administer domestic arbitration proceedings between Russian individuals and companies, including corporate disputes, as well as the disputes with the parties from the Baltic regions and other European countries.

Ural Division

Ural Division in Ekaterinburg was established in September 2018 for administration of arbitration and active cooperation with locally based partners.

The Division has its own database of arbitrators and premises perfectly equipped for oral hearings, including via audio- and videoconference. Beyond that, administrative office regularly organizes events aiming at the development and promotion of arbitration.



In order to develop and popularize arbitration throughout the country, the Russian Arbitration Center also enters into cooperation agreements, attracts arbitrators from the Russian regions, and organizes seminars and roundtables



3

agreements of cooperation with the Russian regions:

- Kaliningrad region
- Sakhalin region
- Primorskiy Krai



14

Russian regions, where RAC held seminars, roundtables and lectures



41

arbitrators from the Russian regions

As one of only a few arbitral institutions known to have gained a licence to operate under Russia's reformed regime, the Arbitration Center at the Institute of Modern Arbitration has spread its wings with the launch of a new division in the Baltic region




Pictured (from left to right):
Andrey Gorlenko, General Director of Russian Institute of Modern Arbitration
Andrey Tarasenko, Acting governor of Primorsky region

Signing of Cooperation Agreement with the Government of Primorsky region
Vladivostok, 11 September 2018



Discussing Arbitration within Special Administrative Regions during the Eastern Economic Forum

Eastern Economic Forum 2018

11-13 September 2018

Vladivostok

During the Eastern Economic Forum, Andrey Gorlenko participated in the discussion panels “The Far East as a Financial and Offshore Center” and “Competitiveness of the National Jurisdiction: A Space of Freedom for Business” which were held on 11 September 2018.

Andrey Gorlenko addressed the main features of arbitration within the newly established Special Administrative Regions (SAR). In these regions, investors enjoy additional protection, in particular, they may submit the disputes to arbitration administered only by permanent arbitral institutions authorized to operate in this field, whereas issued arbitral awards can be enforced in accordance with simplified procedure during two weeks.

The Russian Arbitration Center at the Russian Institute of Modern Arbitration maintains the necessary infrastructure for the arbitration of disputes involving the participants of SAR in its regional divisions functioning in Vladivostok and Kaliningrad. The legislator has intentionally specified the simplified procedure for the enforcement of arbitral awards issued within SAR to increase the attractiveness of SAR regime.

Additionally, Andrey Gorlenko participated in the workshop of Hong Kong International Arbitration Centre (HKIAC) regarding pre-arbitral strategy. He shared knowledge about the arbitration practice in Russia and Hong Kong, as well as about the enforcement of foreign arbitral awards by the Russian state courts.



The foreign investors look at the legislation of a particular country when making investment decisions. But, what is more important is its application – it should be up-to-date, especially in the arbitration disputes between parties from different jurisdictions.

*Andrey Gorlenko,
Executive Administrator
of the Russian Arbitration Center*



at the Russian
Institute
of Modern
Arbitration

Commence arbitration

Parties to arbitration

CLAIMANT

Russian company ▾

RESPONDENT

INN, OGRN or Name of the company

Russian company ▾



You can specify the respondent later

Contact details

SURNAME

NAME

PATRONYMIC NAME

E-MAIL

PASSWORD

CONFIRM PASSWORD



After clicking Continue a confirmation link will be sent to your email address



I hereby give consent for my personal data to be processed in accordance with the Federal Law "On Personal Data" No. 152-FZ. I also agree to the Terms of use.

Show more

Continue

DISPUTE RESOLUTION IN THE DIGITAL ERA: ONLINE SYSTEM OF ARBITRATION

SKOLKOVO LEGALTECH LEADER 2017

The best solution to automatize legal functions

The Online System of Arbitration developed by the Russian Arbitration Center won the first prize at Skolkovo Legal Tech Leader 2017.

User-friendliness

In 2018, the developers of the Online System of Arbitration received feedback from the users of the Online System of Arbitration – parties to arbitration and arbitrators. We took into account the feedback from the users and improved the availability of the Online System of Arbitration.

International expansion

Our main aim in 2018 was the availability of the Online System of Arbitration not only for the Russian parties, but for the international users as well. We have officially launched the Online System of Arbitration in English.

EVENTS OF RUSSIAN ARBITRATION CENTER



VIII St Petersburg International Legal Forum

15-19 May 2018
St Petersburg

Constitution, public element and the choice of arbitration: to what extent does the jurisdiction of the state court go?

The first day of the Legal Forum-2018 started with a cross-disciplinary workshop "Constitution, Public Element, and the Choice of Arbitration: to What Extent Does the Jurisdiction of the State Court go?"

The discussion focused on the arbitrability of disputes arising out of corporate procurement under the Federal Law No. 223-FZ.

The panelists discussed to which extent it was possible to limit the arbitrability of disputes, that is provided by law, due to the certain public elements of dispute, as well as which approach the court practice shall adopt.

The panel of speakers comprised: Roman Bevzenko (Pepeliaev Group), Andrey Panov (Norton Rose Fulbright), Andrey

Rybalov (Private Law Directorate at the Constitutional Court of Russia), Ekaterina Smirnova (Yakovlev & Partners), and Yuliy Tay (Bartolius). The moderator of the discussion was Dmitry Stepanov (Egorov Puginsky Afanasiev & Partners).

This workshop was organized with the support of law firm EPAM and the Russian Arbitration Center at the Russian Institute of Modern Arbitration.

Plenary Session “Future of the Legal Profession”

During the plenary session, Russian Prime Minister mentioned the protection of human rights and enhancing the authority of law (e.g. safeguarding the rights of investors) as the main goals for legal professionals. Dmitri Medvedev pointed out that the recent arbitration reform played an important role in achieving these goals and ensured that arbitration in Russia meets the highest international standards.

As a result of the reform, Russian jurisdiction got rid of bad-faith corporate and so-called “pocket” arbitration courts and created an effective instrument for protecting entrepreneurs’ rights.

The Prime Minister could not help mentioning the growing importance of new technologies in law and the digitization of

entire sectors of the economy. “This makes crucially important to prepare a future generation of lawyers capable to face completely new challenges. This achievement – is the reason of our pride.” – said Dmitri Medvedev. In this regard, Prime Minister praised the HSE student team’s victory in Willem C. Vis International Commercial Arbitration Moot, exceeding 360 teams from the entire world.

Francis Xavier (Rajah&Tann, Singapore, listed in RAC International Arbitration Database) shared a Singaporean point of view on the influence of new technologies on law. Importantly, Francis concluded that code could not yet replace human lawyers, as only they can solve the problems and resolve the disputes that arise from imperfection of new technologies.



Photo: Dmitry Medvedev, Prime Minister of the Russian Federation, and Francis Xavier, Arbitrator of RAC, Partner at Rajah&Tann. Plenary session of the Legal Forum, 16 May 2018

Andrey Gorlenko Is among the Winners of the Award “GQ Code”

The award ceremony for the winners of the award “GQ Code” took place in Saint Petersburg Academic State Capella. The expert committee, together with the editors of GQ, closely followed the lives of 30 prominent Russian lawyers in order to determine the winners for 10 nominations.

Andrey Gorlenko, Executive Administrator at the Russian Arbitration Center, received a prize in the nomination “Missionary” for the promotion and development of arbitration and ADR all over Russia.

Among other nominees were Olga Voytovich (Vice-President of legal department and member of board of directors at Interros) and Ruslan Ibragimov (Vice-President for Corporate and Legal Affairs at MTS PJSC).





Investment Arbitration: How to Ensure Fair Play between Foreign Investors and Host States?

The Russian Arbitration Center organized a discussion session on the most topical issues of international investment law and arbitration.

The first speaker, Mohamed Abdel Wahab (Zulficar & Partners, Egypt) produced an in-depth analysis of the recent reform and reconfiguration of the ISDS system.

Further, Francis Xavier SC (Rajah&Tann, Singapore) underlined the particularities of investment arbitration in Asia, while Aljona Bitkivskaya (SIAC, Singapore) highlighted the importance of the SIAC rules on investment arbitration.

Eric Bloom (Winston&Strawn, USA), shared his views on Chevron v. Ecuador saga. Brigitte Stern (independent arbitrator, France) and Christer Soderlund (Morssing & Nycander AB, Sweden) analyzed the balance between the rights of investors and States' regulatory powers.

Eva Kalnina (Levy Kaufmann-Kohler, Switzerland) scrutinized how to balance confidentiality and transparency in investment disputes. Maksim Kulkov (Kulkov, Kolotilov & Partners, Russia) summarized the discussion by answering the provocative question whether investment arbitration is worth it or not.

Anna Kozmenko (Schellenberg Wittmer, Switzerland) moderated the discussion.



SO STARTS THE GAME!



The Arbitration Battle 2.0: Team Russia v. Team World took place on 18 May.

The event happened in the format of mock arbitral proceedings, where the teams of Russian and foreign lawyers presented their case in a dispute related to the construction of football stadium "Cormoran Arena" during the preparation for the World Cup 2018.

The Claimant's case was presented by the team Russia, comprising captain of the team Elena Trusova (Bryan Cave Leighton Paisner Russia), Evgeny Raschevsky (EPAM), Ilya Rachkov (Nektorov, Saveliev and Partners). The team World that involved Clemens Trauttenberg (Wolf Theiss), Steven Finizio (Wilmer Hale) and Anna Kozmenko (Schellenberg Wittmer) argued the Respondent's case.

The arbitral tribunal comprised Yulia Zagonek (White & Case), Francis Xavier SC (Rajah & Tann Asia) and presiding arbitrator Stefan Wilskie (Gleiss Lutz).

Both teams presented to the arbitral tribunal unexpected evidence, and were generally creative in their approaches to arbitration. As a result, of the Arbitration Battle, the arbitrators adjudged the victory on the jurisdictional issues to the team Russia, and praised bright performance of the counsels, as well as surprise witnesses (who were presented by the lawyers of Bryan Cave Leighton Paisner – Rimma Malinskaya, Counsel, Dispute Resolution/Arbitration practice, and Aleksander Erasov, Counsel, head of Tax disputes Group). The arbitrators also gave positive feedback regarding the issues on the merits of the dispute to the team World.



Arbitration Food Truck Is Back on Legal Street!



This year, in the run-up to the World Cup 2018, Food Truck "Cape Kron" was stylized to the football design.

The guests of Legal Street treated themselves to traditional football fast food from all over the world: hot dogs, curry wurst, falafel, crispy vareniki and house style shkots.





One of the most successful arbitration conferences in Russia resumed its work after a 3-year pause

30 March 2018
Moscow

One of the most successful arbitration conferences in Russia resumed its work after a 3-year pause.

The organizing committee of RAD 2018 included Russian Arbitration Center at the Russian Institute of Modern Arbitration and educational project LF Academy. Among the organizing partners were international law firms Berwin Leighton Paisner LLP, Goltsblat BLP, Debevoise & Plimpton LLP.

The moderators of RAD 2018 were Andrey Gorlenko, Anton Asoskov, Alexander Muranov and Roman Khodykin. Prominent arbitration practitioners Constantine Partasides (UK), Stanimir Alexandrov (USA) and Michael E. Schneider (Switzerland) participated in RAD 2018 as special guests. In addition, Gary Born (UK) joined RAD 2018 with a recorded presentation on his proposal regarding the adoption of bilateral arbitration treaties. The panelists discussed various topical issues of international

commercial and investment arbitration: from the problem of illegally obtained evidence in international arbitration, to the corruption in investment arbitration and the role of psychology in a decision-making process of arbitrators.

Another prominent feature of RAD 2018 is a digest "New Horizons of International Arbitration" that comprises the articles by the participants of the conference. The digest was distributed among the attendees of RAD 2018 and is available online.

Overall, more than 200 lawyers attended RAD 2018, and more than 800 viewers followed live broadcasting of the conference online. Andrey Gorlenko, Executive Administrator of the Russian Arbitration Center at the Russian Institute of Modern Arbitration, commented: "We are enormously pleased about the success of RAD 2018. More than 1000 people joined RAD online and offline. It certainly indicates that arbitration becomes more and more



interesting to the Russian audience that is eager to keep up-to-date about the recent trends in ADR. We thank the speakers, the moderators, the organizing committee and all partners of the conference, and already looking forward to RAD 2019!"

According to Anton Asoskov, Professor at Lomonosov Moscow State University, Member of the Presidium of ICAC, one of the moderators of RAD 2018, "RAD is becoming more attractive to talented speakers. It is a unique platform for young practitioners, who can present the results of their academic research as an article in the digest or as a presentation during the conference. Every and all participants of RAD 2018 significantly contributed to the development of arbitration in Russia".





Arbitration in the Spotlight: Enforcement of Arbitral Awards and Interaction with State Courts after the Arbitration Reform

23 October 2017
Moscow

Another conference, organized by the Russian Arbitration Center together with the educational project LF Academy, addressed the preliminary results of Russian arbitration law reform, as well as the enforcement of arbitral awards and the interaction of arbitration with state courts after the reform. The Conference worked in three sessions.

During the first session, the moderator Prof. Anton Asoskov (ICAC), Andrey Gorlenko (RAC) and Fyodor Vyacheslavov (VLawyers) discussed the first outcomes of the arbitration reform. Tatyana Neshataeva (Judge, Court of the Eurasian Economic Union) and Evgeniya Goriatcheva (Legal Counsel, Permanent Court of Arbitration, the Hague), as the representatives of international arbitral and judicial institutions shared the experience of regulation of several procedural aspects that are topical in light of the recent arbitration reform.

The second session of the conference highlighted the issues of annulment of arbitral awards, as well as the recognition and enforcement in Russia and other jurisdictions. Several Russian and international legal practitioners spoke during the Session: Ilya Rachkov (Nektorov, Savelyev and partners), Yuri Babichev (Goltsblat BLP), Artem Doudko (White & Case LLP, London),

Andrey Panov (Norton Rose Fulbright), Chiann Bao (Skadden, Arps, Slate, Meagher & Flom LLP, Hong Kong), Klaus Reichert (Brick Court Chambers, London). The moderator of the Session 2 was Aleksey Doudko (Hogan Lovells)

The third session proceeded as an interactive workshop, with the support of the firms KPMG, Kulkov, Kolotilov & Partners and Lidings. The leading arbitration practitioners shared their experience on how to enforce an arbitral award efficiently: how to draft an arbitration agreement, considering further annulment and enforcement proceedings in state courts, how to trace the debtor's assets in several jurisdictions worldwide and how to counter abusive and dilatory technics while enforcing an arbitral award.

The panel comprised Evgeniy Rashevsky (EPAM), Anna Grishchenkova (KIAP), Andrey Zelenin (Lidings), Maxim Kulkov (Kulkov, Kolotilov and partners), Ashley Messik (GPW, London), Egor Misyura (KPMG). Aleksey Abramov (KPMG) moderated the workshop.



MODERN ARBITRATION ... LIVE

Discussion on arbitration in comparative perspective

In October 2017, Russian Arbitration Center launched a project – ‘Modern Arbitration: LIVE. Discussing Arbitration in Comparative Perspective’ - a series of seminars focused on the topical issues of international arbitration in a comparative perspective.

The main partners of the seminars are International and Comparative Law Research Center and the educational project LF Academy.

The first seminar took place on 24 October 2017, in partnership with HKIAC, and focused on the third party funding in international arbitration.

The second seminar was held on 7 February 2018 and addressed the role of the procedural «soft law» in the practice of international commercial and investment arbitration. The panelists discussed the following soft law instruments: IBA Guidelines on Conflicts of Interest in International Arbitration, IBA Rules on the Taking of Evidence in International Arbitration, IBA Guidelines on Party Representation in International Arbitration, UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration.

The third seminar took place on 16 May 2018, during St. Petersburg International Legal Forum 2018, in partnership with SIAC. The panelists analyzed the issue “How to Combat Due Process Paranoia in International Arbitration: Perspectives of Counsels, Arbitrators and Arbitral Institutions».

The fourth seminar was held on 26 October 2018 and was dedicated to the role of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards 1958. The panelists discussed the past, present and future of the Convention.



MOZOLIN CORPORATE ARBITRATION MOOT COURT



IVANYAN & PARTNERS

On 9 December 2018, the final round of V.P. Mozolin Corporate Arbitration Moot Court Competition, organized by the Russian Arbitration Center, took place.

The contest was held the second time and gathered participants from all over the country. In 2018, 340 students from Moscow, Saint Petersburg, Ekaterinburg, Tomsk, Vladivostok, Orenburg, Kazan, Perm, Chelyabinsk Region and Nizhny Novgorod participated in the competition. The moot court problem concerned such issues as right of the first refusal, recoverability of damages from a member of LLC, legal status of cryptocurrency, complex arbitration clauses, personal scope of arbitration agreement and binding force of MOU.

The task for the written stage of the competition was to prepare 4 legal documents for the further assessment by three impartial arbitrators. Only 24 teams eliminated to the oral rounds.

The oral stage of the contest consisted of preliminary rounds (8 December) and advanced rounds (9 December) that took place in the new office of the Russian Arbitration Center and Freshfields Bruckhaus Deringer. More than 60 experts in corporate law and ADR arbitrated the teams' pleadings.

The final between the team from Orenburg Institute (Branch) of The Kutafin Moscow State Law University and the team from Higher School of Economics was held in the Library of International and Comparative Law Research Center.

The panel of 3 arbitrators judged the finalists' pleadings: Anton Asoskov (LL.D, Professor, Department of Civil Law, Faculty of Law, Lomonosov Moscow State University), Roman Bezenko (PhD, Partner, Pepelyaev Group law firm) and Vladimir Bagaev (LL.M, Head of Zakon.ru).

Arbitrators chose three best teams:

- 1st Place – team No. 502 (Orenburg Institute (Branch) of The Kutafin Moscow State Law University; members: Ekaterina Markunina, Diana Starkova, Timur Nigmatullin, Irina Cherdintseva)
- 2nd Place – team No. 510 (Higher School of Economics; members: Anastasia Albukh, Egor Gafurov, Alisa Berman, Lada Bevz, Aigul Shaihutdinova)
- 3rd Place – team No. 393 (Higher School of Economics; members: Denis Sarvarov, Artem Asoyan, Vadim Absalyamov, Aigul Minnibaeva, Anton Muhametshin)

The best speakers:

- 1st Place – Marina Galitskaya (Russian School of Private Law), Egor Gafurov (Higher School of Economics)
- 2nd Place – Andrey Yakovlev (Lomonosov Moscow State University)
- 3rd Place – Irina Cherdintseva (Orenburg Institute (Branch) of The Kutafin Moscow State Law University)



Team No. 510 was awarded a prize for the best legal documents.

On 7 December 2018, the Moot Court Conference on the Current Issues of Corporate Law and Corporate Arbitration took place.

Olesya Petrol (Associate Professor, Russian School of Private Law, founding partner, Petrol Chilikov law firm) and Egor Chilikov (founding partner, Petrol Chilikov law firm) discussed controversial issues of corporate arbitration and, inter alia, the question of wide interpretation of arbitration clause.

Evgeniy Glukhov (Partner, DLA Piper) and Dmitriy Stepanov (Associate Professor, Higher School of Economics, Partner, Egorov Puginsky Afanasiev & Partners) continued the discussion focusing on the nature of shareholder agreements.

The Russian Arbitration Center expresses gratitude to all participants, arbitrators, speakers, and main partners of

the moot court: Ivanyan & Partners, ALRUD; and partners: Korelskiy, Ishchuk, Astafiev and Partners (KIAP), Hogan Lovells, Bryan Cave Leighton Paisner, Nektorov, Saveliev & Partners (NSP).

The Russian Arbitration Center expresses special gratitude to Freshfields Bruckhaus Deringer and International and Comparative Law Research Center for kindly hosting the oral rounds.

SUPPORTING MOOT COURTS COMMUNITY

Preliminary rounds of international arbitration moot courts

Student arbitration competitions in the format of moot courts – one of the most efficient means of the promotion of arbitration among the students and young practitioners throughout the world.

Russian Arbitration Center also actively supports the Russian moot-court community.



2nd Russian Pre-Moot of FDI Moot Court

On 2-3 November 2018, Russian Arbitration Center, in cooperation with Saint Petersburg State University, International and



and Saint Petersburg University Moot Court Society hold for the second time FDI pre-moot in Saint Petersburg.

14 teams from Russia and abroad, including teams from Latin America and Australia, participated in the FDI pre-moot in 2019. Two Russian teams, Moscow State University and MGIMO teams met in the final round.

After winning pre-moots in Paris and Warsaw, the Moscow State University once again took the first place in the competition.

On the day before the competition, joint Young IMA - Young ICCA conference took place. It focused on the issues of investment treaty arbitration contested in the 2018 FDI problem, particularly of counterclaims in investment arbitration and balancing host States' regulatory freedom with investors' legitimate expectations.

2nd Russian FIAMC Pre-Moot

Moscow FIAMC pre-moot organized by the Russian Arbitration Center together with international law firm



took place on February 9-10, 2018.

This year, 7 teams from all around the world participated in the Pre-Moot: Goethe-University (Germany), University of Ljubljana (Slovenia), Belarus State University (Belarus), Peking University School of Transnational Law (China), Lomonosov Moscow State University (Russia), National Research Center Higher School of Economics (Moscow, Russia) and Russian State University of Justice (Saint Petersburg, Russia). On February 9, students and arbitrators attended a mini-conference that addressed the contested issues of this year's case concerning the seizure of Portuguese and British vessels by Spain. The panel of speakers included: Diego Brian Gosis (Partner, GST LLP, Miami), Veronica Sandler (Professor, University of Buenos Aires), Iliia Rachkov (Partner, NSP, Moscow), Nikita Kondrashov (Associate, Luther, Hamburg), Elena Burova (Specialist, Russian Arbitration Center, Moscow).

On February 10, during the entire day teams participated in oral rounds. 30 practicing lawyers from the leading law firms (Baker Botts, Freshfields, Dentons, Norton Rose Fulbright, White & Case, Dechert, Herbert Smith Freehills, Latham & Watkins, Debevoise & Plimpton, Beiten Burkhardt, Goltsblat BLP, Clifford Chance, Lex Navicus Concordia, EPAM, Ivanyan & Partners, MZS) served as extremely tough arbitrators asking challenging questions that students were forced to answer with all their intelligence and advocacy.

As a result of the preliminary rounds, the team of University of Ljubljana faced the team of Ghoete-University in the finals. Veronica Sandler, Ilija Rachkov and Diego Brian Gosis presiding had a hard time deciding which team deserved a winning prize. In a remarkably close and tense round, University of Ljubljana was unanimously recognized as a winner. Best advocate award was given to Damen Tursic (University of Ljubljana).

The Team of Higher School of Economics is the Winner of Willem C. Vis Moot Court 2018

For the first time in the history of the Russian moot court community, the Russian team won the largest international moot court competition - Willem C. Vis International Commercial Arbitration Moot, and outplayed 361 teams from 82 countries. In the final round, the HSE team defeated the team from Cambridge University.

Russian Arbitration Center was one of the sponsors of the HSE team.



Pictured (from left to right):

Ludovico Amianto, Vera Bykova, Vladimir Kostsov, Aleksander Kononov (Minister of Justice of Russia), Gayana Gulian, Elena Mazetova (Coach of the HSE team), Elza Dauletshina (Coach of the HSE team)

St. Petersburg International Legal Forum, 18 May 2018

PROMOTING ARBITRATION THROUGHOUT RUSSIA

2018



- **16 February 2018**
Ekaterinburg
Arbitration Conference 'Business Disputes: Criminal Law or Civil Law Way of Resolution?'
XV International Conference 'Kovalyov Readings'
- **5 April 2018**
Kemerovo
Roundtable 'Alternative Dispute Resolution: Arbitration and Mediation. New Opportunities for Business'
- **13 April 2018**
Krasnoyarsk
The Russian Jurisdiction – a Factor for the Investment Attractiveness
Krasnoyarsk Economic Forum
- **27 April 2018**
Kaliningrad
Seminar 'Modern Means of Dispute Resolution and the Protection of Businessmen's Rights'
- **15-19 May 2018**
St. Petersburg
Panel 'Investment Arbitration: How to Ensure Fair Play between Foreign Investors and Host States?'
VIII St. Petersburg International Legal Forum
- **26 May 2018**
Yuzhno-Sakhalinsk
Seminar on the arbitration-related issues at the Sakhalin Bar of Attorneys
- **4 September 2018**
Ekaterinburg
Conference 'Private law and arbitration'
- **17 September 2018**
Yuzhno-Sakhalinsk
Seminar 'Arbitration as modern and effective tool for resolution of disputes. Protection of investors' and entrepreneurs' rights.'
- **26 October 2018**
St. Petersburg
Russian Arbitration Center became a partner of the Eighth Scientific Air Law Conference.
- **2 November 2018**
St. Petersburg
Organization of conference and FDI pre-moot
- **December 2018**
Launch of 'Controversial question' broadcasting on Business FM radio.



COURSES BY CHARTERED INSTITUTE OF ARBITRATORS (CIARB)

Since 2017 the Russian Arbitration Center, in cooperation with Chartered Institute of Arbitrators (CI Arb), has started organizing CI Arb courses on international commercial arbitration.

The introductory course of the Russian Arbitration Center and CI Arb addressed the main issues of international arbitration: principles of arbitration, arbitration agreements, jurisdiction of arbitral tribunal, enforcement of arbitral awards etc.

The course tutors are George Lambrou (Thomas Cooper) and Francis Xavier (Rajah & Tann).

Specialists both from Russia and , from Armenia, Israel and South Africa take part in courses.. As a result of the course

completion, the participants receive the access to online test for the application for the associated membership with CI Arb (ACI Arb), that further allows to apply for other types of membership with CI Arb – MCI Arb and FCI Arb.

CI Arb was founded in 1915 and today comprises about 13 000 members in more than 100 countries. CI Arb holds various seminars and conferences for the arbitrators, aimed at improving knowledge in the field of international cooperation.



INTERVIEW WITH GARY BORN¹

¹ Gary Born, Chair of the International Arbitration Practice Group in Wilmer Cutler Pickering Hale and Dorr Law firm; the President of the SIAC Court of Arbitration
Andrey Gorlenko, Executive Administrator of RAC

² Video version of the interview is available here: <https://www.youtube.com/watch?v=ewu2IGZZWNA>

Andrey Gorlenko: In your opinion, what are the most appealing advantages of arbitration comparing to litigation of domestic and international disputes?

Gary Born: I think there are two main sets of reasons. One of them you might describe as pragmatic or practical. I think of those reasons as “5 E’s”. Arbitration is more efficient, more expeditious, more expert, more even-handed and more enforceable. These are five reasons why commercial parties and states increasingly prefer to use arbitration to resolve both domestic and also, very importantly, international commercial and other disputes.

Arbitration is more efficient in most of the cases, but not all cases, as no method of dispute resolution is perfect. It is more efficient in most cases, because the procedure can be designed by the parties and arbitral tribunal based upon the specific needs of two parties or various parties to a dispute based on specific characteristics of that dispute, instead of taking one set of procedures from the shelf and imposing them on an individual case. One designs and tailors carefully procedures in an individual case. That means that proceedings are not just more efficient and cheaper for commercial parties, but also more expeditious. It can also be quicker because arbitration does not involve all multiple layers of appellate review always with a possibility that you will be returned back to the first instance court only to begin the entire process once more. Arbitration is in a sense one-step shorter: you have your dispute resolved in a single proceeding and that decision is final and binding. One realizes arbitration’s efficiency, because one does not have layers of appellate review. Arbitration is particularly efficient and expeditious in international cases because, in contrast to domestic disputes, international disputes can be and very frequently (if the parties haven’t agreed to arbitration) litigated not just in one country’s courts but in two or three or four or five different countries’ courts, that parties pay for the privilege not just of one set of lawyers in one country but multiple sets of lawyers in different countries.

Arbitration is more expert not only because of design of procedures for an individual case, but also because of choice of arbitrators: that is the essence of arbitration that the parties

choose the decision-makers, they choose a non-governmental decision-maker to resolve their dispute and they choose the decision-maker based upon his or her expertise in the subject matter. The parties know better than anyone else what their dispute concerns, what characteristic capabilities are required to resolve it expertly and they, therefore, have a strong incentive to choose someone, who is truly expert or a panel of decision-makers who are truly experts. In contrast, the state court judge, in addition to being overworked, must decide cases involving administrative law, environmental regulations, tax disputes, employment disputes, everything in the world, perhaps, except the particular type of joint venture dispute or construction dispute that the parties’ case in an individual arbitration actually involves. In addition, that is especially important in international context: if the parties have, let us say, infrastructure project in the Middle East, they can choose an expert in both Middle Eastern law and infrastructure projects in that part of the world. That type of expertise is invaluable for commercial parties, but also for states, when it comes to the resolution of their disputes.

Arbitration is more even-handed, particularly in the international context, because instead of having a dispute resolved on one party’s home turf (a dispute against a French company resolved before a French judge), one can have a dispute resolved in an independent, neutral third country before an independent and impartial arbitral tribunal. In that, sense arbitration is more even-handed, more neutral and independent than litigation in each party’s own home courts. Finally, arbitration is more enforceable, arbitration, especially in the international context produces a final and binding award, just like a national court judgement.

Andrey Gorlenko: Some people say that currently international arbitration is undergoing through challenging times, some even say about the lost promise of international arbitration, criticizing that it fails to provide parties with quick and efficient procedure and that arbitration and arbitration rules are becoming more complex. In your opinion, are these concerns justified, and what can be done to address these concerns from the prospective of the arbitral institution?

Gary Born: They are in a sense not new questions or new concerns; they are perennial concerns about arbitration, to some extent, perennial hostility by some national courts to the arbitral process, criticism of arbitration that it is a kind second class or rough justice, suggestions that arbitration is not quicker and cheaper, but in fact slower and more expensive. In my view, many of these criticisms arise from misconceptions and misunderstandings of international arbitration today.

International arbitrations are like snowflakes, like people, everyone is unique, everyone is different. There are international arbitrations that involve huge amounts of money, extraordinary complex factual, technical, legal disputes, for instance, arbitration that involve 30 or 50 billion dollars, long-term construction project that would take literally decades to complete and goes horribly wrong. Resolving that type of dispute, on which each company's future depends and which could take national courts literally again decades to resolve, would not be resolved cheaply and quickly. Those kind of disputes takes a careful study by experts, by lawyers, by arbitrators as well. Those types of disputes take a long time to be resolved by any means of dispute resolution, including arbitration. Importantly, in the last 20 years one has seen commercial parties submit those types of disputes, not small disputes, not routine, day-to-day disputes, but the biggest disputes that the companies face, and sometimes states face, to international arbitration. They have trusted the arbitral process to resolve those disputes expertly and even-handedly. In order for a dispute of that complexity to be resolved fairly and expertly, time is required, time and investment in people, in expertise. In my view, international arbitration is preferred by companies for those types of disputes, because, although it is expensive, it is less expensive than the alternatives and that is the real question.

Many disputes, however, are not that kind of headline, eye-catching disputes, involving 30 or 50 billion US dollars. Many international commercial disputes are more like traffic accidents, they involve a hundred thousand dollars or millions of dollars, not the types of disputes for most companies that determine their future, determine whether they will survive or not, but instead the day-to-day flow of the international commerce. Those disputes need to be resolved efficiently and quickly, and I believe

that international arbitration does that. It does it in part through innovations in procedural rules that various arbitral institutions have adopted.

At the SIAC, for example, we have introduced 3 procedural innovations. One – we have introduced an emergency arbitration which allows an emergency arbitrator to be appointed before an arbitration even begins, within the space of one calendar day, who is required within the space of 2 weeks to issue emergency interim measures, freezing the status quo, assuming that the claimant, the party, requesting such measures, has demonstrated the appropriate need for that. That provides a mechanism for ensuring that the party's rights are safeguarded, while the dispute resolution process proceeds.

Second – we have introduced expedited procedure - Rule 5 in our SIAC Arbitration Rules allows the arbitration to be resolved through expedited procedure, provided that the claim is at relatively small value, beneath an amount of around 4, 5 million dollars or, alternatively, that it is the case of exceptional urgency, or if the parties mutually consent after the dispute arises. In all those situations, if the cases are expedited by SIAC, then, an award must be made by the arbitral tribunal within 6 months. Typically, the arbitral tribunal will be a sole arbitrator, again to ensure that the proceedings will be expeditious and that they will be cheap. Award can be in a summary form, it can be made without any in-person hearing before the arbitral tribunal.

All of that ensures that the arbitral process for these types of small disputes will be expeditious and efficient. In the last 8 years, since the introduction of these rules, we have had 480 or so applications for expedited procedure and have granted 275 or 60 %. In my view, it demonstrates how the arbitral process can be efficient and expeditious for appropriate types of disputes. We would not use that type of procedure, of course, for the 30 billion dollars construction project that goes badly wrong. However, for small cases, we would use that type of procedure. In our consultation process in 2016, when we revised our rules, we asked the parties around the world, business around the world: "Do you like expedited procedure? Should we expand it? Should we enhance it?" In response, they uniformly and en-

thusiastically said that we should. Other arbitral institutions have adopted similar mechanisms, for instance, the ICC very recently has adopted similar set of procedures. I expect other arbitral institutions to do so as well.

Finally, like ICSID, the International Center for Settlement of Investment Disputes, our third innovation has involved early dismissal. We have affirmed the authority of an arbitral tribunal to dismiss on an early basis claims that manifestly lack legal merit, as well as defenses that manifestly lack legal merit. We have also affirmed the arbitral tribunal's authority to dismiss on jurisdictional grounds at an early stage. All of these is meant to ensure that arbitration will not go for a great length on claims that either frivolous or lack any serious basis. I think, these are important steps that both we and other arbitral institutions have already taken, and we should explore other types of procedural innovations that will allow arbitration to be understood to have realized its promise.

Andrey Gorlenko: As you said, arbitral institutions are step by step dealing with them and it also leads to changes in international arbitration. Two of your books "International Commercial Arbitration" and "International Arbitration: Law and Practice" have undergone through second editions not long ago. Can you point one or two most interesting trends that you noticed in comparison with the first edition of these books?

Gary Born: I will be delighted to, let me first underscore the point that you made, that I think really does need an emphasis. International commercial and economic relationships, international legal relationships have become vastly more complicated in the past 10-20 years. Many relationships involve types of technologies that one never envisaged 20 years ago. They involve legal rules that developed rapidly, whether intellectual property or competition law or types of contractual relationships, which are relatively new. In the past, 30-40 years ago, those disputes often would not have been arbitrated, they often are huge disputes involving multiple parties, involving vast amounts of money, involving huge long-term investments, one thinks of investments in energy sector, which require commitments. These disputes

today are resolved by arbitration, because business and states have confidence in arbitration process to resolve those disputes. One of the aspects of arbitration, which makes it so attractive, is that you can tailor the dispute resolution process to different kinds of disputes. Arbitration has responded to those new types of highly complex, very large disputes by using complex intensive procedures: that is appropriate, that is what the parties want. Because those cases attract substantial attention, one tends to think "that's international arbitration". However, the reality is that there exists another, much larger set of cases that are very small and much less exciting, much less interesting: they are routine, traffic accident type of cases and that reflects a very important reality of international arbitration as well. It is less exciting, but it is more realistic in another way.

As for my books: I think there are two principle differences between the first and the second editions. One trend, that I noticed, was a trend among national courts in different jurisdictions to look to one another interpretations of, for example, New York Convention, UNCITRAL Model Law, to adopt reasoning that have been used in other courts, whether it is the House of Lords or the UK Supreme Court now looking to either US or German or French authorities, whether it is the US Supreme Court looking to international arbitral awards, whether it is courts in other countries (India, Singapore, elsewhere) looking to either civil law or common law decisions. And out of these different national court decisions looking to essentially international instruments (the New York Convention, the UNCITRAL Model Law) and to other national courts interpretations of these instruments has, in my view, developed a type of international arbitration law, a common law of international arbitration, that gives effect to these international instruments. I think that is an exciting set of development that offers further promise in the development of international arbitration.

Second, I have also seen national courts and arbitral tribunals as well develop new and robust legal theories about giving effect to the arbitral process, whether it is the validation principle in the context of the validity of international arbitration agreements or choice of law, governing the substantive validity of arbitration agreements or pro-arbitration rule of interpretation of the scope

of arbitration agreements, or recognition of the arbitral institution's responsibility for providing an efficient and expeditious means of dispute resolution. All of these different types of developments have reinforced the "5 E's" that lead parties to arbitrate. And I think national courts, working in tandem with arbitral tribunals, have played a very important role in this public-private partnership that makes international arbitration successful.

Andrey Gorlenko: In your book, you have used the list of the 19 leading arbitral institutions, to which some refer as "Born's Finest". Are there any specific features to make our institution qualify as the "Born's Finest" and what is your advice to the young institutions, such as the Russian Arbitration Center, to come closer to this list?

Gary Born: That is a list that continually evolves and changes over time, just as international arbitration and arbitral institutions change over time. I had compiled that list in 1992, it would not have SIAC on it and some of the institutions that would have been on the list at that point are no longer on the list. I think it is important to see that this is a snapshot in a particular period in time and the door is not closed. Indeed, I think it is inevitable that other institutions will be added and some institutions will unfortunately be dropped. That is a part of the nature of the competitive process creative destruction, as I think some famous economists remarked.

What are the attributes that lead an institution not necessarily to be on my list, but lead an institution to be recognized by international businesses, international lawyers around the world as a credible international arbitration institution? I think there are variety of factors. One I think needs to be a relative degree of experience. The arbitral institution must have demonstrated the administration of a sufficient number of cases and not only that they have a credible set of rules. One needs a credible set of rules, a set of institutional arbitration rules that are in accordance with the best international practices whether one takes those as the UNCITRAL arbitration rules or the ICC, the SIAC rules, but a set of procedural rules that make sense and that are consistent with the international best practices. One also

though needs, in addition to these rules, experience administering them. One needs to have conducted a number of arbitrations, chosen arbitral tribunals resolved challenges, scrutinized awards, made decisions about tribunal's compensation in a way that has resulted effectively in the award, the final resolution of the parties' dispute. One does not go to a doctor based just on where she went to medical school. One goes to a doctor because of those types of diseases she cured in the past, the types of patient she dealt with. Once a doctor with experience - and exactly the same thing is true for arbitral institutions.

I think one looks to various indicium to ensure oneself that the five "E's" are met by those arbitral institutions. In particular, that they are even-handed, that they are independent from government involvement, that they will independently and impartially select arbitrators, that they will independently and impartially resolve challenges to arbitrators, that they will conduct arbitration in a professional and independent manner and scrutinize the award both professionally in the sense of making sure that the arbitral tribunal has done its job, but also independently in the sense of not interfering with the arbitral tribunal's ultimate responsibility for the decision. I think acquiring the reputation, the expertise, the experience, that gives international parties confidence, takes time inevitably and, in some senses, it is a little unfair, because reputation always lags the reality in a way that one can be administering arbitrations very effectively, with an excellent set of rules, behaving in a professional and independent manner. The world has not realized it yet, it takes a little bit of time for people to actually catch up with the realities of institutions' practice, just like with the realities of young arbitrators' practice.

Andrey Gorlenko: Do you think that new technologies can help in cooperation between arbitral institutions? For example, blockchain technologies? Whether there should be some kind of joint reaction from arbitral institutions to cybersecurity challenges?

Gary Born: I think that the notion of joint reaction on cybersecurity issues and IT security is a very good one. I think that arbitral institutions should cooperate as I think new technology offers

both exciting opportunity and to some extent frightening challenges to international arbitration, like to other types of international commerce and other types of dispute resolution. I think that one can well envisage a time in the not too distant future, when we will not need paper and arbitral proceedings, and actually be able to complete the proceedings using electronic data and laptops. In fact, one will not need a physical hearing that technology will allow witnesses to be questioned and lawyers to make their submissions, just as effectively by video conferencing and other means of technical virtual reality that we use today in-person hearings. I am not sure that will happen as quickly as paperless arbitration, but I suspect that in the space of both our careers we will see arbitrations conducted by hearings in virtual space instead of a real physical space.

Andrey Gorlenko: This year marks the 60th anniversary of one of the most important and successful multilateral treaties in the field of arbitration, the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards. How do you see the future of the Convention and whether any changes are needed because 60 years have passed?

Gary Born: Indeed, the 60th birthday of the Convention, it has been fairly extraordinary 60 years in a sense the Convention started out to some extent inauspiciously, it wasn't signed by about half of various states that in the spring-early summer of 1958 negotiated and finalized the text of the Convention. It took many years for many leading economies around the world actually to ratify the Convention. However, today, the Convention is global, universal, it has 159 contracting states. There are few countries, North Korea, some Pacific Island states that are not parties to the Convention, also a few African states, but for the most part, the Convention is a truly global Constitution for international commercial arbitration.

One could write books, some people have written books about the Convention. In my view though, the former President of the International Court of Justice, Steven Schwebel, summed up the Convention in that 60-year history very well in just two words: "It works". In my view, if something works, then you do not need

to fix it, "if it is not broken, don't fix it", as an old English saying goes. Therefore, I have very considerable skepticism about the wisdom of efforts to suggest the New York Convention version 2.0, efforts to treat the existing Convention as a beta version.

The existing Convention, although being drafted quickly and in reality a page and a half long, when you just look at the important articles 1 through 7, I think, has a genius in its simplicity and to some extent flexibility. It combines extraordinary set of international rules that make private contracts, agreements to arbitrate mandatorily enforceable, as a matter of binding international law. 159 states have chosen to treat international commercial arbitration agreements in that unique fashion and also to treat arbitral awards and in that same fashion to undertake as a binding matter of international law to recognize those awards in each case, subject only to fairly limited international exceptions, quite limited and exhaustively defined international exceptions.

In the same time, the Convention has escape valves. It has escape valves for national public policy and so-called arbitrability, for cases that are not capable of settlement by arbitration under national law. Those escape valves give nations, the contracting parties, the possibility of avoiding their obligations under the Convention in a limited set of cases, where important national public policies are thought to demand. Importantly, countries around the world, courts around the world have not made expansive use of those exceptions, they have used that power to have an escape valve from the Convention in a very guarded, in a very modest way, in fact, they have developed international limitations on those exceptions. I think that it is a very delicate, much nuanced, very sophisticated blend of international obligations and national flexibility that has been cared for in a very sensitive way by national courts. I would not disturb that very delicate constitutional balance that continues to evolve and which, going back to your question about the second editions of my book, which I have tried to capture in the successive volumes of my books. I think that is an important continuing development and I would not interfere with it.

Andrey Gorlenko: In your view, what else can be done to promote pro-arbitration approach among state courts and judges in any jurisdiction?

Gary Born: I think events like this, discussions about international arbitration, law and policy, discussion about the NY Convention.

Andrey Gorlenko: And translations of your book.

Gary Born: Yes, the book has been translated into Mandarin in China. "International arbitration: Law and Practice" has been translated into Mandarin, and Spanish translation is underway. I think that the "Law and Practice" in Russian would be a very interesting idea. I think events in which members of the judiciary are given opportunities to learn more about the international arbitral process and the New York Convention are important. I think in every country, I cannot speak for Russia, but I can speak for other countries, busy trial court judges, who have very broad dockets of general jurisdiction, understandably find not just the New York Convention, but also any international treaty to be an alien instrument. They are not things that they frequently encounter. They, in a sense, push the judges out of the comfort zone, they worry about if they apply them in the wrong way or they will not understand them properly. International law is not always the thing that trial court judges in many countries or even appellate judges spend most of their time doing. I think there is, therefore, a hesitation, a reluctance to dive into those international waters. Doing things to overcome that reluctance and instead to inspire the judges to participate in the public-private partnership, that the New York Convention contemplates, is very important.

Andrey Gorlenko: You have more than 650 arbitrations as a counsel and 125 arbitrations as an arbitrator. So much arbitration, except being a great pleasure and training for mind, is also sometimes stressful and complex. So how to avoid stress and how to get rid of it? Hobbies? Do you have some recommendations?

Gary Born: That is a good question. Arbitration is in a sense stressful. One can debate whether it is more or less stressful than national court litigation, but any type of adjudicative process is stressful. It is probably especially stressful for parties and for lawyers, counsels representing parties. It can also be stressful for arbitral tribunals themselves. I think it is important not to let that stress to undermine the basic five "E's", the basic purpose of the arbitral process.

In addition, to be honest, the basic purpose of life is having a productive and generous approach towards other people. Finding time away from cases, whether as counsel or arbitrator, is important. I have chosen a peculiar path, a path of using that time to write books about arbitration. For some, that was even more stressful than being counsel, but for me it is less stressful. When I sit down and write about some aspect of arbitration, when I discover some new secret about the Moscow Convention of 1972 that dealt with international arbitration, it revitalizes me; it takes away the stress and let me go forward feeling unstressed and willing to face new challenges.



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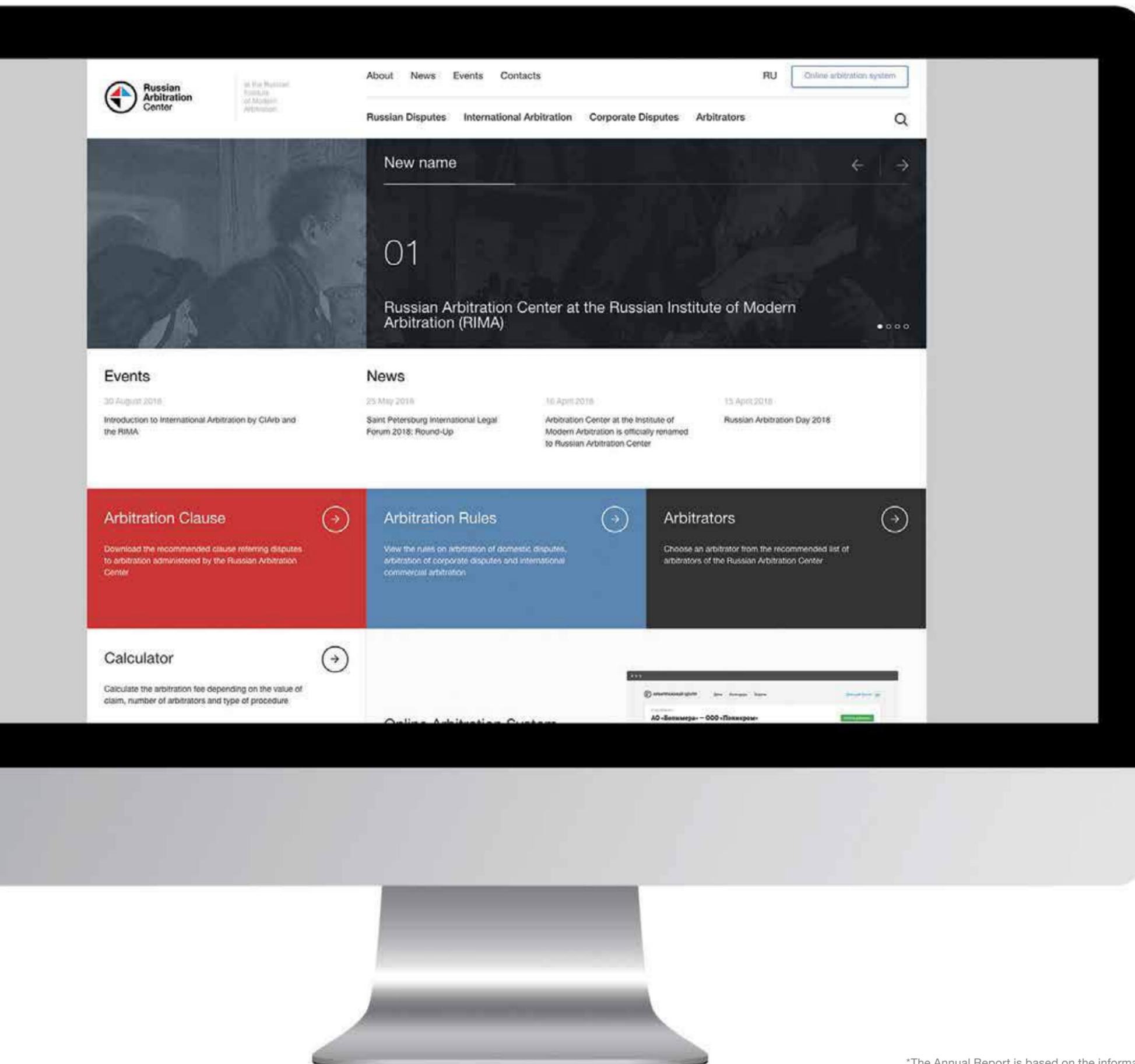
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In October 2017, the Russian Arbitration Center presented the new website – more user-friendly and informative, with a new design and interface. The home page allows finding in one click all information that may be relevant for the users, from the Arbitration Rules and calculator of the arbitration fee to the model arbitration clause and online arbitration system.

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