



**Russian
Arbitration
Center**

at Russian
Institute
of Modern
Arbitration

Guidelines on Jurisdiction of the Arbitral Tribunal

General Provisions

1. Before considering the case on the merits, the Arbitral Tribunal must resolve whether it has jurisdiction, that is, establish the existence and the scope of its mandate with respect to the specific dispute.
2. A valid and enforceable arbitration agreement shall serve as the main source of jurisdiction.
3. The arbitration agreement is autonomous. The autonomy of the arbitration agreement may be seen in two main aspects – its autonomy from the main contract and the national law. By virtue of the principle of autonomy of the arbitration agreement, the Parties may stipulate that the law applicable to the arbitration agreement may be different from the law applicable to the main contract and the law applicable to the procedure of arbitration.
4. If the Arbitral Tribunal declares the contract containing the arbitration agreement invalid, that circumstance in itself shall not entail the recognition of invalidity of that arbitration agreement.
5. The validity and enforceability of the arbitration agreement shall be determined according to the law agreed upon by the Parties as applicable to the arbitration agreement. In the absence of the Parties' agreement, as a general rule, the Arbitral Tribunal is guided by the law of the seat of arbitration.¹

¹ G. Born, *International Commercial Arbitration*. 3rd ed. (2021), p. 534; Resolution of the Plenary Session of the Supreme Court of the Russian Federation No. 53 dated 10 December 2019 "On Performance of Functions of Support and Control in regard of Arbitral Proceedings, International Commercial Arbitration by Courts of the Russian Federation", para. 27.

Possibility of Referring a Dispute to Arbitration (Arbitrability)

6. The arbitration agreement shall produce legal effects (shall be valid) only when it is concluded with respect to disputes that may be referred to arbitration and between those Parties that are entitled to refer their disputes to arbitration in accordance with the law of the seat of arbitration (arbitrable disputes).
7. Non-arbitrable disputes are often the disputes arising from public law relations, disputes involving bankrupt debtor, patent disputes, etc.²
8. The Arbitral Tribunal shall verify the arbitrability of the dispute, irrespective of whether the Parties object against its jurisdiction.

Scope of Claims Referred to Arbitration

9. The Arbitral Tribunal's mandate shall directly depend on the scope of the arbitration agreement; thus, the award made on matters falling beyond the scope of the arbitration agreement shall not produce any legal effects.
10. The Arbitral Tribunal is advised to interpret the arbitration agreement broadly, unless as otherwise provided by the arbitration agreement itself or by the applicable law.
11. The Parties may agree to refer to arbitration only certain categories of disputes, for instance, exclude tort disputes or confine disputes to those connected to the performance of the contract.

² In Russia, the categories of disputes that may not be referred to arbitration are listed in Art. 33(2) of the Commercial Procedure Code of the Russian Federation (hereinafter, "**the Russian Commercial Procedure Code**") and Art. 22.1(2) of the Civil Procedure Code of the Russian Federation (hereinafter, "**the Russian Civil Procedure Code**"). The non-arbitrability of disputes may also be expressly stipulated by the federal law (Art. 33(2)(8) of the Russian Commercial Procedure Code, Art. 22.1(2)(10) of the Russian Civil Procedure Code).

Pre-Trial Dispute Settlement

12. In the arbitration agreement, the Parties may agree on a mandatory pre-trial procedure (complaint procedure, negotiations, mediation, etc.), which may become an integral part of the arbitration agreement.
13. It is advised to set out in detail the manner of conduct of any and all pre-trial dispute settlement procedures.
14. To conclude whether it has jurisdiction, the Arbitral Tribunal shall analyze whether the Parties have agreed on a pre-trial procedure, whether the Parties have used the opportunities to settle the dispute out of arbitration, and whether the Respondent has objected against the failure to comply with the mandatory pre-trial procedure. That said, arbitrators may have different opinions with regard to the impact that the compliance or failure to comply with the pre-trial dispute settlement procedure has had on their jurisdiction, depending on the law of the seat of arbitration.

Signing of the Arbitration Agreement by an Authorized Person

15. Depending on the applicable law, the signing of a separate arbitration agreement or an arbitration clause contained in the text of the main contract by an unauthorized person may result in termination of the arbitration due to the Arbitral Tribunal's refusal to recognize its jurisdiction to resolve the dispute.³
16. Accordingly, if the Arbitral Tribunal has doubts, it shall ascertain that the arbitration agreement is signed by an authorized person.

³ Russian courts consistently view the general powers vested in a representative for the conclusion of a contract as sufficient for signing an arbitration agreement (Ruling of the Supreme Court of the Russian Federation dated 12 May 2020 in Case No. A40-154780/2019).

Objections against Jurisdiction of the Arbitral Tribunal

17. The Parties are entitled to object against the jurisdiction of the Arbitral Tribunal to resolve the dispute.
18. The Arbitral Tribunal may, irrespective of a request by any Party, conclude that it does not have jurisdiction to resolve the dispute in certain cases, for instance, if liquidation proceedings have been initiated against the Respondent.
19. As a general rule, a Party is entitled to object against the jurisdiction of the Arbitral Tribunal no later than it files its submission containing its position on the merits of the dispute. The subsequent participation of such a Party in the arbitration in itself does not amount to recognition of the jurisdiction of the Arbitral Tribunal.
20. A Party may argue that the Arbitral Tribunal has exceeded the scope of its jurisdiction as soon as possible after the issue which the Party believes to be outside the jurisdiction of the Arbitral Tribunal is raised. For instance, it is important to bear in mind that, having consented to the jurisdiction of the Arbitral Tribunal with respect to the claims initially made by the Claimant, the Respondent may nevertheless argue that the Arbitral Tribunal does not have jurisdiction with respect to the claims that the Claimant may additionally make during the proceeding.
21. With a view to minimizing costs, the Arbitral Tribunal shall decide on its jurisdiction at the earliest stage of the proceedings to relieve the Parties from the need to prove their claims on the merits of the dispute if the Arbitral Tribunal lacks jurisdiction.
22. The Arbitral Tribunal may conduct separate oral hearings to resolve whether it has jurisdiction, as a preliminary matter. The Arbitral Tribunal may also invite the Parties, when agreeing upon the Procedural Schedule, to make bifurcation (that is, split the proceedings into two to resolve the procedural and substantive issues separately) to establish whether the Arbitral Tribunal has jurisdiction to resolve the dispute. If the Procedural Schedule has been agreed upon or the dispute is being considered under the expedited procedure,

the Arbitral Tribunal may invite the Parties to have a separate discussion on the issue on jurisdiction to resolve the dispute.

Imposition of Arbitration Fee in Cases Where the Arbitral Tribunal Issues an Order on the Lack of Jurisdiction

23. The arbitration fee shall not be refunded in cases where the Arbitral Tribunal issues an order on the lack of jurisdiction according to the Rules on Arbitration Fees and Arbitration Costs of the Arbitration Rules.
24. Notwithstanding that, the Arbitration Rules vest the Arbitral Tribunal with the discretion to rule on a different allocation of the arbitration fee and costs among the Parties (taking into account procedural conduct of the Parties, the circumstances of the specific dispute, etc.).

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