



Hong Kong

May 2019

HK IAC APPROVED AS ARBITRATION VENUE FOR RUSSIAN DEALS

Hong Kong's International Arbitration Centre became the first foreign venue to be allowed to arbitrate certain corporate disputes involving Russian companies on 4 April 2019.¹ The move follows reforms to Russia's arbitration laws which previously required the decision of a foreign arbitrator to be approved by a Russian court.

HK International Arbitration Centre's Dispute Resolution Services - Scope

As an approved 'permanent arbitral institution' under Russian law, the Hong Kong International Arbitration Centre will be able to handle:

1. Disputes involving parties from any special administrative region of Russia and disputes arising from agreements to carry out activities in any such region;
2. Corporate disputes involving a Russian legal entity which:
 - a) Relate to the ownership of stocks, shares in the charter capital of business companies and partnerships, share contributions by members of production cooperatives, their encumbrance and the exercise of rights arising from them (e.g. disputes arising from share purchase agreements); and

- b) Arise from the activities of registrars of holders of stocks and other securities in relation to the registration of rights to stocks and other securities, the exercise of their rights and discharge of obligations under Russian federal law in connection with their distribution and/ or circulation of securities.

Certain other corporate disputes, including derivative claims, can only be administered by approved permanent arbitral institutions which have special rules governing corporate disputes. The Hong Kong International Arbitration Centre does not yet have special rules for corporate disputes which would allow it to arbitrate these types of dispute. It is also unable to administer Russian domestic arbitrations because it does not have a separate division in Russia, which is a requirement for the administration of domestic arbitration.

Significance of Hong Kong as an Arbitration Venue for Russian Deals

With the imposition of Western sanctions, and the increasing difficulty of doing business in the US and Europe, notably the obstacles to opening bank accounts, many Russians have turned to Asia, and particularly to Hong Kong, to conduct business. With Mainland Chinese companies also increasing their presence in Russia, the Hong Kong International Arbitration Centre's approval as an arbitration venue is likely to contribute significantly to the expansion of Russia-Asia business. As an independently governed region of China with its own common law-based legal system, Hong Kong acts as the gateway between Mainland China and the rest of the world.

¹ Hong Kong International Arbitration Centre. "HKIAC permitted to administer disputes in Russia". 9 April 2019. <http://www.hkiac.org/news/hkiac-forges-new-relationship-russia>

Deals involving Russian and international parties are typically governed by contracts entered into under the laws of a jurisdiction other than Russia; often English law, and increasingly, Hong Kong law. Arbitration clauses commonly provide for the resolution of disputes through offshore arbitration, typically in London, Stockholm or Geneva. The recognition of Hong Kong's International Arbitration Centre as an authorised arbitrator for disputes involving Russian companies will boost Hong Kong's already growing reputation as an alternative foreign arbitration venue. It also puts Hong Kong ahead of rival Singapore, whose Singapore International Arbitration Centre is also benefitting from Russian arbitration's pivot to Asia.

The approval of the Hong Kong venue to handle arbitration cases involving Russian parties is another step aimed at encouraging Hong Kong-Russia business. Companies incorporated in Russia are now permitted to list on The Stock Exchange of Hong Kong Limited, although in the form of depositary receipts, rather than shares. This is because Russian law requires the shares of listed companies to be in uncertificated form, whereas Hong Kong still insists on the issue of paper shares. A double tax agreement between Hong Kong and Russia has been in place since July 2016 which minimises double taxation and reduces tax on trade between the two countries. The general aim behind these moves is to secure Hong Kong's position as a gateway for the flow of capital between Russia and Mainland China.

The HKIAC Administered Arbitration Rules

The Arbitration Rules of the Hong Kong International Arbitration Centre are available in Russian and 35 Russian-speaking arbitrators are listed on the Arbitration Centre's arbitrator panels. Russian-speaking tribunal secretaries, transcribers and translators have also been recruited.

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