ARBITRATION IN CIS COUNTRIES: CURRENT ISSUES
Brussels, June 21, 2012
GENERAL POLICY TOWARDS ARBITRATION IN RUSSIA

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Russian disputes abroad

- Energy generation & supply
- Commodities trade
- Foreign corporate borrowings
  - English material law
  - Foreign forums (mainly LCIA)
- Construction of commercial real estate
- Industrial upgrades
  - Supply of equipment
  - EPC projects
- Corporate disputes
  - Telecom, Energy
- Shipbuilding industry
- Investment claims
Key parties

- Gazprom (SCC, ICC)
- AAR (SCC)
- Rusal (LCIA, SCC, ICC)
- Rosneft (SCC)
- Sistema/MTS (ICC, LCIA, ICSID Additional Facility)
- Vimpelcom/Beeline (LCIA, SCC)
- Megafon (SCC)
- Rosneft (SCC, ICC)
- NLMK (ICAC, ICC, SCC)
- Russian Federation (SCC, PCA)
Stats SCC

Year
2003
2004
2005
2006
2007
2008
2009
2010
2011
Cases
22
22
19
16
19
17
4
4
19
0
5
10
15
20
25

Cases
Stats LCIA

The chart illustrates the number of cases year over year from 2005 to 2011. The number of cases peaked in 2009 with 31 cases, followed by 18 cases in 2010 and 10 cases in 2011. The number of cases decreased from 2005 to 2007, with 5 cases in 2005, 8 cases in 2006, and 4 cases in 2007. There was a significant increase in cases in 2008 with 14 cases.
Stats ICAC (MKAS)
Other Russia-related cases

- Cyprus
- BVI
- Bahamas
- Other

Additional 2-3 Russia-related cases/year per major institution

Total of ~120 institutional cases/year outside Russia
General interest in arbitration

![Graph showing trends in unique internet queries and unique visitors from www.yandex.ru and www.arbitrations.ru, respectively.]
Legal Framework

  - Amendments pending second reading in Parliament
- Code of Arbitrazh (State Commercial) Procedure
- New York Convention (1958)
- Moscow Convention (1972), Czech Rep., Slovak Rep., Russia, Bulgaria, Mongolia, Cuba
- ~ 60 BITs
- Energy Charter (until 18.10.2009)
- Not part of ICSID
Arbitrability

All commercial disputes with a foreign element
- international transactions
- foreign companies
- Russian companies with foreign capital

Disputes with public element
- Title to Real Estate (yes - Constitutional court)
- Corporate disputes (no)
  - Option agreements
  - SHA
  - SPA
- IPR (?)
Recent Case Law

- Courts’ interim measures in support of arbitration
  - *Edimax Ltd (Cyprus) v Shalva Chigirinsky*

- Impartiality of arbitrators
  - *Erick van Egeraat Associated Architects B.V. (Netherlands) v Capital Croup LLC (Russia)*

- Enforceability of ‘zombie’ awards
  - *Ciments Français (France) v Sibirsky Cement (Russia)*

- Diminishing role of ‘public policy’ defense
  - *Stena RoRo AB v JSC Baltisky Zavod*
Recent Case Law

- Optional forum clauses
  - Red Burn Capital (UK) v ZAO Factoring Company Eurocommerz (Russia)
  - Sony Ericsson Communication Rus (Russia) v. Russian Telephone Company (Russia)

- Arbitrability of real estate disputes
  - Constitutional court

- Award enforcement limitation period – 3 years
  - Constitutional court

Translated case law at www.arbitrations.ru
Enforcement stats

- No official stats

- Earliest known case
  - \textit{Ingosstrakh (USSR) v. Aabis Rederi (Norway) and Sovfrakht (USSR)}, 6 May 1968, Moscow city Court

- Historical periods
  - 1958 – 1991 (USSR)
  - 1993 – 2001 (Courts of common jurisdiction)
  - 2009 – 2012 (Arbitrazh courts – phase II)
Successful enforcements (approx.)

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Recent Trends

- Number of arbitrations increased
- Most valued disputes heard abroad
- Enforcement is being liberalized
- Court’s IMP in support of arbitration abroad
- No courts’ review on the merits
- Broader arbitrability
Possible State Reaction

- Amendments to Arbitration Law
- A new ADR institution
- A sole judicial supervisory body
- Optional jurisdiction clauses
- Anti-suit injunctions by Russian courts
- Retaining the exclusive jurisdiction for various types of disputes
Thank you!

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