ASIAN INSTITUTE OF ALTERNATIVE DISPUTE RESOLUTION

ADR CENTURION

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The AIADR shall be a repertoire of global jurisprudence, formed by professional membership, recognized by international institutions, striving for the advancement of alternative dispute resolution methodologies, for amicable conflicts management and effective dispute resolution.

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Thomas Crum, *The Magic of Conflict*

The AIADR is pleased to announce that our 4th Annual General Meeting will be held as follows:

Date: 16 June 2022 (Thursday)
Time: 5pm MYT (GMT+8)
Venue (Hybrid)
Virtual: Zoom Conference
In-Person: Unit 3.07, Level 3, KL Gateway Mall Gateway Mall,
No 2, Jalan Kerinchi, Pantai Dalam, 59200
Kuala Lumpur (WORQ KL Gateway)

Membership

Collaborate with us!

Members are welcome to reach out to the Secretariat for assistance or collaboration in organizing webinars on ADR topics of their choice. No charges are levied. Do not miss out on this great opportunity to enhance your resume by delivering a webinar for the benefit of other members and the ADR fraternity. Email us to register your interest!

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Members can now upgrade their membership level or get accredited as a Certified Practitioner through our fast-track path by virtue of having comparable membership or accreditation from equivalent international ADR organisations (e.g. Chartered Arbitrator with ClArb).

aiadr.membership@aiadr.world

Message from the President

Datuk Professor Sundra Rajoo

Dear Members,

Time flies, and we are now at the end of the first half of 2022. On behalf of the Asian Institute for Alternative Dispute Resolution (AIADR), it is my pleasure to welcome you to the 18th issue of the ADR Centurion. I hope you and your loved ones remain safe and healthy.

With the aim of delivering excellence in Alternative Dispute Resolution (ADR), AIADR continues our efforts in making an impact in the ADR industry. We thank all individuals for the constant support and trust in the work of the institute to achieve our vision in building a global platform in ADR. It is your confidence in the institute that succored us in expanding and achieving our vision.

I would also like to take this opportunity to thank the AIADR Secretariat, Office Bearers, PDECs, partner organizations and our newest subscribers for driving AIADR towards its goals. Please keep an eye out for our updates and posts on various social media platforms including Facebook, LinkedIn, Twitter and Instagram.

Some of our recent initiatives and collaborations are as follows:

1. With the aim of expanding the coverage and influence of the institute, AIADR has recently completed the signing of Memorandum of Understanding with Thailand Arbitration Center (THAC) and Maldives International Arbitration Centre (MIAC) respectively. I believe these collaborations will bring us a step closer to enhance the use of alternative dispute resolution (ADR) in Asia – Pacific area.

2. In the end of April, AIADR held a webinar on the topic of “Annulment, Recognition & Enforcement of Foreign Arbitral Awards”. We had an esteemed list of speakers including Dr. Thomas R. Klotzel, Elodie Dulac, Julian Bailey and Rina See to speak on the topic. The webinar discussed issues arising from the arbitral award of Fornan et al v Malaysia, including setting aside of arbitral awards in Model Law jurisdictions; and enforcement of award under the New York Convention. The recording of the webinar is uploaded in AIADR’s YouTube channel; please do check it out if you are interested.

3. Furthermore, AIADR was the endorsing organization for the CABE Malaysia International Conference 2022 “Overcoming Adversity in the Built Environment” organized by Chartered Association of Building Engineers (Malaysia). I was also honoured to be invited to share my views and insight on the topic of “Standard Forms of Contract Compared”.

4. Moreover, in AIADR continuous effort in building young talents, AIADR was also the supporting organization for the Malaysia Novice Arbitration Training Camp 2022 (MY – NATC). A few AIADR's members were invited to be the judge for the oral submission competition and AIADR's vice President Dato Quek Ngee Meng was the final round judge for that competition. Other than that, AIADR's Head of Secretariat, Heather Yee Jing Wah and Marketing Executive, Irin Tan Su Fern was also invited to be the speaker and shared the career prospect in ADR for one of the webinars in the training camp.

5. On 13th June 2022, organized the AIADR Online Fellowship Roundtable Series with the aim to provide a platform to all with similar interest to have a discussion on various topics regarding alternative dispute resolution (ADR). The topic of the first series is on "The Impact of International Mediation Principles on Apology Legislation". We had speakers from three different jurisdictions specifically from Hong Kong, United Kingdom and Australia to give their views and lead the discussion on this topic.

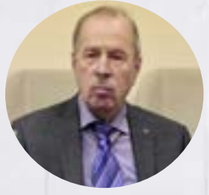
6. On 18th June 202, AIADR and Associated Chinese Chamber of Commerce and Industry (ACCCIM) jointly organized a webinar on the topic of "RCEP Agreement from the Alternative Dispute Resolution (ADR) Perspective". I myself, together with another AIADR Fellow member, Datin Chu Ai Li explained the dispute settlement mechanisms available under the RCEP Agreement, and how alternative dispute resolution (ADR) comes into function when disputes arise under this agreement. The recording of the webinar is available in our Facebook, do check it out if you are interested.

7. On 28th May 2022, AIADR and Peter D. Maynard Counsel & Attorneys co-organized our very first Annual ADR & Investment Summit : Asian and Other Emerging Markets. The objective of this summit is to raise consciousness about Alternative Dispute Resolution (ADR) and link international specialists and centers around the world. This Summit covered key pressing topics pertinent to both ADR and the investment areas including Online Dispute Resolution Technologies, Singapore Convention, the issue of Arbitrability and more.

In short, the first half of 2022 have been productive with how much we have accomplished. We thank all of you for the continuous support and contribution to AIADR. Please spread the work we do here to your close friends and colleagues. Stay safe, healthy and sincere good wishes.

""We will continue to deliver AIADR's vision for the long term and hopeful to sustain AIADR's value creation and progression despite the impact of the pandemic on global recovery"."

The ICAC/MKAS at the Chamber of Commerce and Industry of the Russian Federation turns 90



Prof. Dr. Alexey A. Kostin

- *President of ICAC/MKAS and Maritime Arbitration Commission at Russian Chamber of Commerce and Industry*
- *Professor of Law at MGIMO University, Moscow*

Dmitry Marenkov, LLM

- *Member of the AIADR Editorial Sub-Committee*
- *FAIADR, FCIArb, FHKIArb*

The International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry (ICAC/MKAS), one of Europe's eldest arbitral institutions, celebrates its 90th anniversary in 2022. This article covers its historical roots, its legal status and structure, its caseload as well as some practical aspects of arbitrating at ICAC/MKAS.

I. Historical Roots

The International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry (English abbreviation: ICAC; Russian abbreviation: MKAS; therefore referred to in this article as "ICAC/MKAS") looks back on a long history and tradition. It was founded in 1932 as Foreign Trade Arbitration Commission (FTAC) at the Chamber of Commerce of the Soviet Union. The first award was rendered on 15 November 1933.

The reference to the institution in numerous bilateral trade agreements signed by the Soviet Union enhanced its role at the early stage of its existence. The Convention on the Settlement by Arbitration of Civil Law Disputes Resulting from Relations of Economic Scientific and Technical Cooperation (Moscow Convention), which was signed by Socialist COMECON member states in 1972, further contributed to the scope of its activities.

In 1987 FTAC was renamed into the Arbitration Court at the Chamber of Commerce and Industry of the USSR and was later known as the Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation.

Another milestone was the enactment of the Law "On International Commercial Arbitration" in 1993 which implemented the UNCITRAL Model Law on International Commercial Arbitration in Russia. Annex I to the Law laid down the status of the institution as a permanent independent arbitral institution which received a new name: The International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation.

In its 90 year history ICAC/MKAS administered well over 10,000 international cases. While the institution for many decades was only entitled to administer international arbitration proceedings, since 2017 it also began administering domestic cases following the arbitration reform in Russia. The number of domestic arbitrations at ICAC/MKAS is constantly rising.

II. Status and Structure

Up until the arbitration reform in Russia (2015-2016) there were hundreds of arbitral institutions in Russia, most of them of hardly trust-worthy and reliable nature. For that reason, the Russian legislator decided to introduce a licensing system under which each arbitral institution requires a permission to administer arbitration proceedings issued

by the Government based on a recommendation by a Council for the Development of Arbitration at the Ministry of Justice. The criteria for granting a permission are mainly the existence of arbitration rules which reflect the requirements of Russian arbitration law and a list of arbitrators, as well as the reputation and good financial standing of the NGO establishing the arbitral institution. As a result, there are now only a few permanent arbitral institutions altogether in Russia, two of which with the longest tradition exist at the Chamber of Commerce and Industry of the Russian Federation, namely the ICAC/MKAS and the Maritime Arbitration Commission.

The ICAC/MKAS (https://mkas.tpprf.ru/en/) is nowadays one of the prominent arbitral institutions in Eurasia. Its legal status is governed by:

- the Federal Law No. 5338-1 "On International Commercial Arbitration" of 7 July 1993 (based on the UNCITRAL Model Law);
- the Statute of the ICAC/MKAS, Annex 1 to the Law "On International Commercial Arbitration";
- the Federal Law No. 382-FZ "On Arbitration (Arbitral Proceedings) in the Russian Federation" of 29 December 2015.

Since 1999 ICAC/MKAS has been a member of the International Federation of Commercial Arbitration Institutions (IFCAI). ICAC/MKAS is a beneficiary of the cooperation agreements concluded by the Russian Chamber of Commerce and Industry with the China Chamber of International Commerce/ China Council for the Promotion of International Trade (1996), the Federation of Indian Chambers of Commerce and the Indian Council of Arbitration (1996), the Japan Commercial Arbitration Association (1995), the Union of Chambers of Commerce and Industry of the Republic of Kazakhstan (2004), the Korean Commercial Arbitration Board(2004), the Chamber of Commerce and Industry of the Kyrgyz Republic (1994), the Chamber of Commerce and Industry of the Republic of Uzbekistan (2006).

The ICAC/MKAS activities are managed by the Presidium, the President (four Vice-Presidents) and the Secretariat. The Presidium consists of the President of the ICAC/MKAS, his Vice Presidents for relevant types of disputes, six members from the lists of arbitrators elected at the general meeting of arbitrators for a six-year period, as well as three members appointed by the President of the Chamber of Commerce and Industry of the Russian Federation. The Presidium analyses arbitration practice, reviews issues related to joinder and consolidation of arbitral proceedings, prolongation of deadlines for rendering awards, determines the ICAC/MKAS international policy and considers other matters of ICAC/MKAS activities.

There are four separate Nomination Committees for each sort of disputes: domestic, international, corporate and sports disputes. The Nomination Committees deal with default appointments of arbitrators (if a party has failed to appoint an arbitrator), appoint the sole and presiding arbitrators and are also responsible for any challenges and removals of arbitrators. The members of the Nomination Committees are elected by the general meeting of arbitrators included in the list of arbitrators (see below) for a six-year period which also includes regular rotation to avoid any conflict of interest.

In recent years, ICAC/MKAS has established over 20 branch offices in different regions of the country. Thus, arbitrations can be initiated either at the head office in Moscow or through one of the branch offices, for instance in St.Petersburg, Kazan or Vladivostok.

The Russian Chamber of Commerce and Industry and ICAC/MKAS publish the journal "Commercial Arbitration" (two issues a year) which welcomes articles, case notes and book reviews in Russian and English. The journal is also available in the Kluwer-Arbitration database.

III. Arbitrating at ICAC/MKAS

Rules

ICAC/MKAS offers a set of various rules which create a framework for cost- and time-efficient arbitration proceedings. They comprise:

- Rules of Arbitration of International Commercial Disputes;
- Rules of Arbitration of Corporate Disputes;
- Rules of Arbitration of Domestic Disputes;
- Rules of Sports Disputes.

Lists of arbitrators

Similar to most arbitration institutions in Asia, ICAC/MKAS offers lists of arbitrators. There are separate lists for domestic disputes, corporate disputes, sports disputes and international commercial disputes. The list of arbitrators for international commercial disputes comprises over 140 dispute resolution lawyers and professors from 24 countries (approximately one third of listed arbitrators are non-Russian arbitrators).

The lists of arbitrators generally are recommendatory in character. Thus, parties are free to choose arbitrators either from such list or from outside the list of arbitrators. However, under the ICAC/MKAS Rules the presiding arbitrator and a sole arbitrator are appointed by the ICAC/MKAS Nomination Committee from the list of arbitrators. Parties may deviate from this appointment procedure by laying down an alternative appointment procedure in the arbitration agreement.

Language of arbitration

In accordance with § 22 of the ICAC/MKAS Rules of Arbitration of International Commercial Disputes (in the following: ICAC/MKAS Rules) the parties can choose any language of arbitration proceedings. In the absence of any such choice, the arbitration proceedings will be conducted in Russian. If a foreign party wishes to arbitrate in any other language (e.g. English), it should be considered when drafting the arbitration agreement.

Place of arbitration

Pursuant to § 21 ICAC/MKAS Rules the place of arbitration shall be Russia. It is a mandatory rule which the parties may not deviate from. It means that Russian (UNCITRAL Model Law based) arbitration law will apply to all ICAC/MKAS arbitrations and Russian state courts will be competent to hear arbitration-related matters such as any potential requests for setting-aside of the award. There are only few examples in ICAC/MKAS's 90-year history in which its awards were set-aside by Russian courts.

Arbitration Proceedings

Pursuant to the ICAC/MKAS Rules the arbitral proceedings shall be completed and an award rendered within 180 days from the date of formation of the arbitral tribunal (§ 35 of the Rules). The average duration of ICAC/MKAS proceedings is five to six months.

The arbitration proceedings are initiated by filing of a statement of claim which has to be delivered in hard copy (paper) by mail to the ICAC/MKAS offices. The hard copy is necessary for a proper service of the statement of claim and attached documents to the respondent. All other correspondence in the course of the arbitration proceedings can be sent electronically, if the arbitral tribunal and the parties so agree.

All documents relating to the commencement and conduct of the arbitral proceedings shall be submitted by the parties to the ICAC/MKAS in six copies (four copies if the dispute is heard by a sole arbitrator). The number of copies shall increase where more than two parties are involved in the arbitration (§ 2, 9 ICAC/MKAS Rules).

An arbitral tribunal consists of three arbitrators, unless the parties agreed on a sole arbitrator or unless in view of the total amount of all claims and other circumstances the Nomination Committee decides, in its own discretion, that the case shall be settled by a sole arbitrator (§ 16 ICAC/MKAS Rules).

An arbitrator can be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not meet other requirements stipulated by an agreement between the parties or the applicable law (§ 17 ICAC/MKAS Rules). The Russian Chamber of Commerce and Industry has enacted Rules on Impartiality and Independence of Arbitrators which serve as a practical guide for arbitrators, parties and their representatives. The Rules stipulate circumstances that necessarily prevent the exercise of the arbitrator's powers and those circumstances that require disclosure. The Rules take into account foreign and Russian experience, in particular, the International Bar Association Guidelines on Conflict of Interest in International Arbitration and other documents of international and national professional associations as well as leading arbitration institutions. An updated version of the Rules on Impartiality and Independence of Arbitrators was endorsed on 30 September 2021 (available at: https://mkas.tpprf.ru/en/documents/).

In most cases a tribunal secretary ("reporter") is appointed at no extra costs to the parties whose tasks include keeping records of the hearings, participating in closed-door sessions of the arbitral tribunal and carrying out instructions of the arbitral tribunal related to arbitral proceedings. Reporters are subject to the same confidentiality obligations as the arbitrators.

One or several rounds of written submissions are followed by an oral hearing in which witnesses or experts can be heard. In the vast majority of cases the oral hearings are held at the ICAC/MKAS offices in Moscow. Parties, witnesses and experts can participate remotely, i.e. by means of videoconferencing. Parties can agree to hold hearings elsewhere in which case all additional expenses will be borne by the parties.

The arbitral tribunal resolves the dispute in accordance with the substantive law which the parties have chosen to apply to the merits of the dispute. If the parties have omitted to choose the applicable law, the arbitral tribunal will apply a law determined by the conflict-of-laws rules which it deems appropriate and take into account the applicable trade usages.

If, in the course of the arbitral proceedings, the parties settle their dispute, the arbitral tribunal may, at the request of the parties, render an award on agreed terms.

Prior to signing of the award, the arbitral tribunal shall submit the draft award to the Secretariat. The Secretariat may, without infringing on the independence of the arbitrators to make the award, direct the attention of the arbitral tribunal to discrepancies found, if any, between the draft award and the formal requirements provided by the ICAC/MKAS Rules. The Secretariat delivers the award to the parties.

While ICAC/MKAS proceedings are confidential, ICAC/MKAS regularly publishes anonymised practice reviews and summaries awards.

Expedited Proceedings

ICAC/MKAS Rules provide for expedited arbitration proceedings which take place when the amount in dispute does not reach the threshold of 50,000 USD (§ 33 of the Rules). If the amount in dispute (excluding interest and arbitration costs) is below this relatively low sum, expedited arbitration proceedings apply which provide for the award to be rendered within 120 days from the appointment of the arbitrator (as compared to 180 days in regular proceedings). Expedited proceedings comprise a sole arbitrator, a limited amount of submissions (usually a statement of claim and a statement of defence) and are usually based on written materials only, i.e. without holding an oral hearing, unless either party requests an oral hearing without an unjustified delay or unless the arbitral tribunal decides that an oral hearing would be expedient with the view to the circumstances of the case. The parties are free to opt-out and agree on regular arbitration proceedings. In recent practice, expedited proceedings have been applied in approximately 30% of all cases administered by ICAC/MKAS.

IV. Caseload

Over the last ten years, ICAC/MKAS has administered approximately 4,800 cases.

In 2021, 860 arbitration claims were filed at ICAC/MKAS. This caseload comprised 189 international cases, 668 domestic arbitrations and three sports disputes. Foreign parties included companies from 52 countries, most of them from Europe (44%), 26% from neighbouring CIS countries, 16% from Asia, 6% from the Americas as well as 4% from the Middle East.

Over the last decade the number of Asian parties remained relatively constant at 13 to 18%. However, as a consequence of the growing economic relationship between Russia and CIS countries on the one hand and Asian countries on the other hand, ICAC/MKAS expects to see more Asia-related cases in the future. In approximately 10% of international cases arbitrated at ICAC/MKAS all parties involved were foreign (i.e. non-Russian parties).

The majority of disputes arbitrated at ICAC/MKAS result from international supply contracts (over 70% in 2020 and 2021) followed by service contracts, loan agreements and IP disputes.

There is a wide range of amounts in disputes: approximately half of the international arbitrations initiated in 2021 involve an amount in dispute below 200,000 USD, in 17% of cases the claims are between 200,000 USD and 1 million USD, while 37% of new arbitration cases comprise claims exceeding 1 million USD.

The highest amount in dispute in ICAC/MKAS's history was approximately 22 billion rubles (over 700 million USD) while there have been cases involving claims of less than 5,000 USD on the lower end.

V. Enforcement of ICAC/MKAS awards in Russia and abroad

ICAC/MKAS has a solid track record of successful enforcement of its awards both in Russia and abroad. The ICAC/MKAS awards have been successfully enforced in different parts of the world, including Belarus, Bulgaria, Canada, China, Cyprus, Egypt, France, Georgia, Germany, Japan, Kenya, Malaysia, Marshall Islands, USA, the United Kingdom and Uzbekistan.

For instance, the High Court Malaya, Kuala Lumpur, in Open Type Joint Stock Company Efirnoye ("EFKO") v. Alfa Trading Ltd., [2012] 1 CLJ 323 granted enforcement of an ICAC/MKAS award holding that the defendant had failed to show that there had been a failure to adhere to arbitral procedure. Furthermore, the court ruled that the contention that the enforcement of the award would be contrary to public policy was incorrect.

The Higher People's Court of Liaoning (China) in O'KEY Logistics LLC v. Guangdong South Fortune Import & Export Co. Ltd. (2013) decided to enforce an arbitral award issued by an ICAC/MKAS tribunal rejecting a number of arguments for non-enforcement brought forward by the Chinese respondent.

The Intermediate People's Court of Dongguan (China) in Kurgroup Distribution v. Guangdong Dongguan Animal Products Import and Export Co. Ltd. (2020) held that the Chinese respondent who had not participated in the ICAC/MKAS arbitration proceedings had been duly notified within the meaning of Article V(1)(b) New York Convention and therefore declared the award enforceable.

VI. Conclusion

ICAC/MKAS enjoys a long tradition and is one of the oldest and well-known arbitration institutions in Eurasia. It offers quick and cost-effective dispute resolution with moderate fees. ICAC/MKAS possesses particular expertise in Russia/CIS law and business. It can also be a viable option for so-called East-West disputes between Asian and European parties. ICAC/MKAS expects a steady growth of Asia-related cases in its practice and looks forward to entering into new collaborations in Asia.

Recognition and Enforcement of Chinese Arbitral Awards in Russia: Recent Practice

Dr. Ilia Rachkov
Attorney at law (Moscow Bar), PhD in Law, LL.M., MCIArb, Partner at Nektorov, Saveliev & Partners (Moscow, Russia), Adjunct Professor at MGIMO – Moscow State Institute of International Relations (Chair of International Law)

Aram Grigoryan
Associate at Nektorov, Saveliev & Partners (NSP), Attorney at Law (Bar of the Stavropol Territory, Russia)

International commercial arbitration in China continues to grow. According to the official statistics of the most prominent arbitration institutions in mainland China and Hong Kong, the number of international arbitration disputes (and domestic arbitrations) substantially increased.

For example, the China International Economic and Trade Arbitration Commission (CIETAC) handled 1,968 cases in 2015 and 3,615 cases in 2020; thus, the increase is equal to 85%.[1] At the same time, the number of cases handled by CIETAC involving both claimants and respondents who are not resident in China raised by almost 24%.

Economic relations between China and Russia are very active: China is the largest trading partner for Russia, and Russia is an important trading partner for China. However, Russian courts do not often hear cases on recognition and enforcement of foreign arbitral awards rendered by arbitral tribunals seated in China.

In 2019 – 2022, our Russian law firm – Nektorov, Saveliev and Partners (NSP), represented:

1) two companies of Zoomlion group (China) in three cases on recognition and enforcement of CIETAC arbitral awards; in this case, we succeeded at the Supreme Court of the Russian Federation[2]; and

2) Zhefu Holding Group Co, LTD (Zhefu) in a case on recognition and enforcement of an arbitral award rendered by the Beijing Arbitration Commission (BAC); notably, this case is the first and, so far, the only case in Russia of recognition and enforcement of a BAC award.

Thus, we would like to share our experience with readers in this article.

[1] Statistics are available on the official CIETAC website: http://www.cietac.org/index.php?m=Page&a=index&id=40&l=en

[2] Recognition and Enforcement of the CIETAC awards in Russia // Arbitration in China. No. 8 (12), 2019 (in Russian).

In 2008 and 2013, the parties: Hunan Zoomlion International Trade Co., Ltd. and Zoomlion Heavy Industry Science & Technology (two Chinese suppliers of Zoomlion group), and ZAO ARM-AUTO (a Russian buyer) – concluded cross-border supply contracts. Zoomlion Heavy Industry Science & Technology had a similar agreement with a Russian company, OOO China Leasing Construction.

CIETAC award against OOO China Leasing Construction (Case No. A40-217055/2018) was not recognized and enforced by Russian courts. The refusal was since CIETAC sent notifications of arbitration proceedings to the respondent's address specified in the contract, but the express delivery service redirected these notifications to its actual address.

Two other CIETAC awards regarding the companies of Zoomlion group, against ZAO ARM-AVTO, were recognized and enforced by the Supreme Court of the Russian Federation. In these cases (Case No. A40-217053/2018, Case No. A40-217058/2018) the courts of lower instances – the Arbitrazh Court of the City of Moscow and the Ninth Arbitrazh Court of Appeal – incorrectly accepted the respondent's position that it was not duly notified of the arbitration proceedings in CIETAC.

The notification procedure did not correspond to that established by the Arbitrazh Procedure Code of the Russian Federation, the Law of the Russian Federation "On International Commercial Arbitration", and Agreement between the Russian Federation and the People's Republic of China on Legal Assistance in Civil and Criminal Cases (1992).

Zoomlion presented its legal position, according to which the notification of the parties about the arbitration proceedings in CIETAC should comply only with CIETAC Arbitration Rules (Art. 8). The parties to the contracts themselves chose the priority of these rules when they formulated the arbitration clause of contracts. This position was supported by the Supreme Court of the Russian Federation. As a result, the claimant had the opportunity to recover more than $ 7 million from the respondent.

The second above-mentioned company, Zhefu, is a Chinese supplier of hydraulic power equipment. The BAC arbitration concerned a dispute between Zhefu and OOO Elektrostroy Sirius, a Russian company, on collecting a debt under a hydro-power equipment supply contract. Under this contract, Zhefu was obliged to supply specific equipment for constructing a hydroelectric power station in Zaragizh settlement, the Kabardino-Balkar Republic, Russia, and supervise the installation and commissioning of that equipment.

The total contract price was equal to 240 million rubles, of which only 50% was paid to Zhefu by its Russian customer. The latter refused to pay the remaining amount, claiming that the equipment was of improper quality.

In the course of the arbitration, Zhefu (represented by King & Wood Mallesons, Beijing office) successfully proved that the equipment was delivered following the terms of the contract, and the supervision and commissioning works were performed in full; hence, the buyer shall pay the total price for them.

BAC correctly evaluated the evidence. In particular, the arbitrators did not take a formal approach and accepted the protocols of comprehensive testing and acceptance of equipment as proper evidence of contract performance, as well as the publication on the website of the end customer of news about the start of operation of its Small Hydroelectric Station, equipped with goods supplied by our client – Zhefu.

One of the features of this case is the issue of notification of OOO Elektrostroy Sirius. When the claimant filed its request for arbitration with the BAC, Zhefu was aware of three addresses of the respondent. The first was specified in the contract, and the second – was in a supplementary agreement to the contract. Finally, according to the extract from the Russian Unified State Register of Legal Entities, OOO Elektrostroy Sirius was located at the third mailing address. Therefore, upon our recommendation, notifications were sent to all three addresses of the respondent.

In addition, during the arbitration proceedings, Zhefu (with NSP assistance) also applied to the Arbitrazh Court of the Amur Oblast (Case No. A04-9864/2018) to take interim measures in the form of seizure of funds and other property belonging to the respondent. The Court pointed out that when assessing a limited range of evidence and without calling the respondent, interim measures can be taken only by the court that has effective jurisdiction, that is, jurisdiction within which interim measures can be effectively executed. Furthermore, the Court did not see the existence of factual or legal grounds for applying interim measures, noting that there are no obstacles to recover property from the respondent in the future.

Eventually, on 22 April 2020, the BAC arbitral tribunal granted Zhefu's request for arbitration and ordered the buyer to pay the claimant the principal debt amount (122 million rubles), penalties and arbitration costs.

However, the buyer did not honor the arbitral award voluntarily. That is why Zhefu (represented by NSP) filed its application for recognition and enforcement of the BAC award. The application was filed with the Arbitrazh Court of the Amur Oblast (case No. A04-8942/2021).

The Court assessed whether the respondent had been duly notified of the BAC arbitration proceedings. The Court correctly stated, with reference to the legal findings of the Supreme Court of the Russian Federation in the Zoomlion case (above): the fact that notice had been sent to the address indicated by the respondent in the contract constitutes a proper notification of the party.[3] Furthermore, all notifications in the BAC arbitration proceedings had been sent by DHL. Moreover, the Court took into account that during the BAC arbitration, the respondent sent a reply (although in Russian, whereas the arbitration was conducted in Chinese) to Zhefu's request for arbitration. This fact demonstrates that the respondent had been duly notified about the ongoing arbitration.

As a result, in January 2022, the Court granted Zhefu's application for recognition and enforcement of the BAC arbitral award in full.[4] This ruling of the Court has entered into legal force; thus, the BAC award can now be enforced in Russia.

It should be noted that the trade turnover between Russia and China is growing steadily.Therefore, we believe that the number of cases handled by Chinese arbitration institutions, in particular the BAC, the HKIAC, and the CIETAC will increase. We hope that the Zoomlion and the Zhefu cases will serve as good recent examples for Russian courts in further cases on recognition and enforcement of arbitral awards originating in China.

In the current geopolitical events, the doors of Russian justice for Chinese investors are still open. Therefore, we expect that Russian business will soon change the vector of choice of arbitration in favor of arbitration in Asia.

[3] Paragraph 17 of the Review of cases related to the functions of assistance and control in respect of arbitration courts and international commercial arbitrations approved by the Presidium of the Supreme Court of the Russian Federation dated 26 December 2018

[4] Ruling of the Arbitrazh court of Amur Oblast in case No. A04-8942/2021 dated 29 December 2021

Diana Bayzakova

The Director of the Tashkent International Arbitration Centre (TIAC), the ICSID Panel of Arbitrators, the only arbitration practitioner from Uzbekistan ranked by Legal500 in "Arbitration Powerlist: CIS and Caucasus"

Nafosat Toshtemirova

Bachelor's degree with honours in Jurisprudence from the University of World Economy and Diplomacy, a mentee of the Young ICCA Mentorship Programme, a member at TIAC45, Young ICSID, ICC YAF, YIAG, YSIAC, Young ITA, WIPO ADR Young, and a future participant of 2022 London Summer Arbitration School of Arbitration Lab.

International Arbitration in Uzbekistan: Tashkent International Arbitration Centre and the Law on International Commercial Arbitration

Interview with Diana Bayzakova and Nafosat Toshtemirova, interviewed by Dmitry Marenkov, FAIADR, member of the AIADR Editorial Sub-committee.

1. Please tell us about how and when the Tashkent International Arbitration Centre (TIAC) was established.

The Tashkent International Arbitration Centre (TIAC, www.tiac.uz) was founded at the Chamber of Commerce and Industry of the Republic of Uzbekistan in accordance with the Presidential Decree[1] in November 2018. Pursuant to the Decree, the TIAC was granted a mandate to administer disputes arising from contractual and other civil law matters with a foreign party to the dispute, including investments to intellectual property and blockchain technologies. Having received an overwhelming support from international arbitration community and prominent arbitration practitioners, the TIAC was officially launched in April 2019 during the Paris Arbitration Week. The establishment of the TIAC has been a pivotal step in the transformation of Uzbekistan into a hub for dispute settlement by means of international arbitration in the CIS region and beyond.

2. Current caseload: what kind of disputes are currently arbitrated at the TIAC?

From its official launch, the TIAC has received 30 requests for arbitration with various types of disputes and industry sectors, ranging from construction, real estate, supply and sale of goods, agriculture, oil and gas, even including one request for sports arbitration. All these cases are international in nature, with at least one party not being from Uzbekistan. It should be also noted that in a recent case administered by the TIAC both parties to the dispute were foreign, one party being from Russia and the other one being from Singapore which underpins the fact that the TIAC is gaining traction not only as a regional, but also an international arbitration centre. The geographical representation of the parties to the disputes registered and being administered by the TIAC has included so far Uzbekistan, Kazakhstan, Russia, China (mainland China and Hong Kong), Turkey, Italy, the Netherlands, Singapore, the Philippines and Moldova.

To clarify, the caseload of the TIAC reflects Uzbekistan's foreign trade profile. From 2022 statistics[2], the top five trading partners of Uzbekistan in terms of total trade volume (both import and export) are China, Russia, Kazakhstan, Turkey and South Korea. Over 50 % of the caseload registered by the TIAC accounts for disputes with one party being from China. Not surprisingly, one of the events we organised at early days following the TIAC establishment was the organisation of the TIAC's roadshow in China with visits to Beijing, Shanghai and Shenzhen, meeting with the representatives of the largest Chinese companies, prominent legal and arbitration practitioners so as to collaborate and provide each other with local expertise and all possible facilities.

3. What are the special features of TIAC Arbitration Rules which potential users need to know before concluding a TIAC arbitration clause?

The TIAC and the TIAC Arbitration Rules have introduced several novelties:

First and foremost, as found in the 2018 International Arbitration Survey: The Evolution of International Arbitration[3], conducted jointly by Queen Mary University of London and White & Case, the cost of the arbitration is considered as the worst characteristic of international arbitration. In this respect, in order to mitigate the financial burden of the parties to a dispute, the TIAC introduced a zero-admin policy, thus, TIAC does not charge any administrative fee (there is only a filing fee of 100 USD which applies irrespective of the amount in dispute). Yet the TIAC does not receive any funding from the government of Uzbekistan to maintain the highest levels of neutrality and independence.

[1] Presidential Decree No. PP-4001 dated 5.11.2018, available at: https://lex.uz/docs/4039518

[2] https://stat.uz/ru/press-tsentr/novosti-goskomstata/17060-o-zbekiston-respublikasi-tashqi-savdo-aylanmasi-2021-yil-yanvar-dekabr-2

[3] https://arbitration.qmul.ac.uk/research/2018/

Second, the TIAC implemented a reinforced 'no conflict of rules' policy. This means that no Member of the TIAC Court of Arbitration, nor the TIAC staff members may act as arbitrators under the TIAC Rules of Arbitration during their term of service.

Third, in order to maintain geographical diversity in the TIAC Court of Arbitration, the Uzbek nationals may comprise up to 20 percent of the Members of the TIAC Court of Arbitration.

Fourth, our Panel of Arbitrators[4] is composed of prominent arbitrators who work with other leading arbitral institutions, such as the ICC Court of Arbitration, the Arbitration Institute of the Stockholm Chamber of Commerce, the China International Economic and Trade Commission, the Singapore International Arbitration Centre, the International Centre for Settlement of Investment Disputes and others.

Fifth, compensation of arbitrators under the TIAC Rules[5] can be made on ad valorem method of compensation or based on an hourly rate.

At the legislative level, several incentives were introduced by the Presidential Decree on the establishment of the TIAC, we talked about earlier, which can be grouped into two categories:

Financial incentives:

Non-resident arbitrators are exempted from personal income tax for the services they render under the TIAC Rules. Legal entities are exempted from value added tax for the services rendered under the TIAC Rules.

Administrative incentives:

Citizens of foreign states acting as arbitrators and experts under the TIAC Rules are exempted from obtaining work permit in Uzbekistan. Foreign advocates or counsels willing to act in arbitral proceedings in accordance with the TIAC Rules of Arbitration and in court proceedings related to challenges of arbitral awards in Uzbek courts are exempted from licensing requirements.

4. Can a hearing under the TIAC Rules be held remotely? (by video-conferencing)

Yes, and it should also be stressed that the Decree expressly allowed conduct of arbitral proceedings in a virtual format, even before the start of COVID-19. As of today, 100 % of cases registered by the TIAC are administered virtually with the use of technology.

5. Was TIAC created "from scratch" or does it look back at a longer history at the Chamber of Commerce and Industry of Uzbekistan? What is the status of TIAC and its relation to CCI Uzbekistan?

It was an initiative of the Chamber of Commerce and Industry (CCI) to establish an institutional international arbitration centre in Uzbekistan and the CCI is a founding member of the TIAC. Coming back to the organisational framework of the TIAC, it should be noted that the TIAC did not incorporate or adjust an organisational structure of other arbitral institutions. The TIAC organisational structure was formed by the support of the TIAC Supervisory Board[6] whose members were invited by the CCI in December 2018 following the TIAC establishment.

To briefly mention, the TIAC has three main bodies:

1) The TIAC Court of Arbitration which is a fully autonomous organ within the TIAC and is the only body within the Centre's structure that administers disputes according to the TIAC Rules of Arbitration in complete independence from the Centre, its founders, the Director or any other entities.

The exclusive powers of the TIAC Court of Arbitration include confirmation, appointment or replacement of the arbitrators, fixing the arbitration costs and overseeing the arbitral process and scrutinising the awards to ensure their enforceability.

2) The TIAC Supervisory Board which is an organ within the TIAC which observes and advises on the operational standards of the TIAC.

3) The TIAC Executive Body which assists the TIAC Court of Arbitration in the procedural matters which are under the competence of the TIAC Court of Arbitration in accordance with the TIAC Arbitration Rules.

6. The TIAC Arbitration Rules have been updated on 1 October 2021. What are the novelties as compared to the previous version from 2019?

The TIAC had been considering to introduce several amendments into its 2019 Rules in order to meet the rising importance of use of technology. For these purposes, a working group led by a prominent arbitration practitioner in the field of technology disputes Ms Claire Morel de Westgaver drafted the updated 2021 Rules of Arbitration, which were later adopted and became effective from 1 October 2021.

The first important addition is related to the document and data production which reflects the recent trends in international arbitration:

- Article 20.1 grants a tribunal the right to order document production on its own motion or upon a party's request;

- Article 20.2 provides a non-exhaustive list of grounds to object to document production a) confidentiality; b) commercial and/or technical sensitivity; 3) any legal or ethical impediment, including any applicable privilege;

- Article 20.3 empowers a tribunal to appoint an expert, on its own motion or upon a party's request, to review and determine whether privileged and/or confidential document or data should be produced.

- Finally, Article 20.4 grants the tribunal the right to condition any order for the production of documents or data upon the requesting party showing a prima facie breach, infringement or defence to which the documents or data requested are relevant.

The second important addition sets out the rule in Article 21 of the 2021 TIAC Rules on the use of experimental evidence in order to facilitate the conduct of arbitral proceedings when a dispute involves a complex subject matter conditioning a conduct of an experiment necessary. According to this new rule, a tribunal is empowered, on its own motion or upon a request from a party, to order any experiment to be carried out or repeated in the presence of the tribunal, the parties and/or an expert.

Lastly, the 2021 TIAC Rules now contain an article on the provision of technical primers, reference materials and tutorials which may be ordered under a tribunal's motion or a request from a party when a subject matter of a dispute makes the demonstration of such technical primers, reference materials and tutorials necessary.

7. Schedule 1 of the TIAC Rules provides for Emergency Arbitrator procedure. Are ruling by an emergency arbitrator enforceable in Uzbekistan?

Yes, the Economic Procedural Code and Civil Procedural Code of Uzbekistan set out rules for recognition and enforcement of arbitral awards in Uzbekistan which also regulate the enforcement and recognition of arbitral awards taken by an emergency arbitrator. To note, the TIAC has administered 2 emergency arbitration cases since its establishment.

[4] https://www.tiac.uz/arbitrators

[5] https://www.tiac.uz/tiac-rules-of-arbitration

[6] https://www.tiac.uz/supervisory-board

8. What is the exact purpose of Cybersecurity Rules as contained in Schedule 2 of TIAC Arbitration Rules?

The 2021 TIAC Rules provide also the Cybersecurity Rules in Schedule 2 and parties to a dispute may opt for the inclusion of these rules into arbitral hearings. The main purpose of the Cybersecurity Rules is to enforce cybersecurity measures and address a concern in regard to cyber attacks with ever-increasing number of virtual arbitral hearings.

The Articles 2-7 of the Cybersecurity Rules establish provisions on the limitation of access to arbitration data, access of arbitration itself, communication between participants of arbitral hearings, arbitration data transfer and protection of IT systems as well as a party's obligation to make aware a third party involved to a dispute of the Cybersecurity rules whenever applicable. Further Cybersecurity Rules provide inadmissibility of hacked materials as evidence, notification of a security breach, arbitration of a cybersecurity dispute itself.

9. Moving on, Uzbekistan has implemented the UNCITRAL Model Law just recently in 2021. Is it a verbatim adoption of the Model Law or are there any differences between the Model Law and the national arbitration law in Uzbekistan?

To shed light on the adoption of the Law on International Commercial Arbitration (ICA Law), for readers of this article, initially, the Presidential Decree on the establishment of the TIAC stipulated the development of the law on international arbitration. The ICA Law was signed by the President of Uzbekistan on February 16, 2021 and became effective from August 18, 2021.

ICA law, in line with other legislative acts on the substantive matters, forms the foundational basis of the Uzbek legislation to regulate transboundary transactions. The ICA law facilitates the transformation of Uzbekistan into a desirable seat of arbitration in the CIS region and beyond. Moreover, the ICA Law has been recognised by UNCITRAL[7] as based on the text of the UNCITRAL Model Law on International Commercial Arbitration with amendments as of 2006.

Yet there are several amendments or additions made into Uzbek ICA Law:

Immunity of arbitrators

The ICA law provides that arbitrators, experts appointed by an arbitral tribunal, an arbitration institution and its employees shall not be liable to the parties or other persons for any actions or omissions in connection with the arbitration proceedings, unless their action or omission have been proven to be intentional. Moreover, they are exonerated from giving any explanations on any issue related to the arbitration proceedings, or may not be called as witnesses in a judicial or any other process that arose as a result of the arbitration proceedings.

Presentation of a case and representation in arbitral proceedings

Parties to a dispute are given a reasonable opportunity to present their case, while the UNCITRAL Model Law provides parties with full opportunity for presentation of their case. This rule has been established in order to prevent unnecessary delays in arbitral hearings and ensure settlement of cases in a timely and effective manner.

Copy of the Arbitration Agreement

The ICA Law requires the presentation of the original arbitration agreement or its properly certified copy in addition to the submission of an arbitral award or its properly certified copy by a party requesting enforcement and recognition of an award by courts of Uzbekistan.

10. How arbitration-friendly are state courts in Uzbekistan when it comes to a potential setting-aside or enforcement of awards?

As mentioned above, Uzbekistan has been conferred the status of an UNCITRAL Model country in 2021. What statistics on the recognition and enforcement arbitral awards show is that no arbitral award has been refused as of today by courts on its recognition and enforcement in Uzbekistan based on public policy grounds and this, in turn, contributes to the status of Uzbekistan a pro-arbitration country in the international arbitration map.

11. How popular is ADR in your country? Do companies often conclude arbitration agreements? How do you see the future of arbitration in Uzbekistan?

It would be not a mistake to state that ADR is gaining traction in Uzbekistan. As saying goes, an overnight success requires years of dedication, further development of ADR in Uzbekistan requires time and active involvement.

Taking a look at the statistics of caseload of a judge in Uzbekistan with from 300 to 500 cases in a month, we can state that international arbitration is not, yet, a preferred option for parties as a dispute resolution mechanism and there is a room for improvement and cooperation of involved parties. However we do not refrain from stating that in coming years we will see further development of international arbitration in Uzbekistan. For example, the TIAC, as an arbitral institution which administers sports disputes also, has actively been cooperating with various sports federations as well as the Ministry of Sports Development of Uzbekistan in order to seize the mandate of becoming a sole dispute resolution body for disputes within the 2025 Asian Youth Games.

12. You are co-organisers of the Uzbek Arbitration Week. When was it established and when does it take place?

The first Uzbek Arbitration Week was held on 6-10 September 2021 and the next one is planned to be held from September 19 to 23, 2022. Taking avail of this interview, we kindly invite to the 2022 Uzbek Arbitration Week.

13. How to become an arbitrator at TIAC?

The TIAC maintains two lists: the TIAC Panel of Arbitrators, and the TIAC Reserve Panel of Arbitrators. All interested applicants may send an email at the address shown on the TIAC website of the TIAC after which applicants will be asked to fill in a form with demonstration of relevant experience in international arbitration. One of the main criteria for inclusion of a candidate into the TIAC Panel of Arbitrators or the TIAC Reserve Panel of Arbitrators is the presence of extensive experience in award and/or procedural documentation drafting.

14. What is your advice to young dispute resolution practitioners?

The most important factor in becoming an international arbitration practitioner is the commitment in every action you take. The role of networking plays a critical role, too. Moreover, being open to opportunities or even creating ones by reaching out to arbitrators with offer of help and willingness to act as a tribunal secretary may bring young professionals into the international arbitration market and lead to the awaited first appointment as an arbitrator.

[7] https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status

Intern's View

By Joy Ji
East China University of Political Science and Law

The internship in AIADR is coming to the end. These three months are truly unforgettable for me. I not only obtain more knowledge of ADR which was a relatively new topic for me, but also meet so many lovely people. The first week of my internship is still fresh in my mind. It was my first time having an internship in an international organization, so I was a bit nervous about the future of my internship. However, after the first online meeting with the AIADR supervisors, Ms. WanYng, Ms. Heather, and Ms. Irin, all doubts and anxieties disappeared. The teachers and other interns were very kind and we soon became a part of this warm family.

Regarding the work in AIADR, it involves tasks from translation and legal research to drafting speeches and attending meetings. During the process, I gradually understand how essential it is for a lawyer and other legal practitioner to comprehend the ability to exchange ideas and communicate with different kinds of people as well as handle complicated cases. Therefore, I am grateful that I can have this opportunity and accept advice and guidance from my supervisors, which is very helpful for my future career.

As being the relation of supervisors and interns during work, we are also intimate friends in leisure time. The atmosphere is always comfortable and relaxing. The Coffee session is such a platform for us to talk about life, hobbies, food, and customs in different countries, which connects us together despite the fact that we are far away from each other.

In the end, I would like to express my gratitude to Ms. WanYng, Ms. Heather, Ms. Irin, and President Datuk Sundra for their support and guidance through this internship. In addition, I would also like to thank all of my brilliant teammates, without whom the internship will not be so memorable. I really enjoy the time we spend together on how we cooperate on tasks and share both work life and daily life. Thank you so much!

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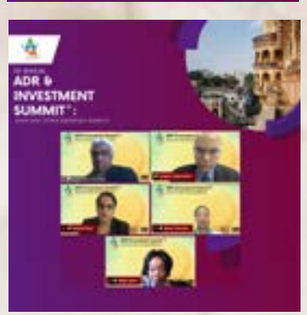

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From left to right: *Professor Dato' Dr. Rahmat Mohamad, Dr. Thomas R. Klotzel, Elodie Dulac, Julian Bailey and Rina See.*
Master of Ceremonies: *Jay Patrick Santiago*

Webinar on "RCEP Agreement from the ADR Perspective" held on 18 May 2022, jointly organized with The Associated Chinese Chambers of Commerce and Industry of Malaysia (ACCCIM).
From left to right: *Datuk Ng Yih Pyng, Datuk Professor Sundra Rajoo, Mr Michael Chai, Dato' Quek Ngee Meng, Datin Chu Ai Li.*
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17 June 2022
2022 China High-level Dialog on Maritime and Commercial Arbitration (CHDOMACA)

8 July 2022
CIPAA Conference
Register at https://www.l2icon.org/cipaaconference2022

12 - 14 July 2022
Thailand Arbitration Center (THAC) Arbitration Week

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The Asian Institute of Alternative Dispute Resolution
No.28-1, Jalan Medan Setia 2,
Bukit Damansara, 50490,
Kuala Lumpur, Malaysia.
T: (60) 3 2300 6032
E: thesecretariat@aiadr.world
URL: https://aiadr.world