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Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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International Arbitration in Central and Eastern Europe: An Overview and Key Developments

Franz T. Schwarz

Krystyna Khripkova

Wilmer Cutler Pickering Hale and Dorr LLP

The number of arbitral cases in Central and Eastern Europe has increased steadily over the years, and local courts have assumed a more favourable attitude to the arbitration process as a whole. However, arbitral practice in the region is still not entirely uniform despite the fact that most countries are parties to international instruments meant to harmonise arbitration standards and court-related procedures. This chapter seeks to highlight recent key amendments to domestic arbitration laws; provide an overview of recent court practice concerning arbitrability, recognition and enforcement of arbitration agreements, and foreign arbitral awards; and discuss current state-to-state and investor-state arbitrations brought against countries in the region.

I. Overview: Legal Framework

In 2015, the legal and business communities witnessed a progression towards local pro-arbitration laws in a number of countries in Central and Eastern Europe. Russia adopted a new law "On Arbitration (Arbitral Proceedings) in the Russian Federation" (the "**New Law**") and amended a number of other arbitration-related laws on 31 December 2015 that will enter into force on 1 September 2016.[1] The New Law entirely replaces the current rules on domestic arbitration and amends the regulations related to international commercial arbitration.[2] The reasons for the reform include, in particular, the previous lack of consistency in Russian arbitration regulations, the existence of so-called "pocket arbitration tribunals", and the presence of sham arbitration institutions. The reform thus aims to promote the stability and transparency of the arbitration system.[3]

After the reform, state courts will assist in appointing, challenging, and replacing arbitrators.[4] Parties are free, however, to waive the right to seek such assistance from local courts unless the proceedings are *ad hoc*.[5] In order to prevent conflicts of interests, the judge who assists in the formation of the tribunal will automatically be prohibited from considering set-aside or enforcement petitions with respect to the same arbitration.[6] Courts are also competent to assist with the taking of evidence in arbitrations administered by permanent arbitration institutions, but not by *ad hoc* tribunals.[7] The tribunal will be able to request that a state court collect documentary evidence or take witness testimony. A state court can dismiss a petition for taking of evidence, e.g. if the requested evidence relates to a highly classified information or commercially sensitive information in relation to a third party (e.g. a third party's records).[8]

Under the reform, parties to international arbitration agreements choosing Russia as the seat of arbitration will also be able to waive their right to set aside an award.[9] Previously, this was only permitted in the context of domestic arbitrations. The new legislation also introduces several new provisions that simplify the recognition of foreign declaratory judgments and awards. If an international treaty provides for the recognition of such judgments and awards, they will be recognised in Russia without further enforcement proceedings. It is then up to the Respondent to file any objections against recognition.[10]

Likewise, the legislative branch in Poland introduced two important amendments to the existing Polish arbitration regulations. First, in January 2016, Poland did away with previous rules concerning the impact of bankruptcy proceedings on both arbitration clauses involving a bankrupt party and the ongoing arbitration proceedings.[11] Notably, state courts have exclusive jurisdiction over matters concerning bankruptcy proceedings and the parties' conduct during such proceedings, which thus are not arbitrable. When a party became bankrupt under the previous legal regime, the arbitration agreements concluded by the party were automatically voided, and all ongoing arbitration proceedings involving the party were mandatorily discontinued, regardless of the stage the proceeding had reached or whether the insolvent party had acted as Claimant or Respondent.[12] The Restructuring Law of 15 May 2015, which entered into force on 1 January 2016, modified the former rules through amendments to the Bankruptcy and Recovery Law of 28 February 2003.[13]

Now, once bankruptcy has been declared, only the Bankruptcy Administrator can act on behalf of the estate – both with respect to the arbitral proceedings commenced after the opening of the bankruptcy proceedings and with respect to proceedings that were already pending at the time bankruptcy was declared.[14] Consequently, after one of the parties declares bankruptcy, an arbitral tribunal (like a court) should suspend arbitral proceedings upon its own motion.[15] The proceedings may only resume with the participation of the Bankruptcy Administrator on the condition that, when the bankrupt party is the defendant, the claim in question has not been added by the Bankruptcy Administrator to the list of admitted claims against the bankrupt estate.[16] In that respect, it is at the discretion of the arbitral tribunal to request that the Bankruptcy Administrator appointed for the estate join the arbitral proceedings. These rules apply only to claims pursued through arbitration that are related to the bankrupt estate. If the arbitration concerns a claim not subject to the bankrupt estate (e.g. a claim seeking to declare a right or an obligation of a party as opposed to a claim for a sum of money to be paid), it may continue without any interference even if one of the parties has been declared bankrupt.[17]

Moreover, under Article 147a of the new Bankruptcy Law, a Bankruptcy Administrator has the power to unilaterally rescind an arbitration agreement if no arbitral proceedings have been commenced, and if he or she considers that enforcement of the

claims in arbitration would hinder the liquidation of the bankrupt estate. This would happen, for example, if the assets of the bankrupt estate were not sufficient to cover the costs of commencing and conducting arbitral proceedings. In the event that the Bankruptcy Administrator decides to rescind the arbitration agreement, it loses binding legal effect.[18]

The Polish arbitration law also introduced other important changes which are currently included in Book Five of the Code of Civil Procedure of Poland (the "**CCPP**"). The first set of amendments reduced the challenge of an award in the Polish courts to one instead of two levels of appeal.[19] Additionally, the deadline to file a petition has been shortened from three months to two months.[20]

In Slovakia, the new Arbitration Act[21] adopted in January 2015 addresses, among other things, questions regarding the written form of an arbitration agreement, arbitrability, interim measures, and the grounds for setting aside an arbitral award. The new statute applies to domestic and international commercial disputes seated in Slovakia, as well as to the recognition of foreign awards, but not to consumer disputes.[22]

The new Arbitration Act is a reaction to the decision of the Slovak Supreme Court that mistakenly found that arbitration clauses may not be incorporated by reference into a main contract (namely, the Supreme Court held that an arbitration agreement incorporated by reference into a loan agreement between a bank and its corporate client was invalid due to a lack of written form).[23] The new Arbitration Act explicitly provides that an arbitration agreement will be validly concluded if it is contained in the exchange of the parties' written communication, or concluded by electronic means. Moreover, it is now explicitly recognised that an arbitration agreement can be incorporated by reference without a signature on the incorporated document. Finally, the new Arbitration Act adopts the grounds for annulment of an arbitral award from Article 34 of the UNCITRAL Model Law, and increases the limitation period for the initiation of proceedings before civil courts from thirty to sixty days.[24]

The new arbitration rules in Latvia impose unreasonably formalistic requirements on arbitrators. Only a person with an impeccable reputation who has acquired the qualification of a lawyer, and who has at least three years of experience as a member of an academic staff in law or in another law-related position, can now be appointed as an arbitrator. Furthermore, a person may be listed as an arbitral candidate for no more than three arbitration institutions. Once listed, a person cannot be a party representative or provide legal services to the parties involved in arbitration proceedings conducted under the rules of the respective arbitration institution for the next five years.[25] As discussed below, following the recent Constitutional Court Judgment,[26] Latvian courts of general jurisdiction may now review the validity of arbitration agreements if the Claimant has challenged the existence or validity of the arbitration agreement in a separate court action.[27]

Finally, arbitration reform is underway in Ukraine.[28] The key changes introduced to the Ukrainian arbitration law will address: (i) the limitation of jurisdiction over all matters of judicial control over and support to international arbitration to two state courts: the Kyiv City Appellate Court and the High Specialized Court of Ukraine for Civil and Criminal Cases; (ii) pro-arbitration interpretation of arbitration agreements (any defects in the arbitration agreement and/or doubts as to its validity will be interpreted in favour of its validity, operability and capability of being performed); (iii) the new possibility of considering an application for setting aside and granting permission for enforcement of an arbitral award in a single proceeding, since the grounds for setting an award aside and refusal of its recognition and enforcement are the same; (iv) the novel possibility of waiving the right for recourse against arbitral awards; (v) the provision of judicial support in matters related to international arbitration irrespective of whether the seat of arbitration is in Ukraine or abroad; (vi) the possibility of obtaining court-ordered interim measures in support of international arbitration; and (vii) the new opportunity of obtaining judicial assistance in the taking of evidence for arbitral proceedings.[29]

II. The Scope of the Non-Arbitrability Doctrine

In Central and Eastern Europe, the trend towards adopting pro-arbitration laws, which among other things aims at expanding the category of arbitrable disputes, has been repeatedly observed and reported on by commentators and practitioners.

The most significant changes in domestic laws in favour of arbitration occurred in Russia last year. In general, the majority of civil law cases are regarded as arbitrable, with certain exceptions. The new laws introduced two consolidated lists of non-arbitrable disputes, one in the Code of Civil Procedure (the "**CCP**")[30] for courts of general jurisdiction, and the other in the Code of Arbitrazh [Commercial] Procedure (the "**CAP**")[31] for the arbitrazh courts.[32]

The reform addresses the issue of arbitrability of "corporate disputes" that arise for companies registered in Russia.[33] Generally, this type of dispute is now regarded as arbitrable, with a few exceptions, such as corporate disputes arising out of share redemption and mandatory tender offer procedures in joint stock companies.[34] Such corporate disputes may be arbitrated if the dispute is referred to a Russian or foreign permanent arbitration institution in accordance with the specific rules for the arbitration of corporate disputes (with a few exceptions)[35] and if the seat of arbitration is in Russia. The submission of corporate disputes to an *ad hoc* arbitration is prohibited.[36] This legislation provides helpful clarification following several recent cases in Russia, such as the *Novolipetsk Still Mill (NLMK) v. Nikolay Maksimov*[37] case,[38] which threw the arbitrability of corporate disputes into doubt.

Arbitration agreements may now be included in the charter of a legal entity and form the basis for a tribunal's jurisdiction to consider disputes between members of the legal entity, or between the legal entity itself and a third party, subject to the third party's consent to be a part of the arbitration agreement.[39] As an exception, however, neither public joint-stock companies nor joint-stock companies comprising of more than 1,000 shareholders (owners of voting shares) can include an arbitration agreement in the charter.[40] Arbitration agreements providing for arbitration of corporate disputes may be concluded no earlier than 1 February 2017, otherwise, the agreement entered into before that date will be deemed inoperable.[41] Thus, until 1 February 2017, the option of arbitrating corporate disputes remains unavailable.

The regulation of arbitration in Slovakia defines similar categories of non-arbitrable disputes. Section 1 of the new Arbitration Act (the "**Act**") provides an exhaustive list of non-arbitrable disputes, namely: those in relation to the personal status of physical persons including, for example, divorce and adoption; ownership rights and other rights *in rem* with respect to immovable property; forced enforcement (execution) of court or administrative decisions; and disputes arising out of bankruptcy and restructuring proceedings. Under Article 1(2) of the Act, the arbitrable disputes are those which are related to legal relations and "*can be settled by an agreement of the parties [under art. 585 of the Slovak Civil Code ("SCC")] including disputes regarding the declaration whether there is a right or a legal relation or not*".[42] It remains to be seen what jurisprudence will emerge on the issue of arbitrability from the new, more liberal regime.[43]

Accordingly, the examples above illustrate that some Central and Eastern European countries have steadily followed the path towards pro-arbitration statutory changes aimed at limiting categories of non-arbitrable matters. Still, companies doing business in, or with parties from, this region should be mindful of the fact that the types of matters which are considered non-arbitrable may vary from country to country, and seek professional legal advice before entering an arbitral agreement.

III. The Enforcement of Arbitration Agreements

Heterogeneity also exists in the approaches taken by Central and Eastern European countries towards the enforcement of agreements to arbitrate, with some countries' practices in this regard diverging significantly from the standard arbitral practice in most developed jurisdictions. However, a new body of pro-arbitration case law in certain jurisdictions in Central and Eastern Europe has emerged, which limits courts' ability to review the alleged violations of procedure as prescribed by the New York Convention and/or European Convention, as will be discussed below.

A good example of such a country is Belarus, where the Supreme Court in *Minskvodstroy v. ICOR*[44] upheld the validity of the assignment of an arbitration clause, rejecting arguments that the transfer of a right of claim under a contract would not automatically transfer rights under the contract's arbitration clause. Minskvodstroy argued that the assignment contract was invalid and the arbitration clause was not concluded. The Belarusian Supreme Court found that the validity of the assignment contract as a substantive issue was addressed by the tribunal in the award and, thus, could not be revisited by the state court.[45]

On the other end of the spectrum, the Constitutional Court in Latvia recently ruled[46] that parties to arbitral proceedings have the right to challenge arbitration agreements before national courts, contrary to domestic civil procedure guidelines. SIA Hiponia submitted a constitutional petition asking the court to clarify, among other things, the scope of the competence-competence principle and the content of the right to a fair court.[47] Pursuant to Article 495(1) of Latvian Civil Procedure Law, the arbitral tribunal alone can decide on its competence, and national courts are prevented from revisiting the tribunal's decision. However, the Constitutional Court ruled that this practice was inconsistent with Article 92 of the Latvian Constitution, which guarantees a fair trial to each party.[48] In addition, the court held more generally that the competence-competence principle did not prevent the national courts from assessing the jurisdiction of the tribunal. This decision motivated the subsequent introduction of amendments to the Latvian arbitration regulations.[49]

IV. The Enforcement of Arbitral Awards

The judiciary's willingness to recognise and enforce arbitral awards is another area of considerable divergence as amongst Central and Eastern European countries. While foreign companies might fear unpredictable interpretations of public policy in Central and Eastern European countries, courts in many of these jurisdictions have been reluctant in recent years to set aside, or refuse to enforce, arbitral awards on the basis of an expansive reading of public policy. However, other courts in this region have, at times, liberally denied the enforcement of arbitral awards, often on the basis of parochial interpretation of public policy or formalistic reasons.

The pro-arbitration approach to the enforcement of arbitral awards has been affirmed by the Supreme Court of Lithuania, which recognised an award rendered under the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC award") that restrained the country's Energy Ministry from litigating claims against Russia's Gazprom for breach of the arbitration clause in its shareholders' agreement. This decision adhered to a ruling by the European Court of Justice that anti-suit injunctions by arbitral tribunals are not prohibited by European Union law.[50] The Supreme Court overruled a 2012 judgment of a lower court that refused to enforce the SCC award.[51]

Ukraine has taken several notable steps towards fostering a pro-arbitration environment. On 11 December 2015, the High Specialized Court of Ukraine for Civil and Criminal Cases (the "**High Specialized Court**") issued an overview of the case law related to the recognition and set aside procedures of international arbitral awards by Ukrainian courts (the "**Overview**"). Notably, the High Specialized Court confirmed its overall pro-arbitration approach, thus increasing the level of certainty for foreign parties seeking enforcement of their arbitral awards in Ukraine.[52] The High Specialized Court stated that international law rules should prevail over national law rules regarding enforcement, explaining that courts should limit the grounds for refusing to recognise or enforce an arbitral award to those stipulated in international treaties ratified by Ukraine. The High Specialized Court also noted that courts should normally refrain from using the application of "public policy" as grounds for refusing to recognise a foreign arbitral award. If the court, however, believes that there was a breach of public policy, then it should perform a thorough analysis of the case, and give full and specific substantiation for the application of "public policy" grounds.[53]

Nevertheless, the judiciary's willingness to recognise and enforce arbitral awards in Ukraine does not remain without problems. In 2015, the High Specialized Court denied the recognition and enforcement of an arbitral award on the basis that a respective application was served by an assignee, who sought to gain enforcement of the award by entering into an assignment agreement with the original Claimant, rather than an original Claimant who had taken part in the arbitral proceedings.[54]

V. Overview of Investor-State and State-to-State Arbitrations

In light of the dramatic political tension and conflict between Ukraine and Russia, which led to the subsequent annexation of the Autonomous Republic of Crimea and the city of Sevastopol (the "**Crimea**") by Russia, several factors have led a number of investors to file claims. These factors, include, but are not limited to, the economic and financial crises in the region, the fluctuation of currency rates, and the implementation of various regulations by local governments aimed at stabilising the market around Central and Eastern Europe.

One of the most noteworthy arbitrations in 2015 concerned the boundary dispute between Croatia and Slovenia and was administered by the PCA. An arbitration agreement was signed by both States on 4 November 2009 in order to resolve this dispute, which dated back to the dissolution of the Former Yugoslavia. Of the five-member tribunal chaired by the former president of the International Court of Justice, Judge Gilbert Guillaume, two of the arbitrators were appointed by the parties. This case became notorious when the media published audio recordings of conversations between the arbitrator appointed by Slovenia and a representative of the Ministry of Foreign Affairs of Slovenia concerning the ongoing arbitration. Croatia's parliament subsequently voted to terminate the arbitration

agreement.[55] A hearing was held on 17 March 2016 in The Hague, focusing on the legal consequences of the above-mentioned events of the arbitral proceedings.[56]

In the last two years, multiple investment arbitration claims have also been brought against Russia in regards to the consequences of its actions in the Crimea. The following cases are of particular interest:[57]

- *Stabil LLC and others v. The Russian Federation*, PCA Case No. 2015-35;
- *LLC Lugzor and others v. The Russian Federation*, PCA Case No. 2015-29;
- *Privatbank and Finance Company Finilion LLC v. The Russian Federation*, PCA Case No. AA568;
- *Everest Estate LLC and others v. The Russian Federation*, PCA Case No. AA577;
- *Aeroport Belbek LLC and Mr Kolomoisky v. The Russian Federation*, PCA Case No. 2015-07;
- *PJSC Ukrnafta v. The Russian Federation*, PCA Case No. 2015-34; and
- *JSC Oschadbank v. The Russian Federation*.

All of the above-mentioned cases have been filed under the 1976 UNCITRAL Arbitration Rules pursuant to the Agreement between the Government of the Russian Federation and the Cabinet of Ministers of Ukraine on the Encouragement and Mutual Protection of Investments dated 27 November 1998. In light of the events in the Crimea, the arbitration claims against Russia are for the recovery of alleged losses incurred after Russian troops invaded Crimea in 2014, and shut down or nationalised Ukrainian businesses without compensation. The parties that launched the claims include the financial institution PJSC CB PrivatBank & Finance Co. Finilon LLC (also known as PrivatBank); PJSC Ukrnafta, which is both a publicly and privately owned institution and is one of Ukraine's largest oil and gas companies; nearly a dozen private petrol stations; Aeroport Belbek LLC, which is near Sevastopol and is one of two airports in Crimea; and Everest Estate LLC, which is the lead claimant for about 20 to 25 companies that owned resort hotels, apartment buildings, and other real estate parcels.[58]

The arbitral tribunals in the named cases will have to deal with several jurisdictional issues, particularly the issue of consent. Other issues the tribunal will have to examine include: whether the dispute in question relates to covered investments; whether such investments were made or are within the Respondent's territory; and whether the dispute in question concerns a breach by the Respondent of an obligation it had assumed under the BIT. The PCA Press Release of 6 January 2016[59] regarding *Aeroport Belbek LLC and Mr Kolomoisky v. The Russian Federation* clarifies that Russia "indicated, *inter alia*, that the [Ukraine-Russia BIT] cannot serve as a basis for composing an arbitral tribunal to settle [the Claimants' claim]" and that it "does not recognize the jurisdiction of an international arbitral tribunal at the [PCA] in settlement of the [Claimants' claims]." It also stated that nothing in its correspondence "should be considered as consent of the Russian Federation to constitution of an arbitral tribunal, participating in arbitral proceedings, or as procedural actions taken in the framework of the proceedings".

Endnotes

1. Under the arbitration reform, the Federal Law No. 382-FZ "On Arbitration (Arbitral Proceedings) in the Russian Federation" (available in Russian at: http://www.rg.ru/2015/12/31/arbitrazh-dok.html) will replace the Law "On Arbitral Tribunals in Russia". In addition, the Federal Law No. 409-FZ, adopted on the same day, will change other related laws, including the Law "On International Commercial Arbitration" (the "ICA Law"), the Code of Civil Procedure (the "CCP"), the Code of Arbitrazh [Commercial] Procedure (the "CAP"), and the Law "On Insolvency (Bankruptcy)." The calls to modernise the ICA Law began shortly after the revision of the UNCITRAL Model Law in 2006, but the bill to update the national law in line with the revised UNCITRAL Model Law remained pending before Parliament for several years without making progress.
2. M. Yaremenko, I. Prusskaya, *Russian arbitration reform: what will happen after 1 September 2016*, available online at: http://www.lexology.com/library/detail.aspx?g=524ccfe5-82db-44a1-8ba0-cb6b4cea0f27.
3. Dmitry Davydenko, *New Draft Law Aims to Bring Arbitration in Russia to Order*, CIS Arbitration Forum, 28 May 2015, available online at: http://www.cisarbitration.com/2015/05/28/new-draft-law-aims-to-bring-arbitration-in-russia-to-order/.
4. New Law, Article 6; ICA Law, Article 6. A party acting in bad faith, however, may potentially use such an innovation as a dilatory tactic, as the process involving state courts' assistance may delay the arbitration for up to three months. *See* M. Yaremenko and I. Prusskaya, *Russian arbitration reform: what will happen after 1 September 2016*, available online at: http://www.lexology.com/library/detail.aspx?g=524ccfe5-82db-44a1-8ba0-cb6b4cea0f27.
5. New Law, Article 11(4); ICA Law, Article 11(5).
6. CCP, Article 427.3(5); CAP, Article 240.3(5).
7. New Law, Article 30; ICA Law, Article 27.
8. CCP, Article 63.1(4); CAP, Article 74.1(4).
9. New Law, Article 40; ICA Law, Article 34.
10. Still, entries to public registers continue to require confirmation of state court decisions. This means that declaratory arbitral awards aiming for registration continue to be subject to state court control. *See* C. Harler, E. Antipin, *Arbitration Reform and State Court Merger in Russia*, available online at: https://www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/Documents/cdr-magazine-arbitration-reform-and-state-court-merger-in-russia.pdf.
11. Wojciech Sadowsk and Ewelina Wętrys, *Act of 15 May 2015, the Restructuring Law*, A contribution by the ITA Board of Reporters, Kluwer Law International, available online at: http://www.kluwerarbitration.com/CommonUI/document.aspx?id=kli-ka-16-6-003.
12. However, the desired protection of the bankruptcy estate turned out in fact to be contradictory in terms of international arbitration. This was demonstrated in the *Elektrim SA and Vivendi* saga. This case involved a series of arbitration and state court proceedings, including LCIA arbitration in London and ICC arbitration in Geneva, where two different tribunals reached opposing conclusions on whether the arbitral proceeding had to be discontinued. Furthermore, a Polish appeal court agreed to enforce the LCIA award and rejected arguments that Elektrim's bankruptcy was an intervening event that cancelled the arbitration clause. *See* Jonathan Sutcliffe and James Rogers, *Effect of Party Insolvency on Arbitration Proceedings: Pause for Thought in Testing Times*, Reprinted from (2010) 76 Arbitration 287–290, available online at: http://www.nortonrosefulbright.com/files/us/images/publications/CharteredArbit-SutcliffeRogersMay2010.PDF; and Uzma Balkiss Sulaiman, *Polish court finds arbitration agreement valid despite bankruptcy*, Global Arbitration Review, 21 December 2009, available online at: http://globalarbitrationreview.com/news/article/19693/polish-court-finds-arbitration-agreement-valid.

13. Wojciech Sadowsk and Ewelina Wętrys, Act of 15 May 2015, the Restructuring Law, A contribution by the ITA Board of Reporters, Kluwer Law International, available online at: http://www.kluwerarbitration.com/CommonUI/document.aspx?id=kli-ka-16-6-003.
14. In the latter case, the amended provision of Article 147 of the Bankruptcy Law stipulated that the provisions of Articles 174 § 1 points 4 and 5, and Article 180 § 1 point 5 of the Code of Civil Procedure of Poland (the "**CCPP**") together with Articles 144 and 145 of the Bankruptcy Law, shall apply accordingly to arbitration proceedings.
15. CCPP, Article 174 § 1 points 4 and 5; the Bankruptcy Law, Article 147.
16. CCPP, Article 180 § 1 point 5; the Bankruptcy Law, Article 145 § 1 and Article 147.
17. Wojciech Sadowsk and Ewelina Wętrys, *Act of 15 May 2015, the Restructuring Law*, A contribution by the ITA Board of Reporters, Kluwer Law International, available online at: http://www.kluwerarbitration.com/CommonUI/document.aspx?id=kli-ka-16-6-003.
18. *Ibid*. In order to mitigate the adverse effect of the bankruptcy administrator's power over the legal certainty of the other party to the arbitration, that party can request the Bankruptcy Administrator to declare whether he or she intends to exercise the right of avoidance. The Bankruptcy Administrator has 30 days to respond in writing to such a request. In the event that the Bankruptcy Administrator does not waive the right of avoidance within this period, the arbitration agreement shall be deemed void (Article 147a § 2 of the Bankruptcy Law). On the other hand, the other party to the arbitral proceedings may rescind the arbitration agreement in the event that the Bankruptcy Administrator fails to exercise the right of avoidance but denies participation in the costs of the arbitral proceedings (Article 147a § 3 of the Bankruptcy Law). When the arbitration agreement becomes void, it ceases to have legal effect (Article 147a § 4 of the Bankruptcy Law).
19. Earlier, arbitral awards rendered in Poland were subject to set aside proceedings, which could have been lodged with a state court competent to decide the matter, but for the absence of the arbitration clause. The judgment issued by the court was then subject to an appeal on issues of both fact and law to the upper court, and the judgment rendered on appeal was - subject to certain conditions - appealable on the points of law to the Polish Supreme Court. In practice, it was not infrequent for such set aside proceedings to last for a number of years. The rules also allowed, for example, for third-party interventions in court proceedings. *See* Maciej Durbas, Rafał Kos, '*Poland*', The European, Middle Eastern and African Arbitration Review 2016, Global Arbitration Review, 2016, available online at: http://globalarbitrationreview.com/reviews/76/sections/289/chapters/3113/poland/.
20. CCPP, Article 1208 § 1.
21. Slovak Arbitration Act (Act No. 244/2002).
22. Juraj Gyárfáš, Martina Kasemová, Martin Magál, '*Slovakia*', Global Arbitration Review, available online at: http://globalarbitrationreview.com/reviews/76/sections/289/chapters/3117/slovakia/.
23. Slovak Supreme Court, 2 Cdo 245/2010, dated 30 November 2011. *See* Juraj Gyárfáš, Martina Kasemová, Martin Magál, '*Slovakia*', Global Arbitration Review, available online at: http://globalarbitrationreview.com/reviews/76/sections/289/chapters/3117/slovakia/.
24. P. Plachy, *The new Slovak Arbitration Act applicable from January 2015: has it progressed sufficiently?*, available online at: http://slovarblog.com/new-slovak-arbitration-act-applicable-january-2015-progressed-sufficiently/.
25. Maija Tipaine and Liga Fjodorova, *Arbitration in Latvia: Was a Restart a Failure?*, Kluwer Arbitration Blog, 25 January, 2016, available online at: http://kluwerarbitrationblog.com/2016/01/25/arbitration-in-latvia-was-a-restart-a-failure/.
26. The Constitutional Court of Latvia, Judgment in case No. 2014-09-01 "On Compliance of Section 495(1) of the Civil Procedure Law with the first sentence in Article 92 of the Satversme of the Republic of Latvia", 28 November 2014, available online at: http://www.satv.tiesa.gov.lv/en/press-release/the-norm-regarding-the-competence-of-arbitration-court-to-determine-jurisdiction-regarding-a-dispute-is-incompatible-with-the-satversme/.
27. Maija Tipaine and Liga Fjodorova, *Arbitration in Latvia: Was a Restart a Failure?*, Kluwer Arbitration Blog, 25 January, 2016, available online at: http://kluwerarbitrationblog.com/2016/01/25/arbitration-in-latvia-was-a-restart-a-failure/.
28. Olena Perepelynska, *International Arbitration, Client Alert*, April 2–16, available online at: http://www.eba.com.ua/static/members_reviews/Integrites_Client_Alert_Arbitration_ENG_April_2016.pdf.
29. *Ibid*.
30. CCP, Article 22.1(2).
31. CAP, Article 33(2).
32. The following disputes will be non-arbitrable starting from 1 September 2016: family disputes (excluding division of marital assets); probate proceedings; labour disputes; claims of harm to life or health; eviction from residential housing; special proceedings to establish legal facts (for example, declaration of death); public administrative disputes (such as the annulment of governmental and municipal acts, registration of companies and sole traders by the state, administrative offences, recovery of taxes and levies, and compensation claims against the government for delay in litigation); government and municipal procurement of goods and services under the special law "On Federal Contract System" (however, the reform contains a reservation that these disputes may become arbitrable if the law "On Federal Contract System" is amended to provide for arbitration in Law No. 409-FZ, Article 13(8)); group actions where only some of the claimants are named (these actions are similar to class actions in the U.S.); insolvency cases; privatisation disputes; environmental damage claims; and intellectual property disputes where there is a "public" element involved (including disputes involving collective rights management organisations, disputes involving grant and seizure of protection of IP rights by the State, patent holder contests, and annulment of patents).
33. The corporate disputes have been defined by the law as "*disputes associated with the creation of a legal entity in the Russian Federation, its management or participation in a legal entity including disputes based on claims of participants of the legal entity in connection with the legal relationship of a legal entity with a third party in the case, if the participants of the legal entity have the right to file such claims in accordance with federal legislation*".
34. The exceptions that fall under exclusive jurisdiction of the Russian state courts are listed in Article 9 of the CAP.
35. New Law, Article 45(7), (8).
36. M. Yaremenko, I. Prusskaya, *Russian arbitration reform: what will happen after 1 September 2016*, available online at: http://www.lexology.com/library/detail.aspx?g=524ccfe5-82db-44a1-8ba0-cb6b4cea0f27.
37. Decrees of the RF Supreme Court, 9 April 2015, Case No. 305 ES15 1789 and of the Commercial Court of Moscow

District, 17 December 2014, Case No. A40-26424/11-83-201. *See*, e.g., Ruling of the Higher Arbitrazh Court of Russia, 30 January 2012, Case No. 15384/11.

38. M. Yaremenko, I. Prusskaya, *Russian arbitration reform: what will happen after 1 September 2016?*, available online at: http://www.lexology.com/library/detail.aspx?g=524ccfe5-82db-44a1-8ba0-cb6b4cea0f27.

39. New Law, Article 7 and the CAP, Article 225.1(3).

40. Dmitry Davydenko, *New Draft Law Aims to Bring Arbitration in Russia to Order*, CIS Arbitration Forum, 28 May 2015, available online at: http://www.cisarbitration.com/2015/05/28/new-draft-law-aims-to-bring-arbitration-in-russia-to-order/.

41. The Federal Law No. 409-FZ, Article 13(7).

42. P. Plachy, *The new Slovak Arbitration Act applicable from January 2015: has it progressed sufficiently?*, available online at: http://slovarblog.com/new-slovak-arbitration-act-applicable-january-2015-progressed-sufficiently/.

43. M. Magal, M. Porubsky, *Commercial Arbitration in Slovakia*, 2016, available online at: http://globalarbitrationreview.com/know-how/topics/61/jurisdictions/75/slovakia/.

44. The Supreme Court of the Republic of Belarus, *Minskvodstroy (Belarus) v. ICOR (Lithuania)*, Decree, 16 October 2014, Case No. 9-9ux/2014/925K, available online in Russian at: http://sccinstitute.com/media/56013/_by_supreme_court_ruling_ru.pdf.

45. Clemmie Spalton, *Belarus court enforces SCC award*, Global Arbitration Review, 31 October 2014, available online at: http://globalarbitrationreview.com/news/article/33119/belarus-court-enforces-scc-award/.

46. The Constitutional Court of Latvia, Judgment in case No. 2014-09-01 "On Compliance of Section 495(1) of the Civil Procedure Law with the first sentence in Article 92 of the Satversme of the Republic of Latvia", 28 November 2014, available online at: http://www.satv.tiesa.gov.lv/en/press-release/the-norm-regarding-the-competence-of-arbitration-court-to-determine-jurisdiction-regarding-a-dispute-is-incompatible-with-the-satversme/.

47. In this case, the arbitral tribunal based its jurisdiction on an arbitration agreement supposedly contained in an appendix to the main contract. The Respondent in the arbitral proceedings, however, claimed that this appendix had been forged and requested that the tribunal compel the other party to submit the appendix to be certified by an expert. The tribunal rejected this request, which led the requesting party to attempt to have the arbitration award challenged in front of a national court on the grounds that the arbitration agreement was invalid. However, this motion was denied.

48. The Constitutional Court of Latvia, Judgment in case No. 2014-09-01 "On Compliance of Section 495(1) of the Civil Procedure Law with the first sentence in Article 92 of the Satversme of the Republic of Latvia", 28 November 2014, available online at: http://www.satv.tiesa.gov.lv/en/press-release/the-norm-regarding-the-competence-of-arbitration-court-to-determine-jurisdiction-regarding-a-dispute-is-incompatible-with-the-satversme/. The Court found that "[i]f a person has not agreed that the case will be heard by an arbitration court, then the procedure before the arbitration court and its potential outcome, obviously, can significantly infringe upon the rights of this person. On such occasions a person should have the right to turn to court to defend his or her infringed rights directly and immediately, independently from other persons' will or actions [20.2.4.]".

49. Richard Woolley, *Latvian court recognises right to challenge arbitration agreements in court*, Global Arbitration Review, 10 December 2014, available online at: http://globalarbitrationreview.com/news/article/33247/latvian-court-recognises-right-challenge-arbitration-agreements-court/.

50. Supreme Court of Lithuania, Civil Case No. 3K-7-458-701/2015, 23 October 2015, available online at: http://res.cloudinary.com/lbresearch/image/upload/v1446565220/gazprom1_310115_1540.pdf, available in English at: http://res.cloudinary.com/lbresearch/image/upload/v1446738164/2015_10_23_gp_enmin_scl_ruling_scc_award_recognition_en_002_510115_1542.pdf.

51. Douglas Thomson, *Gazprom award recognised in Lithuania*, Global Arbitration Review, 5 November 2015, available online at: http://globalarbitrationreview.com/news/article/34305gazprom-award-recognised-lithuania/ and http://res.cloudinary.com/lbresearch/image/upload/v1446565220gazprom1_310115_1540.pdf.

52. Taras Tertychnyi, *Ukrainian High Court Summarises Case Law on the Enforcement and Setting Aside of International Arbitration Awards*, CIS Arbitration Forum, 4 April 2016, available online at: http://www.cisarbitration.com/2016/04/04/ukrainian-high-court-summarises-case-law-on-the-enforcement-and-setting-aside-of-international-arbitration-awards/. An overview of the case law is a special legal instrument used by Ukrainian high courts to summarise and unify case law in a particular field of law. Although such overviews are formally advisory in nature, they are in fact used extensively by lower courts as guidelines in similar cases.

53. Taras Tertychnyi, *Ukrainian High Court Summarises Case Law on the Enforcement and Setting Aside of International Arbitration Awards*, CIS Arbitration Forum, 4 April 2016, available online at: http://www.cisarbitration.com/2016/04/04/ukrainian-high-court-summarises-case-law-on-the-enforcement-and-setting-aside-of-international-arbitration-awards/.

54. The Higher Specialised Court of Ukraine, *Euler Hermes Services Schweiz AG v OJSC Odessa Fat and Oil Plant*, Decision, 8 April 2015, case No. 6-3583св15. A panel of judges of the High Specialized Court of Ukraine revisited the case three times. In 2013 and 2014, the Court remanded the case for a *de novo* review to the Odessa Region Appeal Court. Consequently, an almost three-year legal battle ended with a controversial decision being rendered by the High Specialized Court of Ukraine in 2015. The Supreme Court of Ukraine, by its Order of 24 June 2015, dismissed an application for leave to appeal the discussed judgment. Regrettably, the Supreme Court found no divergent application of law by the cassation court.

55. L. Misetic, 'Croatia', *The European, Middle Eastern and African Arbitration Review 2016*, Global Arbitration Review, 2016, available online at: http://globalarbitrationreview.com/reviews/76/sections/289/chapters/3102/croatia/.

56. Press release of the PCA, 18 March 2016: http://www.pcacases.com/web/sendAttach/1604.

57. Sergejs Dilevka, *Arbitration Claims by Ukrainian Investors under the Russia-Ukraine BIT: between Crimea and a Hard Place?*, CIS Arbitration Forum, 17 February 2016, available online at: http://www.cisarbitration.com/2016/02/17/arbitration-claims-by-ukrainian-investors-under-the-russia-ukraine-bit-between-crimea-and-a-hard-place/.

58. Vidya Kauri, *Ukrainians Hit Russia With Multimillion-Dollar Claims*, Law360, New York, 11 January 2016, available at: http://www.hugheshubbard.com/NewsDocuments/Ukrainians%20Hit%20Russia%20With%20Multimillion-Dollar%20Claims.pdf.

59. PCA Press Release of 6 January 2016 on *Arbitration between Aeroport Belbek LLC and Mr. Igor Valerievich Kolomoisky as Claimants and the Russian Federation*, available online at: http://www.pcacases.com/web/sendAttach/1553.

Franz T. Schwarz
Wilmer Cutler Pickering Hale and Dorr LLP
49 Park Lane
London, W1K 1PS
United Kingdom

Tel: +44 20 7872 1000
Email: franz.schwarz@wilmerhale.com
URL: www.wilmerhale.com

Franz Schwarz, a partner in WilmerHale's international arbitration practice group, has extensive experience with arbitral practice, procedure and advocacy both in civil and common law systems.

Mr. Schwarz has been involved in more than 200 arbitrations as counsel and arbitrator (including as chairman), both *ad hoc* and before all major arbitral institutions, at multiple seats and governed by a broad variety of laws.

Mr. Schwarz regularly counsels clients on conflict of laws issues and international enforcement of arbitration awards and judgments, and frequently advises parties on the protection of foreign investments under bilateral investment treaties.

Mr. Schwarz teaches international arbitration at the University of Zurich, the Europainstitut in Saarbrücken and the Vienna University School of Economics.

Mr. Schwarz has also published extensively on topical issues of arbitration law and is the co-author of *The Vienna Rules – A Commentary on International Commercial Arbitration in Austria* (Kluwer Law International 2009, 2nd edition forthcoming).

Krystyna Khripkova
Wilmer Cutler Pickering Hale and Dorr LLP
49 Park Lane
London, W1K 1PS
United Kingdom

Tel: +44 20 7872 1021
Email: krystyna.khripkova@wilmerhale.com
URL: www.wilmerhale.com

Krystyna Khripkova is a visiting foreign lawyer at Wilmer Cutler Pickering Hale and Dorr LLP in London. Her practice focuses on international arbitration and dispute resolution. Ms. Khripkova's international arbitration practice includes representation in both institutional and ad hoc arbitrations (including under the ICSID, ICC, LCIA, SCC, UNCITRAL and ICAC at the UCCI rules) sited in both common and civil law jurisdictions, and has particular experience with issues relating to CIS jurisdictions. Ms. Khripkova's international arbitration practice covers a wide range of industries, including construction, financial services, telecommunications and oil and gas. Ms. Khripkova is qualified in Ukraine. Ms. Khripkova is a graduate of Stockholm University (LL.M., 2014) and Ukrainian State University of Finance and International Trade (LL.M., 2008).

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glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
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