



British Institute of
International and
Comparative Law

Admission, regulation and operation of arbitral institutions: a comparative perspective

Working Group
Meeting: Project on
Pilot Admission and
Operation of Foreign
Arbitration Institutions
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Questions

- UK and international experience in the admission, regulation and operation of arbitration institutions
- How admission, regulation and operation may differ between domestic and foreign arbitration institutions
- Where a distinction is made, the types of cases accepted by foreign arbitration institutions
- Where new arbitration institutions have been established, particularly foreign arbitration institutions, the common denominators or similar aspects across these different jurisdictions.

Key findings

- UK and the vast majority of jurisdictions do not distinguish between domestic and foreign arbitral institutions when it comes to registering and administering them.
- Some arbitral institutions have established branches or representative offices abroad. This is done not to change the legal status of arbitral awards they render but to improve their marketing and case management efforts.
- Russia is one notable exception which for some disputes (primarily related to corporate law) requires that foreign arbitral institutions require registration with the Ministry of Justice. Only two institutions (HKIAC and VIAC) registered and none has established physical presence in Russia.
- Arbitral institutions are usually set up in the form of non-for-profit. In the UK, key arbitral institutions such as LCIA and LMAA registered as companies limited by guarantee.

Company limited by guarantee

- LCIA, LMAA, ICC UK and other key players are registered in the UK as companies limited by guarantee (CLG)
- CLG is used for charities, community projects, clubs, societies and other similar bodies. Most are not-for-profit companies - that is, they do not distribute their profits to their members
- CLG does not have a share capital or any shareholders
- In most other respects GLCs follow other rules for corporate entities

Foreign and domestic arbitral institutions and awards

- No definition of foreign arbitral institutions, the focus is on the nature of awards
- Some jurisdictions create different legal regimes foreign and domestic arbitral awards
- Domestic awards: rendered in the territory of a state other than the state of recognition
- Foreign awards: those not regarded as "domestic" in the state in which their recognition is sought
- Many jurisdictions do not make a distinction between foreign and domestic awards for recognition and enforcement purposes
- The UNCITRAL Secretariat Explanatory on the Model Law on International Commercial Arbitration encourages to apply the same rules should apply to arbitral awards whether made in the country of enforcement or abroad, and that those rules should follow closely the 1958 New York Convention

Examples

- Award rendered by ICC tribunal seated in London would be regarded as foreign in Singapore
- SIAC award rendered by a London-based tribunal would be regarded as a foreign award in Singapore
- Domestic courts in England can set aside awards rendered within its jurisdiction or refuse recognition/enforcement of foreign arbitral awards

Approaches to foreign arbitral institutions

- Nearly all major jurisdictions (except for Russia) do not impose requirements for foreign arbitral institutions to register.
- Foreign (e.g., rendered abroad) arbitral awards are enforced in accordance with the New York Convention with domestic courts playing a "policing" role.
- Domestic courts can set aside arbitral rendered in the territory within their jurisdiction or refuse recognition/enforcement for awards rendered in foreign jurisdictions.

Branches of arbitral institutions abroad

- ICC established presence in Hong Kong (2008), New York (2014), Sao Paulo (2017), Singapore (2018) and Abu Dhabi (2021); as well as Shanghai Representative Office (2016).
- HKIAC has representative offices in Shanghai and Seoul.
- LCIA established a branch and special arbitral rules for India in 2009 but 6 years later decided to discontinue India operations.
- The main purpose of these branches - organizing marketing, training, conference and logistical help with managing cases.
- No special rules developed for admitting foreign arbitral institutions in most jurisdictions, but usually it is done in collaboration with a local partner (Abu Dhabi Global Market (ADGM), the Ministry of Law, Korean Commercial Arbitration Board, etc).

Russia's approach to foreign arbitral institutions

- In 2015-2016 Russia introduced restrictions on consideration of certain types of disputes to institutions, which are granted permanent arbitral institution status.
- Only two institutions currently have this status: Hong Kong International Arbitration Centre and Vienna International Arbitration Centre.
- Arbitrations administered and seated in Russia may
 - (i) benefit from Russian court assistance in obtaining evidence; and
 - (ii) exclude certain aspects of court oversight.

Russia's approach to foreign arbitral institutions

Recognized foreign institutions are authorized to administer:

(i) international disputes seated in Russia;

(ii) disputes between parties from any special administrative region as defined under Russian law or disputes arising from agreements to carry out activities in any such region;

(iii) disputes arising from contracts made in accordance with or in connection with Federal Law "On Procurement of Goods, Works and Services by Certain Types of Legal Entities" seated in Russia; and

(iv) the following types of corporate disputes in respect of a legal entity in Russia (Article 45(7) and (7.1) of the Federal Law and Article 225.1 of the Russian Arbitral Procedure Code:

"disputes concerning the ownership of stocks, shares in the charter capital of business companies and partnerships, share contributions by the members of production cooperatives, their encumbrance and the exercise of rights, arising from them", such as disputes arising out of share purchase agreements;

"disputes arising from agreements between the participants of a legal entity concerning the management of that legal entity including disputes arising from corporate agreements", such as disputes arising out of shareholders' agreements; and

"disputes arising from the activities of registrars of placement owners, regarding the registration of rights to stocks and other securities, the exercise of their rights and discharge of other obligations, provided by federal law in connection with the distribution and (or) circulation of securities, by the registrar of placement owners".

Conclusions

- In most jurisdictions no special rules for admission of foreign arbitral institutions.
- Determination of whether an arbitral institution is foreign or domestic not so important, the focus is on the nature of the award (foreign or domestic).
- Major arbitral institutions are usually registered as non-for-profit entities.
- Some arbitral institutions set up branches in various jurisdictions but usually this does not change the legal status of their awards under their domestic arbitration laws or the New York Convention.

Read full report

Kryvoi, Yarik, **UK and International Experience in the Admission, Regulation and Operation of Arbitral Institutions (仲裁机构准入、监管和运作之英国及国际经验)** Great Britain China Centre (22 February 2021).

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