

Alternative Disputes Resolution

Under the Chairmanship of Khawar Qureshi QC, the MIFC ADR group, including representatives of law firms Herbert Smith, Hogan Lovells, Muranov Chernyakov & Partners and White & Case, has met on several occasions since being given its mandate in June 2011 and produced an interim report in December 2011 which was presented to a gathering of lawyers in London in May 2012. The key findings are summarised below:

1. The issue of whether a new financial court is created in MIFC should be decided as a matter of priority and determination be made of the scope of its jurisdiction and relationship with the ADR institution(s) that are intended to operate as part of the MIFC initiative.
2. A court in Moscow should be designated to supervise all international arbitrations seated in Russia, irrespective of the actual city where the arbitration takes place.
3. A court in Moscow (the same court) should be made responsible for recognition and enforcement of all international arbitral awards, which are subject to enforcement in Russia.
4. A determination should be made as soon as possible on whether the MIFC project requires an entirely new ADR institution to be created and, if not, whether ICAC will be the vehicle for developing Moscow as a seat of international arbitration.
5. Certain issues of concern relating to international arbitration in Russia, namely, arbitrability, interim measures and public policy, should be further addressed in legislation and guidance of the Highest Commercial Court.

The interim report was presented at a conference in London in May 2012. The broad range of attendees at the event was drawn from lawyers (UK and Moscow based), judges, mediators and experts on international law. They enjoyed a detailed exposition of the existing legal organs in Russia that could enable or block development of a dispute resolution service that can serve the international community.

Finding the right solution should ultimately result in more international business being conducted in and disputes being resolved on Russian soil. The challenges of evolving the existing Russian legal system at the speed with which the State seems to be supporting development of MIFC in, for example, the financial markets, appears to leave limited options. Despite strengths of the existing legal system, it is perceived not to be well disposed to arbitration generally, nor robust enough to deal with the complex, high value, multilingual nature of international commercial disputes. Significant reform would therefore be required by its nature taking a long time. The most viable option seems to be a new centralised Moscow court to supervise all Russian seated international commercial arbitrations and arbitral award, staffed with experienced international arbitrators that can deal such cases. This is similar to the successful approach taken by Dubai. Grafting the new and the old cultures together then becomes the challenge but there are certainly enough bright and ambitious lawyers in Russia that will gravitate to this important feature of an international financial centre to ensure its long term success.

The Report is to be refined and presented in Moscow in July 2012.

Khawar Qureshi QC

Chairman of the Alternative Disputes Resolution Stream