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UK-RUSSIA LIAISON GROUP ON MOSCOW AS AN INTERNATIONAL FINANCIAL CENTRE

INTERIM REPORT OF ADR WORK-STREAM

December 2011

1. EXECUTIVE SUMMARY

1.1 We summarise our interim recommendations, with references to the relevant sections in this Interim Report, as follows:

(a) 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 (section 4).

(b) 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 (section 5).

(c) 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 (section 5).

(d) 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 (section 6).

(e) 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 (section 7);

(f) If ICAC is to be the vehicle for development of Moscow as a seat of international arbitration, then steps such as the following should be taken:

(i) ICAC undertake reforms that will make it more credible as an international institution including by increasing foreign representation in its administrative body and in its list of arbitrators and by promoting flexibility in the choice of language for ICAC arbitration;

(ii) the ICAC Rules be amended in a way which will make them more appropriate for high value, complex commercial disputes;

(iii) the ICAC arbitration clause be adopted as standard in MIFC contractual documentation (section 8).

(g) In time, obligatory training programmes for members of the Russian judiciary involved in international arbitration cases be established with the involvement of leading international organisations and members of the legal profession and judiciary from other countries (section 9).

2. **CONTENTS**

3. **INTRODUCTION**

3.1 This is the Interim Report of the ADR Work-stream of the UK-Russia Liaison Group on Moscow as an International Financial Centre (the "Interim Report"). The Interim Report has been prepared by the ADR Work-stream consisting of representatives of law firms Herbert Smith, Hogan Lovells, Muranov Chernyakov & Partners and White & Case, under the chairmanship of Khawar Qureshi QC.

3.2 The Interim Report examines ways in which alternative dispute resolution ("ADR") in Russia may be improved and so serve as one of the pillars for the initiative of creating Moscow as an International Financial Centre ("MIFC"). The Interim Report considers the task of enhancing ADR in Russia from three main perspectives: (1) institutional, (2) reform of laws and rules, (3) educational. The Interim Report adopts a comparative approach; that is, it analyses the current climate for ADR in Russia and contrasts this with best practice in certain other leading jurisdictions.

3.3 The Interim Report draws upon earlier contributions of the members of the ADR Work-stream in the form of reports which are as follows:

(a) Memorandum on Alternative Dispute Resolution in Russia prepared by Hogan Lovells and dated 15 July 2011;

(b) Memorandum on Arbitration in Singapore prepared by Hogan Lovells and dated 15 July 2011;

(c) Memorandum on French Law of Civil Procedure on the Courts' Role in Arbitration and Mediation prepared by White & Case and dated 9 August 2011;

(d) Memorandum on English law and procedure in relation to arbitration and mediation prepared by White & Case and dated 9 August 2011;

(e) Brief comments on the issue of establishment of the arbitration institution for the needs of the International Financial Centre in Moscow prepared by Muranov Chernyakov & Partners and dated 10 November 2011;

(f) Paper entitled "The Moscow Alternative Dispute Resolution Centre Initiative – The Challenges Ahead" prepared by Herbert Smith.

3.4 We address the institutional issues first. Identifying the institution(s) that will be used to enhance ADR in Russia is a prerequisite to understanding what reform and educational programmes are required.

4. **THE FIRST INSTITUTIONAL ISSUE:** MIFC – A NEW COURT OR A NEW FORUM FOR ADR OR BOTH?

4.1 The brief of the ADR Work-stream has been to consider ways of enhancing ADR in Russia, the principal, universally understood methods of ADR being arbitration (**третейский суд**), mediation (**медиация**) and expert determination (**внесудебное разрешение посредством эксперта**). We note, however, from the MIFC website[1] that there are also proposals for the creation of a special financial court within the existing commercial court (**арбитражный суд**) system; in other words, the creation of a specialised state court.

4.2 This raises interesting possibilities as well as a number of questions:

(a) Will the financial court's role be limited to disputes arising out of the financial matters which are of core concern to MIFC, i.e. listing and trading of equities and trading of derivatives?

(b) Or will it have a wider remit, dealing with all forms of dispute which have an international and commercial element?

(c) What will the relationship be of the financial court to an improved ADR institution within MIFC? Will the financial court assume the role of supervisory court for ADR in MIFC?

4.3 In our view, it is advisable to establish a final position on these issues sooner rather than later. Opportunities may be lost if the development of a financial court is not approached with the requirements of ADR in MIFC in mind, and vice versa.

4.4 A number of precedents exist of state financial or commercial courts which have an international reach.

4.5 A leading example is the Commercial Court in London. The Commercial Court is staffed by sixteen judges, all of whom were formerly advocates specialising in commercial law. The Commercial Court handles all forms of commercial dispute and has become famous in recent years for the number of high-profile cases heard there involving Russian parties or assets. The success of the Commercial Court may have historical reasons (London's position as a trade hub, its insurance and commodities markets) but it has become self-perpetuating due, perhaps, to three main factors: first, the use of English law as the governing law in many international contracts; secondly, the large number of experienced legal professionals in London; and thirdly, the sophisticated procedures in the English courts (including the Commercial Court) which, while expensive, ensure a thorough and fair hearing of cases.

[1] http://mfc-moscow.com

4.6 A more radical example is that of the Dubai International Financial Centre (the "DIFC"), which has been established by design rather than by evolution. The DIFC, while physically located in the United Arab Emirates, is an entirely separate legal system, with its own laws and courts. There are currently plans to extend the jurisdiction of the DIFC courts beyond companies incorporated and carrying on business in DIFC to any businesses worldwide which want to have their disputes resolved in the DIFC courts. The practice of the DIFC courts includes a number of features which makes it attractive to international users: a common law based legal system; an internationally renowned panel of judges; proceedings being conducted in the English language and the principle of the winning party being able to recover its legal fees from the losing party.

4.7 Typically, leading arbitration jurisdictions share some of the features that have been outlined above in relation to state courts. However, there are also differences. By contrast with state court proceedings, international arbitration is not supposed to be prescriptive in matters such as applicable procedure. The guiding principles are flexibility and party-choice. The parties should be left to resolve their dispute in the way that suits them best with minimal interference from the local court. To the extent that the local court is involved at all, it should be in a supporting rather than a policing role. Examples of leading arbitration "seats" are (in order of popularity) London, Paris, Geneva, Stockholm and Singapore.

4.8 We believe, therefore, that the process of developing dispute resolution in the MIFC should be a coordinated one to maximize the benefits which may be obtained from the role of the state courts on the one hand and ADR on the other. In particular, the relationship between the financial court and the ADR institution needs to be defined.

4.9 With these observations, the remainder of the Interim Report will focus on ways in which Moscow may be made into a world-class seat of international arbitration. In our opinion, attention to arbitration is a first step further to which improvements in other forms of ADR such as mediation and expert determination will follow.

5. **THE SECOND INSTITUTIONAL ISSUE:** THE LOCATION OF THE SUPERVISORY COURT

5.1 While the hope of parties that choose international arbitration is that their disputes will be exclusively and finally resolved in the arbitration, circumstances do arise when it is necessary to have recourse to a court with supervisory jurisdiction over arbitration matters. The typical situations are (1) challenges to the jurisdiction of the arbitral tribunal, (2) default appointment and challenges to arbitrators, (3) applications for interim measures, (4) applications to set-aside an arbitral award, (5) applications to enforce an arbitral award. With the exception of (2), these functions in Russia are performed by courts in the commercial court system.

5.2 In reality, there are a large number of courts and judges in Russia that can be involved in supervising arbitration or enforcing an arbitral award. A commercial court in a particular region may have jurisdiction if the arbitration is seated locally (rather than in Moscow). Or a commercial court will be the court required to enforce an arbitral award because the respondent's domicile or assets are in that locality. There are over eighty commercial courts throughout Russia which have such responsibilities.

5.3 In our view, this is a weakness. While it is generally accepted that the judges of the commercial courts now have greater experience of dealing with international matters and in applying the norms of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention") the diffusion of responsibilities to so many individual courts still presents a risk of inconsistency in judicial decision-making and the possibility, which is occasionally seen, of local influence over the court.

5.4 There may be a number of ways of dealing with this. One way could be to maintain the existing system of local supervision / enforcement but to remove any appealed cases to Moscow straightaway so that there is a "leap-frog" procedure. This would have the effect of cutting out the Federal Commercial Court instance and transferring cases straight to the Highest Commercial Court or a new division thereof.

5.5 The better way in our view would be to transfer all competences to Moscow, so that there is a designated court (whether a new financial court or the existing Moscow City commercial court) which has all supervisory powers in relation to international arbitration and which will be responsible for recognising and enforcing incoming foreign arbitral awards. This is consistent with the approach in some other jurisdictions. For example, England where, although there is no one official court with responsibility for supervising international arbitration, in practice, the Commercial Court and the Technology and Construction Court in London deal with most international arbitration cases. So too, in Paris, where the Tribunal de grande instance in practice supervises most international arbitrations seated in France and is responsible for procedures relating to the recognition and enforcement of all foreign arbitral awards being brought into France.

6. **THE THIRD INSTITUTIONAL ISSUE:** A NEW ADR INSTITUTION OR IMPROVEMENT OF ICAC?

6.1 Success in creating Moscow as a world-class seat of international arbitration will depend in large measure on there being in Moscow an arbitral institution which can be considered a serious competitor to pre-eminent global institutions such as the International Court of Arbitration of the International Chamber of Commerce (the "ICC"), the London Court of International Arbitration (the "LCIA"), the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC") and the Singapore International Arbitration Centre ("SIAC").

6.2 Russia already has a number of institutions which administer international commercial arbitration. The leading institution – based in Moscow – is the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation ("ICAC"). ICAC has a special place among arbitration institutions in Russia. It has a statutory basis, in that its role and sphere of activities are expressly set out in an addendum to the Federal Law on International Commercial Arbitration 1993 (the "International Arbitration Law")[2]. Furthermore, the President of the Russian Chamber of Commerce and Industry – the parent institution of ICAC – is the appointing and removing authority for the purposes of articles 11(3), 11(4), 13(3) and 14 of the International Arbitration Law.

6.3 The question therefore arises: should ICAC be used as the means to promote Moscow as a leading seat of international arbitration or should an entirely new ADR institution be created?

6.4 An important consideration in this issue is that of independence. Users of arbitration want to be sure that the institution they choose to administer their disputes is free of all forms of political and commercial influence.

6.5 ICAC is not an ideal example in that regard. ICAC is perhaps unique among international arbitral institutions in having a statutory basis. This and its place in the Russian Chamber of Commerce and Industry give it an indirect connection with the Russian state. By contrast, institutions such as the SCC, even though established within a chamber of commerce, can claim to be entirely independent from government[3]. Other institutions are established along more corporate lines. The LCIA, for example, is based on a not-for-profit company limited by guarantee. It operates on a three-tier structure which separates the administration of the LCIA as an institution from the administration of cases. The LCIA Board oversees the company limited by guarantee and is responsible for the development of the LCIA's business and its compliance with company law. The LCIA Court appoints tribunals, determines challenges to arbitrators and oversees matters relating to the costs of cases. The LCIA Secretariat deals with the day-to-day administration of cases[4].

[2] The Maritime Arbitration Commission at the Russian Chamber of Commerce and Industry also shares this distinction.
[3] www.chambers.se
[4] www.lcia.org

6.6 In principle, it ought to be possible to establish a new leading institution in Russia on a basis different from that of ICAC. Article 3(2) of the Federal Law on Arbitral Tribunals 2002 anticipates that permanent arbitral institutions may be established in a number of ways, including by chambers of commerce, stock exchanges, public associations of entrepreneurs and legal entities incorporated in Russia. If the MIFC wished to start with a clean slate, therefore, it would be theoretically possible to remove ICAC from its current position under the International Arbitration Law, substitute another authority for the President of the Chamber of Commerce and Industry as the authority for the purposes of 11(3), 11(4), 13(3) and 14 of the International Arbitration Law and set up a new ADR institution with a different constitution.

6.7 On the other hand, such a step may be seen by some as an overreaction and prove wasteful of resources. Although, there are criticisms that could be made of ICAC's perceived, indirect connections with the state, ICAC has shown itself capable of dealing impartially with politically sensitive and high-value disputes. Furthermore, it seems doubtful that the existence of two leading arbitral institutions side-by-side in Moscow would be beneficial to arbitration in Russia or, indeed, possible. The arbitration community in Russia is currently very much focused around ICAC. Unless the competences of ICAC and the new ADR institution were clearly differentiated, it seems unlikely to us that Moscow could sustain two leading arbitral institutions. In time, one of them would fade away. Creating an entirely new ADR institution would probably, therefore, be a waste of resources in one way or another. That said, if the ICAC is to be the vehicle for enhancing arbitration in Russia, very real changes would need to be made to its current make-up for it to be regarded as a serious competitor to the global institutions. These issues are dealt with in more detail in section 8.

7. REFORM OF THE LAW AND PRACTICE

7.1 Reform of the International Arbitration Law is already underway. A revised draft of the International Arbitration Law with amendments based on certain of the revisions contained in the 2006 version of the UNCITRAL Model law was introduced into the State Duma of the Russian Federation on 22 July 2011.

7.2 Our view is that the current draft amendments do not go far enough in some respects. Furthermore, certain aspects of the practice of the Russian courts might create misunderstanding as to their attitude towards arbitration. This section considers some of these issues.

ARBITRABILITY

7.3 The question of what disputes cannot be made subject to arbitration is one which surfaces from time to time in Russian arbitral law and practice in different forms. On 26 May 2011, the Constitutional Court of the Russian Federation finally resolved (in the context of domestic arbitration) the question of whether disputes relating to real estate located in the Russian Federation were arbitrable. The answer of the Constitutional Court was that they were. However, with one controversy having receded, another has taken its place. Now the question has arisen of whether corporate disputes in relation to Russian companies can be subject to arbitration.

7.4 The cause of these two areas of uncertainty is the drafting of provisions of the Commercial Procedural Code which confer jurisdiction for certain disputes on the commercial courts: Article 248 of the Commercial Procedural Code in relation to real estate disputes (where foreign parties are involved) and Article 225.1 of the Commercial Procedural Code in relation to corporate disputes. While these provisions are almost certainly intended to delimit jurisdiction between the commercial courts and other state courts (including foreign state courts) the commercial courts are prone to interpreting them widely; holding that they exclude all other possible fora including arbitration.

7.5 In arbitration-friendly jurisdictions, courts do not view the delimitation between the arbitrable and non-arbitrable as territory to be fought over. Generally, matters which have a strong public law or public interest element and / or where state entities are likely to be involved – matters such as criminal law, administrative and tax law, the core of insolvency proceedings, competition law – fall on the side of the non-arbitrable[5]. We doubt that in most jurisdictions the proposition that real estate and corporate disputes were arbitrable would be controversial. In arbitration-friendly jurisdictions, arbitration is accepted merely as an alternative to court litigation and not as a rival.

[5] Although some counties, such as France, adopt a particularly generous view of what is arbitrable and permit competition, copyright and patent matters to be arbitrated.

INTERIM MEASURES

7.6 One of the major changes being proposed in the draft amendment to the International Arbitration Law is to add certain of the provisions in the 2006 revision of the UNCITRAL Model Law relating to interim measures. These include the helpful provisions which outline the types of interim measure that an arbitral tribunal can make and (with amendments) the circumstances in which an order may be made as well as the provisions – of more debatable value[6] – as to the making of "preliminary orders" on an ex parte basis. However, what are noticeably absent from the current draft that is before the State Duma are the provisions relating to the recognition and enforcement of a tribunal's interim measures by a court.

7.7 It appears that there has been much debate on the nature of interim measures of an arbitral tribunal and the Highest Commercial Court has opposed any amendments which would equate an interim measure of an arbitral tribunal with that of a court or admit of the possibility that an interim measure might be internationally exportable like a final arbitral award. From the perspective of Russian law and practice, the Highest Commercial Court is, of course, correct. There is no international treaty which expressly permits to recognition and enforcement of the interim orders of an arbitral tribunal and it is well established in Russian practice that only a final award of an arbitral tribunal on the merits is enforceable under the New York Convention.

7.8 However, there may be some benefit in reconsidering the matter. It would be a missed opportunity if the concept of enforceability of a tribunal's interim measures by a court did not become part of the Russian practice. This area is a key test of a jurisdiction's readiness to be leading seat of arbitration. It is a delicate balancing exercise; the court having the power to enforce a tribunal's order on the one hand but having to restrain itself from reviewing the basis on which the tribunal made the order in the first place on the other.

7.9 As matters stand, the amendments to the International Arbitration Law will mean in practice that the orders of an arbitral tribunal have no more compulsive power than they did before. Even if the position is maintained that the orders of an arbitral tribunal seated abroad cannot be enforced through a court in Russia, a system ought to be developed whereby orders issued by tribunals seated in Russia can be enforced through the supervisory court in Russia. Precedents exist for such a system. For example, sections 41 to 42 of the English Arbitration Act 1996 permit an order of a tribunal seated in England to be converted into an order of the English court if a party has breached an order of the tribunal which is in peremptory terms. Section 12(5) of the Singapore International Act also permits an order of an arbitral tribunal to be enforced in the same manner as an order of the court if the court gives its permission.

[6] See Gary B. Born "International Commercial Arbitration" (2009) (Kluwer Law International) page 2017, where it is suggested that the ex parte orders of an arbitral tribunal virtually never make sense or accomplish any serious purpose because they have no immediate coercive effect.
[7] Information Letter No.78 of the Presidium of the Highest Commercial Court dated 7 July 2004, paragraph 26.

7.10 A further step would be to establish the principle that arbitral tribunals and courts should not have concurrent jurisdiction over interim measures. This would mean drafting provisions to the effect that the court shall only be entitled to act on the direct application of a party if the arbitral tribunal itself is not yet constituted or does not have the requisite power.

7.11 In our view, improvement of the regime for the enforcement of interim measures should remain on the agenda as in time it will provide a bridge between arbitral tribunals and the court system.

PUBLIC POLICY

7.12 Some jurisdictions, including Russia, have acquired a bad reputation for the use by respondents of the public policy objection to the enforcement of arbitral awards. In reality, this reputation is becoming more and more unfounded in Russia as the Russian courts have become astute to reject bad public policy challenges.

7.13 The decrease in the misuse of the public policy objection has been achieved to a large extent by the Highest Commercial Court's rulings in particular cases. An additional attempt to provide useful guidance to the lower courts was made in the Information Letter No.96 dated 22 December 2005 relating to the recognition and enforcement of the judgments of foreign courts and the challenge and the enforcement of arbitral awards. However, the examples cited by the Presidium of the Highest Commercial Court in that letter in relation to the public policy argument are considered by some commentators to have been insufficient for the lower courts and to have resulted in further mixed court practice. For example, despite the reminder given throughout the letter that an enforcing court is not allowed to review the merits of an arbitral award, the Highest Commercial Court gave as examples of court practice cases where such review is effectively suggested.

7.14 The public policy argument is therefore still perceived as an issue in Russia. To avoid any ongoing confusion at the level of the lower courts a new Information Letter of the Highest Commercial Court is required which gives a consistent picture of best practice and clear statements as to the circumstances in which an objection may be made on public policy grounds. In particular, the problem of satellite litigation in Russia must be addressed by clarifying that proceedings brought in Russia by a third party after the request for arbitration is filed with the aim of invalidating the underlying translation should not render an arbitral award unenforceable on public policy grounds.

OTHER ISSUES

7.14 This is not an exhaustive review of issues that might be addressed in the Russian law and practice relating to arbitration. There are some other matters, for example, arbitration confidentiality, which could be added as a part of a comprehensive package of reform.

8. REFORM OF ICAC AND ITS RULES

8.1 According to its current profile, the ICAC is an institution which administers a reasonable number of international arbitrations where foreign parties are involved and that proceedings under ICAC Rules proceed quickly and cheaply. However, the disputes conducted under the auspices of ICAC tend to be relatively small in value. Data on ICAC's performance for the year 2010 shows that companies from foreign countries participated in a large number of the 299 disputes registered in 2010; that, of cases concluded in 2010, 78% did so in less than a year; but that only around 20% of disputes heard in 2010 exceeded USD 1 million in value and that under half of these were for more than USD 5 million.

8.2 While ICAC's low cost and efficiency are no doubt attractive features for commercial parties, it does not follow from them that ICAC is entrusted with large-scale international disputes the likes of which are heard under the auspices of ICC, LCIA and SCC. We set out below what we see as some of the main issues regarding the ICAC and its Rules.

ICAC NEEDS TO BE MORE INTERNATIONAL

8.3 The essence of a possible perception of ICAC is that, in its current make-up and outlook, it is too domestic to be truly regarded as international.

8.4 First, all thirteen members of ICAC's executive body – the Presidium – are Russian. This compares poorly with the composition of administering bodies of other international arbitral institutions which all have some representation which is foreign to the city and country with which the institution is principally associated.

8.5 Secondly, ICAC's list of arbitrators is also very Russian-dominated. While there is a significant minority of foreign arbitrators on the list there are very few of the global leading arbitrators who are most in demand and who take appointments as arbitrators under the rules of ICC, LCIA, SIAC, SCC and in ad hoc arbitration under UNCITRAL Rules. The list of arbitrators of SIAC provides a good comparison. Of the 366 arbitrators on SIAC's list, less than one third (120) are from Singapore and, among the majority, a large number of other nationalities are represented, some of them in significant numbers such as UK (60 arbitrators), US (22 arbitrators), China (17 arbitrators) and Hong Kong (17 arbitrators). We are aware that under the ICAC Rules it is possible for parties to nominate arbitrators who are not on the ICAC list. However, the current composition of the list gives a strong impression all the same that ICAC is a Russian rather than an international institution. In any event, the chairman of an ICAC tribunal or a sole arbitrator will be selected by the ICAC Presidium from an arbitrator in the list[8].

[8] ICAC Rules articles 17(7) and 17(9).

8.6 Another comment that might be made about ICAC's list of arbitrators – and which could in fact be made of the lists of most institutions – is that there are too many lawyers, whether academics or practitioners. The origins of arbitration lie in the adjudication of disputes of commercial men by their peers, for example, mariners, merchants or brokers. It is not necessary in international arbitration for a tribunal of three arbitrators to consist entirely of lawyers. If the panel includes one or two members of the actual trade that it is the subject of the dispute then the tribunal has all of the expertise that it needs for the resolution of the dispute. It would complement the work of the MIFC as a whole, therefore, if ICAC actively recruited arbitrators who were currently involved in or recently retired from the industries which form the core concern of MIFC – banking, financial services, trading, broking – as well as other service providers such as accountants and tax experts.

8.7 Thirdly, Russian should be removed as the default language under the ICAC Rules[9] and the parties encouraged to make a positive choice as to the language of ICAC proceedings by amending the standard ICAC arbitration clause with the addition of a provision as to choice of language. In time, the ICAC would benefit from a more open approach to choice of language in ICAC proceedings. On the one hand, it ought to retain its pre-eminence as the leading Russian-speaking institution and so serve as a dispute resolution hub for the wider CIS, where Russian is a common language. On the other, greater encouragement of other languages, particularly English, will enhance its credibility as a truly international ADR centre.

TRANSMISSION OF DOCUMENTS

8.8 Although the ICAC Rules anticipate the possibility of communication by email and fax, in practice, communication in ICAC arbitration can be delayed with documents being sent by mail through the medium of the ICAC Secretariat before being forwarded to the tribunal and the other party.

PARTIES' STATEMENTS OF CASE

8.9 While the procedure for the exchange by the parties of their statements of case is commendably short this may not, in fact, meet the needs of large disputes. In leading institutional rules the parties provide initial request and response documents. The claims and defences are then set out in full in subsequent written submissions with the parties generally having the expectation too of a right of reply.

[9] ICAC Rules article 23(1).

ARBITRATORS' FEES

8.10 The standard fees in the ICAC Schedule of Costs are at a level which is unlikely to attract the world's leading arbitrators to preside over arbitration under ICAC Rules. The bulk of fees for ICAC arbitration consist of the "administration fee", the arbitrators' fees coming out of a smaller "arbitrator's fee". Both fees are calculated by reference to the amount of the claim. For a claim of USD 50 million, the standard figures for the arbitrator's fee would be USD 38,380 (total for three arbitrators) and the administration fee USD 84,220. The reason for the administration fee being over two times larger than the arbitrator's fee is not entirely clear. Under the ICC Rules the standard fees of three arbitrators would be USD 517,452 for an equivalent value claim and the administrative fee USD 95,515.

USE OF ICAC CLAUSE

8.11 The ICAC arbitration clause should be adopted as a standard form dispute resolution provision for contractual documents for trading and custodian arrangements in MIFC.

GENERAL

8.12 These are just some comments on possible issues in the ICAC Rules as they stand for large-scale international arbitrations. One ultimate solution might be to maintain the existing Rules as a fast track / cheap procedure for claims under a threshold of USD 100,000 or USD 1 million and to develop a newer set with different emphasis in certain areas for large claims.

9. **EDUCATION**

9.1 Technically, and notwithstanding the fact that amendments are currently under discussion, the existing International Arbitration Law (based on the 1985 UNCITRAL Model Law) ought to be an adequate framework for the conduct of international arbitration in Russia. Legislation based on the UNCITRAL Model Law has been adopted in one form or another by at least 74 countries or other territorial entities (including 7 US States).

9.2 As has been suggested elsewhere in the Interim Report the problems relating to arbitration in Russia stem not so much from the legal framework as from a perception of the approach of some of the judiciary to arbitration. Such a perception is not confined to Russia. English judges are sometimes criticised for being too interventionist when, in reality, the English legal framework and judiciary operate so as to support arbitration in a very effective manner.

9.3 We think, therefore, that it is important to develop courses which are obligatory for all judges involved in international arbitration cases. These courses should cover not just the legal framework and Russian practice, but also raise awareness of international arbitral institutions and current themes in international arbitration around the world.

9.4 We have not yet approached any potential education providers. It occurs to us, though, that there would be considerable interest from abroad in assisting with training programmes in Russia. It is possible that one or more leading arbitral institutions could participate, such as ICC or LCIA or the Chartered Institute of Arbitrators. It may also be possible to arrange participation from governmental and regulatory bodies. From the UK side, this could mean involvement of the Bar Council of England and Wales and the Law Society and may be some formal liaison with judges of the Commercial Court in London.

10. **CONCLUSIONS**

10.1 If the aim is to promote Moscow as a world-class seat of international arbitration then, objectively speaking, and as has happened in every jurisdiction which has sought to attract arbitration matters, significant changes will be required to existing institutions, law, practice and attitudes. There is likely to be resistance to this sort of change from some quarters. In our view, reform is achievable if sufficiently bold steps are taken in a comprehensive way. Moscow already has much to commend itself as a hub for the resolution of disputes in the CIS region and we think that this can be built on as part of the MIFC project to establish a truly international seat of arbitration.

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