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## **“RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN RUSSIA AND RUSSIAN JUDGMENTS ELSEWHERE”**

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Moscow, Russia



# I. RUSSIAN JUDICIAL SYSTEM



*\*not to be confused with arbitration tribunals!*



# I. RUSSIAN JUDICIAL SYSTEM

## courts of general jurisdiction

- proceed on the basis of the Civil Procedure Code of the Russian Federation (CCPC);
- primarily handle disputes involving individuals and legal entities;
- handle disputes arising from matters other than commercial or business-related relationships, such as civil, family, labour, residential, land, environment etc.

## *arbitrazh* courts

- acting on the basis of the Arbitrazh Procedure Code of the Russian Federation (Russian acronym is APC);
- state courts that hear cases relating to commercial disputes:
- handle disputes involving legal entities and individuals engaged in business activities as an individual entrepreneur or, where provided for by the APC or other Federal Law, individuals engaging in business activities without such status.



## II. LEGAL FRAMEWORK



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## II. LEGAL FRAMEWORK

- Bilateral International treaties;
- Civil Procedure Code of the Russian Federation, Chapter 45;
- Arbitrazh Procedure Code of the Russian Federation, Chapter 31;
- customs.



### III. WHAT CONSTITUTES A FOREIGN JUDGMENT?

- judgments except for criminal judgments;
- final judgment on the merits which entered into force.



## IV. WHAT CONSTITUTES AN APPROPRIATE FORUM?



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- arbitrazh court of the Russian member state;
- the supreme court of the Russian member state.



## V. WHAT CONSTITUTES AN APPROPRIATE APPLICATION?



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- contains all requirements listed in a Law;
- supplemented with all listed in a Law attachments;
- filed in appropriate court.





## VI. BRIEF OVERVIEW OF THE COURT PROCEEDINGS

Filing an application



Notifying the parties



Submitting evidences



Holding a court hearing



Assessing the grounds for refusal





## VII. GROUNDS FOR REFUSAL OF RECOGNITION AND ENFORCEMENT

- judgment is not into force;
- party was not notified of the time and place of the proceeding;
- exclusive jurisdiction of a Russian court;
- existence of a Russian judgment entered into force on the same grounds (res judicata effect);
- existence a case under consideration by a Russian court on the same grounds (lis pendens effect);
- expiration of the limitation period;
- contradiction to Russian public policy.



## VIII. ENFORCEMENT STAGE



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- applicant obtains a writ of execution from the Russian court;
- submission the writ of execution to the Federal Bailiff Service.



## IX. PRACTICAL BACKGROUND.

### When do the courts recognize and enforce judgments?

- if there is an international treaty in force;
- if there is no an international treaty then Russian court look at other international treaties:
  - European Convention for the Protection of Human Rights and Fundamental Freedoms (1950);
  - The EU–Russia partnership and cooperation agreement (1994);
  - Agreement between the Government of the United Kingdom and the Government of the Russian Federation on Economic Co-Operation (1992).



## IX. PRACTICAL BACKGROUND.

Which countries recognize and enforce Russian judgments?  
Which do not?

Recognize

- USA
- Israel
- CIS
- UK
- non-EU territories

Do not recognize

- Germany



## IX. PRACTICAL BACKGROUND.

### What about application of customs?



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- in case of lack of international treaty;
- integral part of Russian legal system;
- reciprocity and international comity;
- difficult to prove reciprocity.



## IX. PRACTICAL BACKGROUND.

### What are the disadvantages?



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- deny recognition and enforcement if the foreign court (located in a country which is a party to the Hague Convention of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters) did not use the mechanism provided by that Convention when serving documents on the Russian defendant;
- too broad approach to “public policy”;
- refer to a wrong source of law – the New York UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).



## IX. PRACTICAL BACKGROUND.

### Where to litigate with a Russian party?



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#### State courts

- quick (questionably);
- less expensive;
- confidential (questionably);
- difficulties with a proper court competence;
- judgements are only subject for enforcement.

#### Arbitration tribunals

- quick (questionably);
- less expensive (questionably);
- confidential;
- too many non-arbitrable disputes;
- awards are subject to recognition and enforcement.





## X. OUR RECOMMENDATIONS

- more care on selection the dispute resolution clause while drafting contracts with Russian parties;
- it makes sense to subject the disputes against a Russian defendant to Russian courts;
- make sure that the foreign court complies with the Hague Convention of 1965;
- make sure you / the foreign court use the correct official mailing address of the defendants.

Thank You for your patience & attention!



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