



Presentation Handout

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Recognition and enforcement of foreign court judgments in Russia

I. Russian judicial system

In Russia courts authorized to hear civil cases consist of two types:

- courts of general jurisdiction that proceed on the basis of the Civil Procedure Code of the Russian Federation (CCPC); these courts primarily handle disputes involving individuals and legal entities arising from matters other than commercial or business-related relationships, such as civil, family, labour, residential, land, environment etc.; and
- *arbitrazh* courts (not to be confused with arbitration tribunals!) acting on the basis of the *Arbitrazh* Procedure Code of the Russian Federation (Russian acronym is APC). The *arbitrazh* courts are state courts that hear cases relating to commercial disputes. Such cases usually involve 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.

Despite these two co-existing systems of civil courts in Russia, their practice of recognition and enforcement of foreign court judgments is more or less the same.

II. Legal framework

Because there are two systems of state courts in Russia dealing with civil cases, each court system has got its own procedure:

- the Civil Procedure Code of the Russian Federation, Chapter 45 applies to recognition and enforcement of foreign court judgments by court of general jurisdiction; and
- the *Arbitrazh* Procedure Code of the Russian Federation, Chapter 31 applies to those by *arbitrazh* courts.

The basic rules provided by these Codes are as follows:

- Requirements as to the form and the contents of an application for recognition and enforcement of a foreign court judgment;
- Procedural rules for the examination of such applications by the court and for the outcome of the trial; and
- Grounds for the refusal to grant such applications.

For the recognition and enforcement of foreign arbitral awards, separate set of rules applies (including the 1958 New York Convention).

The Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters was concluded within the Hague Conference on Private International Law. Representative of the Russian Federation signed the final act of the Session of the Conference which resulted in the adoption of the Convention. Convention has not entered into force and the only signatory to it today is Uruguay.

III. International treaty or custom?

Foreign court judgments can be recognized and enforced in Russia based on:

- International treaties to which my home country is a Party¹; or
- (in absence of an applicable international treaty) international custom, such as reciprocity and international comity.

According to the Constitutions of the Russian Federation of 1993, international treaties supersede Russian federal laws (and legal provisions of inferior levels).

At present, Russia is a Party to only a few multilateral international treaties on recognition and enforcement of foreign judgements:

- Minsk Convention of 22 January 1993 on legal assistance and legal relations in civil, family and criminal matters (all 12 CIS countries are parties to that Convention); and
- Kiev Convention on Settling Disputes Related to Commercial Activities (1992).

In addition to that, Russia is a Party to 28 bilateral International treaties (e.g. with China, Cyprus, India), but most of the developed economies do not fall within this group.

Thus, Russia is not a party to Regulation No. 1215/2012 of the European Parliament and of the Council dated 9 January 2013 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

IV. What constitutes a foreign judgment?

- judgments in civil cases², except for criminal judgments to the extent they deal with recovery of damage caused by a crime;
- final judgment on the merits which entered into force (i.e. orders for interim measures or cost orders shall not be recognised and enforced in Russia).

V. What constitutes an appropriate forum?

- *arbitrazh* court of the Russian member state at the debtor's corporate seat or residence or, if the debtor's place of stay or of residence is unknown, at the location of the debtor's property³; or
- the supreme court of the Russian member state where the debtor's residence is located; if the debtor has no place of residence or stay in Russia or if the place of his stay is unknown, at the place of location of his property⁴.

¹ Article 409 (1) of CCPC, Article 241 (1) APC

² There is no answer as to whether decisions that approve settlement agreements are subject to recognition and enforcement. Usually, the courts will refuse the enforcement of a court judgement approving a settlement agreement, unless the international treaty provides otherwise.

³ Article 242 (1) APC

⁴ Article 410 CCPC

VI. Application for recognition and enforcement

the application shall indicate⁵:

- the name of the *arbitrazh* court to which the application is lodged;
- the name and location of the foreign court and its location;
- the name of the exactor and his place of stay or of residence;
- the name of the debtor and his place of stay or of residence;
- information on the judgment of the foreign court;
- the exactor's request for recognition and enforcement of a foreign court judgment;
- list of enclosed documents.

* The requirements for the courts of general jurisdiction are less severe⁶: the exactor's claim for recognition and enforcement or for pointing out from what particular moment its execution is to be demanded; the name of the exactor; the name of the debtor and an indication of his place of residence.

An application filed to an *arbitrazh* court must be supplemented with:

- a duly certified copy of the judgment;
- a document that was duly certified and which confirms entry of the foreign judgment into force, unless it is set out in the text of the judgment itself;
- a document that was duly certified and confirms that the debtor was in a timely manner and properly notified of the proceedings in the foreign court whose judgment is being enforced;
- a power of attorney or another document that is duly certified and confirms the authority of the person who signed the application;
- a document that confirms that a copy of the application was sent to the debtor;
- duly certified translations of the aforementioned documents;
- a document confirming the payment of the application fee (3,000 rubles equivalent to around 50 USD).

An application filed to a general court must be supplemented with the same documents, but:

- the judgment must be certified by the court that issued it;
- a document on the judgment's prior enforcement in the country where it was rendered (if there was such enforcement) is additionally required;
- there is no need to attach a document confirming that a copy of the application was sent to the debtor.

* All documents that were not produced in Russia must be legalized or apostilled unless Russia has an international treaty with the country in question that lifts this requirement⁷.

VII. Brief overview of the court proceedings

- an application shall be considered in accordance with the rules of APC established for the proceeding before the court of the first instance;
- the application is to be filed within three years after the foreign judgment in question has entered into force;
- the court notifies the party against whom the judgment was rendered;
- the court assesses whether there are any grounds to refuse recognition and enforcement of the judgment;

⁵ Article 242 (2) APC

⁶ Article 411 (1) CCPC

⁷ Article 255(1) APC and Article 408(1) CCPC

- timeframe for the proceedings is one month (for *arbitrazh* courts); no timeframe at all for courts of general jurisdiction;
- after having heard the arguments of the applicant and the debtor, the court issues a ruling either refusing recognition and enforcement or allowing them;
- the court will then issue a writ of execution (a separate document).

Types of judgments that do not require any special procedure to be recognized and against which no objections can be raised⁸ :

- judgments on the status of a citizen of a state whose court rendered the judgment;
- on the dissolution or annulment of a marriage between a Russian national and a foreign national, if at the time of the consideration of the case at least one of the spouses lived outside Russia;
- on the dissolution or annulment of a marriage between Russian nationals, if, at the time of the consideration of the case, both spouses lived outside Russia;
- other situations as provided for by Russian federal laws.

VIII. Grounds for refusal of recognition and enforcement (brief overview)

The court has to refuse to recognize and enforce a foreign court judgment (to the relevant extent), if:

- the judgment has not entered into force;
- the party against whom the decision was adopted was not properly notified of the time and place of the case, or could not give its explanations to the court for other reasons;
- the dispute was subject to the exclusive jurisdiction of a Russian court;
- there is a Russian judgment taken on a dispute between the same parties and on the same grounds that has entered into force (*res judicata* effect);
- there is a case under consideration by a Russian court that is between the same parties and on the same subject matter and the same grounds, and the Russian court was the first to initiate the proceedings, or to accept a statement of claim (*lis pendens* effect);
- the limitation period for the recognition and enforcement has expired;
- recognizing and enforcing the judgment would be contrary to Russian public policy.

IX. Enforcement stage

Once the competent Russian court ordered that a judgment of a foreign court has to be recognized and enforced in Russia, the applicant can obtain a writ of execution from the Russian court. The writ of execution can be submitted to the Federal Bailiff Service, which shall start enforcement proceedings. They have to be conducted under a separate federal law on enforcement proceedings.

X. Practical background

- In general, Russian courts do recognize and enforce judgments of foreign courts on civil and commercial matters, if there is an international treaty in force between Russia and the state of origin of such foreign court.
- If the judgment was rendered by a court of a country with which Russia has no international treaty to this effect, Russian court often look at other international

⁸ Article 415 CCPC

treaties. For instance, when recognizing judgments of English courts, Russian courts used:

- Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) – right to fair trial;
- The EU–Russia partnership and cooperation agreement (1994); and
- Agreement between the Government of the United Kingdom and the Government of the Russian Federation on Economic Co-Operation (1992).

Note: none of these international treaties explicitly provide for mutual recognition and enforcement of foreign court judgments.

- Same approach with regard to Dutch court judgments.
- Russian courts extend this approach even to non-EU territories (e.g. judgments of courts of the British Virgin Islands).
- “Difficult” countries: Germany (as German courts usually do not recognize and enforce Russian court judgments); USA (although US courts – both at the federal and the States’ level – do recognize Russian court judgments).
- Even if no international treaty is in force between Russian and the appropriate foreign country, Russian courts are entitled to rely on international custom. International custom constitutes an integral part of Russian legal system (Article 15 para. 4 of the Constitution). Customary rules of international law applicable in the case at hand are: reciprocity and international comity. Thus, even in the absence of reciprocity, Russian courts are entitled to recognize and to enforce a foreign court judgment – on the basis of international comity.
- It may be difficult (or even impossible) to prove reciprocity. Usually, applicants use expert opinions of foreign lawyers qualified in the appropriate jurisdiction.
- However, sometimes Russian courts in many cases act very formally. It is noteworthy that Russia made the following reservation to the Hague Convention of 1965: “Service of documents by methods listed in Article 10 of the Convention is not permitted in the Russian Federation.” Thus, if the foreign court that rendered the judgment is 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) and that foreign court did not use the mechanism provided by that Convention when serving documents on the Russian defendant, the competent Russian court would most likely deny recognition and enforcement of such foreign court judgment.
- In some cases, Russian courts treat the notion of the “public policy” too broadly and use it as a ground to deny recognition and enforcement of foreign court judgments.
- Sometimes, Russian courts refer to a wrong source of law when recognizing and enforcing foreign court judgments. For instance, we came across a number of cases when Russian courts referred to the New York UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

XI. Some recommendations:

- carefully select the appropriate dispute resolution clause when drafting contracts with Russian parties: arbitration or litigation? – Some disputes fall within the exclusive jurisdiction of Russian courts.
- Advantages of arbitration: quick (?) (anyway one instance); less expensive (?), confidential; drawbacks of arbitration: some disputes are non-arbitrable; arbitral awards are subject to recognition and enforcement (which also may be denied);
- If litigation: before Russian or foreign courts?
- Foreign courts is a viable solution if the country where such courts are located has an international treaty with Russia in force; in other cases: various risks of non-recognition;
- If your client would most likely be the claimant, and the Russian party the defendant, it makes sense to subject the disputes arising out of such contract to Russian courts. This will make recognition and enforcement of foreign court judgments unnecessary.
- Even if foreign law governs the legal relationship between the claimant and the defendant, Russian courts are perfectly suited to apply foreign law.
- If you opt for a foreign court, make sure that the court complies with the Hague Convention of 1965, otherwise risks of non-recognition;
 - When serving foreign court documents on Russian defendants, make sure you / the foreign court use the correct official mailing address of the defendants.