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Conditions for recognition and enforcement of foreign judgments in Russia

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Conditions for recognition and enforcement

Enforceable judgments

Which types of judgment (eg, monetary judgments, mandatory or prohibitory orders) are enforceable in your jurisdiction and which (if any) are explicitly excluded from recognition and enforcement (eg, default judgments, judgments granting punitive damages)?

There is no exhaustive list of the types of foreign judgment enforceable in Russia. In order to be enforceable, a foreign judgment should:

- be final (ie, been issued on the merits of the case and entered into legal force); and
- not address matters that fall within the exclusive jurisdiction of the Russian state courts or violate public policy.

For this reason, the Russian courts tend to refuse to enforce foreign judgments that order any type of injunction (ie, interim measures), such as the seizure of assets or prohibition to act in a particular way. Therefore, any party to foreign proceedings that needs to obtain injunctions in Russia must solicit the relevant measures directly from a Russian court.

The Russian courts also tend to refuse to enforce foreign judgments on commercial matters that deal with the following types of dispute, which are considered to be within the exclusive jurisdiction of the Russian state courts:

- disputes over property owned by the Russian state;
- disputes over real property in Russia or related property rights;
- disputes over the issuance or registration of patents, trademark certificates, industrial designs, utility models or other IP rights which require the issuance or registration of patents or certificates in Russia;
- disputes concerning requests to invalidate entries in state registers made by the competent Russian agencies that maintain those registers;
- disputes connected with the establishment, liquidation or registration of legal entities in Russia and disputes connected with challenging the management bodies of these entities; and

- the bankruptcy of Russian legal entities and individuals.

In order to be enforceable in Russia, foreign judgments should not result from a public dispute involving the recovery of taxes, customs duties or administrative fines in favour of a foreign state.

Monetary judgments are probably the most widespread category of foreign judgment enforced in Russia. At the same time, Russian courts have recognised and enforced foreign judgments for specific performances and orders dealing with the invalidation of contracts and the recognition of foreign legal entities as bankrupt.

Default judgments of foreign courts are usually enforceable in Russia when they are final and the losing party has been duly notified of the proceedings before the foreign court.

Foreign judgments granting punitive damages are also usually enforceable in Russia when they are based on foreign law provisions (even in the absence of similar statutory provisions in Russian law) and do not violate Russian public policy.

How are foreign judgments subject to appeal treated?

In order to be enforceable in Russia, a foreign judgment should have entered into force according to the applicable procedural law of the foreign state from which it emanates. Therefore, in enforcement proceedings, the Russian courts tend to request documents confirming that a foreign judgment has entered into force or been appealed.

In the event that proceedings which aim to challenge the foreign judgment in question or stay the enforcement under this judgment in a foreign jurisdiction running in parallel with the enforcement proceedings in Russia, the Russian court is entitled to postpone enforcement proceedings in Russia and resume them following the end of the respective proceedings in a foreign jurisdiction.

Formal requirements

What are the formal and documentary requirements for recognition and enforcement of foreign judgments?

Russian law provides grounds for refusing to recognise and enforce foreign judgments, against which foreign judgments are tested during enforcement proceedings – either at the request of the losing party to the foreign judgment or on the initiative of the Russian courts.

Enforcement proceedings are usually initiated by the winning party in the foreign judgment by submitting an application for the recognition and enforcement of the judgment before the Russian courts (which can be submitted electronically).

This enforcement application should comply with the requirements set out by Russian law and be supported by:

- the duly certified foreign judgment (for non-commercial cases, the foreign judgment must be certified by the foreign court);
- documents confirming that the foreign judgment has entered into force (usually legal opinions provided by law firms or attorneys), if this does not follow from the text of the foreign judgment;
- documents confirming that the losing party was duly notified about the time and place of the foreign proceedings;
- documents proving that the foreign judgment was enforced in full or in part in foreign jurisdictions, where appropriate (for foreign judgments on non-commercial matters);
- documents proving the legal status of the winning and losing parties in the foreign judgment;
- documents confirming the address of the losing party or the location of assets belonging to the losing party in Russia;

- a power of attorney given to a counsel regarding representation before the Russian courts and documents confirming the authority to execute this power of attorney (where appropriate); and
- proof of payment of state duty (if applicable).

Foreign documents (including foreign judgments) must be presented to the Russian courts with a translation into Russian certified by a Russian notary and containing an apostille or consular legalisation, where appropriate.

In commercial cases, the winning party in the foreign judgment should send a copy of the enforcement application together with exhibits thereto to the losing party before submitting this application to the Russian court and enclose evidence of compliance with this requirement with the enforcement application. In non-commercial cases, the winning party in the foreign judgment should prepare an extra copy of the enforcement application together with exhibits thereto for the losing party, which will be sent to the latter by the Russian court.

Substantive requirements

What substantive requirements (if any) apply to the recognition and enforcement of foreign judgments? Are enforcing courts in your jurisdiction permitted to review the foreign judgment on the merits?

The Russian courts cannot review foreign judgments on their merits and usually test foreign judgments solely against the grounds for refusal for recognition and enforcement set out by Russian law.

However, the Russian courts are theoretically entitled to ask the foreign courts to provide clarifications on the judgments rendered.

Limitation period

What is the limitation period for enforcement of a foreign judgment?

The limitation period for the enforcement of a foreign judgment in Russia is three years from the moment when the foreign judgment enters into force. In theory, a Russian court may reinstate this period at the request of the winning party in the foreign judgment if it provides solid grounds for missing this deadline. However, the chances of having this limitation period reinstated are low.

Russian law also provides a limitation period for opposing the automatic recognition of declaratory foreign judgments, which may be recognised in Russia without any approval from the Russian courts if provided by international conventions and bilateral treaties ratified by Russia. This period is one month from the moment when the applicant for the recognition of a declaratory foreign judgment learned of the judgment.

Grounds for refusal

On what grounds can recognition and enforcement be refused?

Russian law provides the following grounds to deny the recognition and enforcement of a foreign judgment in Russia in commercial and non-commercial cases:

- the foreign judgment has not entered into legal force according to the applicable procedural law of the foreign state from which the judgment emanates;
- the losing party to the foreign judgment was not duly informed in a timely manner of the time and place of the foreign proceedings or could not present its case to the foreign court for another reason;
- the category of the dispute before the foreign court is subject to the exclusive jurisdiction of the Russian courts;
- a Russian court judgment involving the same parties and rendered on the same grounds and subject matter is in force;

- court proceedings involving the same parties which are based on the same grounds and subject matter, which were initiated before those in a foreign court, are pending in Russia;
- the limitation period for enforcement of a foreign judgment has expired and has not been reinstated; and
- enforcing the foreign judgment would contradict Russian public policy.

The Russian courts are entitled to refuse to recognise and enforce a foreign judgment on the grounds set out in the third to seventh bullet points above, even if the losing party to the foreign judgment does not raise them during enforcement proceedings.

Service of process

To what extent does the enforcing court review the service of process in the original foreign proceedings?

The Russian courts carefully review the service of process in foreign proceedings as far as the untimely and undue notification of the losing party of the time and place of the foreign proceedings is one of the grounds to refuse to recognise and enforce a foreign judgment in Russia. This ground is frequently raised by losing parties during enforcement proceedings in Russia.

The Russian courts may consider:

- the language of the notice of service;
- its ability to allow the losing party to participate in foreign proceedings; and
- the existence of the official procedure for serving notices, which can be established in international conventions (eg, the Kiev Convention, the Minsk Convention, the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (also known as the Hague Convention)) and bilateral treaties.

There is case law involving Russian legal entities which were losing parties in foreign judgments, in which the Russian courts recognised that the efficient service of process (eg, sending notice by email, post, courier or fax) to the Russian party was insufficient, since Russia has ratified a number of international conventions and bilateral treaties and made a reservation on the inadmissibility of alternative methods of notice under Article 10 of the Hague Convention.

In the event that a Russian party actively participated in foreign proceedings, the Russian courts usually believe that the losing party was duly notified of the foreign proceedings and was in a position to present its case before the foreign court.

Process agents (whether private or court appointed) are not used in Russia.

Public policy

What public policy issues are considered in the court's decision to grant recognition and enforcement? Is there any notable case law in this regard?

The violation of public policy is the only ground for refusal which could be invoked in order to block recognition and enforcement of a foreign judgment based on the merits and substance of the judgment.

Russian law provides no legal definition of 'public policy'. The Russian courts usually understand public policy to be the fundamental principles of supremacy, universality and superior public importance and to constitute the basis of Russia's economic, political and legal systems. These principles include a veto on violating super-mandatory norms if this results in a violation of Russia's sovereignty or security, affects large social groups or violates constitutional rights and freedoms.

Breaches of public policy are considered on a case-by-case basis and may relate to various aspects of a particular dispute. In the event that the losing party in a foreign judgment invokes the public policy defence, it must substantiate and prove that public policy has been violated. The absence of any foreign law provisions in Russian law, non-approval of major deals or a misprint which does not affect the

substance of the judgment are not usually regarded by the Russian courts as a violation of public policy.

The Russian courts have recently refused to enforce foreign judgments and arbitral awards on the basis of violations of Russian public policy when:

- they were based on an agreement executed because of bribery;
- they were based on an agreement that a Russian court found to be invalid;
- they were executed against a Russian military unit, thus violating Russia's sovereign immunity; or
- a foreign law on fraudulent transactions was applied to a transaction executed in Russia between Russian companies.

Jurisdiction

What is the extent of the enforcing court's power to review the personal and subject-matter jurisdiction of the foreign court that issued the judgment?

During enforcement proceedings, the Russian courts are prohibited from reviewing a foreign judgment on the merits. This also means that the Russian courts are not allowed to question the personal and subject-matter jurisdiction of the foreign court, as long as it does not violate the exclusive jurisdiction of the Russian state courts, which is one of the grounds to refuse to recognise and enforce a foreign judgment in Russia.

However, the Russian courts sometimes interpret their right to test a foreign judgment more broadly and also review the foreign court's jurisdiction. There is case law where the Russian courts have refused to recognise and enforce foreign judgments referring to, for example, the fact that the foreign court did not have jurisdiction to consider the dispute due to the absence of a choice of law and jurisdiction clause in a contract or any other consent of the Russian party to the dispute to have the dispute considered by the foreign court.

Concurrent proceedings and conflicting judgments

How do the courts in your jurisdiction address applications for recognition and enforcement where there are concurrent proceedings (foreign or domestic) or conflicting judgments involving the same parties/dispute?

In order to prevent conflicting judgments coexisting, the Russian courts refuse to recognise and enforce a foreign judgment when:

- a Russian court judgment involving the same parties and rendered on the same grounds and subject matter is in force; and
- court proceedings involving the same parties which are based on the same grounds and subject matter, initiated before those in a foreign court, are pending in Russia.

In the event that proceedings which are aimed at challenging the foreign judgment in question or at staying the enforcement under this judgment in a foreign jurisdiction are running in parallel with the enforcement proceedings in Russia, the Russian court is entitled to postpone enforcement proceedings in Russia and resume them following the end of the respective proceedings in a foreign jurisdiction.

The Russian courts do not consider the existence of any other parallel proceedings or conflicting judgments in a foreign jurisdiction to be an obstacle to the recognition and enforcement of the foreign judgment *per se*.

The Russian courts must terminate proceedings in the event that a claimant files a claim with the Russian court when a foreign judgment involving the same parties and rendered on the same grounds and subject matter is in force, unless this claim falls within the exclusive jurisdiction of the Russian state courts.

Notably, the Russian courts must decline to consider a claim involving the same parties which is based on the same grounds and subject matter following its consideration by a foreign court (unless this claim falls within the exclusive jurisdiction of the Russian state courts) in the event that the proceedings before the foreign court have been initiated before those in Russia.

During enforcement proceedings, Russian parties tend to:

- invoke the public policy defence, arguing that the foreign judgment contradicts the facts established by the Russian courts or refers to agreements that have been quashed by the Russian courts (including in criminal cases); or
- ask to stay the enforcement proceedings pending consideration of parallel cases in Russia.

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