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Recognition and Enforcement of Foreign Arbitral Awards in Russia: A Practical Guide

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This guide provides an introduction to some of key issues regarding the legal framework and procedure for obtaining the recognition and enforcement of a foreign arbitral award in Russia. It covers applicable procedural rules, grounds on which enforcement can be refused by Russian courts and the procedure for seeking enforcement.

Russia is an arbitration-friendly jurisdiction. While all kind of Russian state courts have jurisdiction to deal with the recognition and enforcement of foreign arbitral awards, the courts of general jurisdiction consider the issues related to an arbitration only where the arbitration arises out of non-business activities. Given that the vast majority of foreign arbitral award enforcement cases are heard by Russian commercial (arbitrazh) courts, this guide is focused on this type of courts.

1. Regulation

General rules that provide the legal framework for the recognition and enforcement of foreign arbitral awards in Russia are similar to those applied to the enforcement of foreign judgments.

International treaties and agreements of Russia shall be a component part of its legal system. If the international treaty or agreement of the Russian Federation provides other rules than those envisaged by law, the rules of the international agreement shall be applied (Art. 15(4) of the Constitution of the Russian Federation).

Pursuant to Art. 241(1) of the Commercial (Arbitrazh) Procedure Code of Russian Federation (the «***Commercial Procedure Code***») foreign arbitral awards made in the territory of a foreign state are recognized and enforced within the territory of the Russian Federation by the state commercial courts only if such recognition and enforcement are

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permitted by an international treaty of the Russian Federation and Russian federal laws.

1.1. International treaties

Russia is a party to a number of international treaties regulating arbitral procedures and enforcement of international arbitral awards. Some of them are made within the United Nations framework:

- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the «***New York Convention***»);
- European (Geneva) Convention on International Commercial Arbitration of 1961; and
- UNCITRAL Model Law on International Commercial Arbitration of 1985.

The others are entered into by the members of the Commonwealth of Independent States, including:

- Convention of CIS Countries on the Settlement of Disputes Related to Commercial Activity (Kiev, March 20, 1992); and
- Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, January 22, 1993).

These documents stated the basic principles and rules, which were later adopted by the Russian legislator. The most significant act within this framework is the New York Convention. According to Art. III of the New York Convention, the recognition and enforcement of foreign arbitral awards should be held in accordance with procedural rules of the country, where it is going to be enforced, taking into account the provisions of convention. Moreover, the conditions of such enforcement, payable duties and fees should not be heavier than those applying to the enforcement of the awards made by the state courts.

1.2. Statutory Regulation

The main source of international arbitration law in Russia is Law «On International Commercial Arbitration» No. 5338-1 dated 07 July 1993 (the ***«Law on ICA»***). The Law on ICA was essentially based on the UNCITRAL Model Law on International Commercial Arbitration of 1985, with certain modifications. It provides legal framework for the recognition and enforcement of foreign arbitral awards and the grounds for refusal (Art. 35-36).

Additionally, the procedural aspects of the covered topic are set out in Chapter 31 of the Commercial Procedure Code, including the following:

- requirements to the form and substance of the application for recognition and enforcement of the foreign arbitral award;
- list of documents which should be attached to the application;
- consideration of case procedure;
- substance of the court ruling and the term for appeal;
- recognition of the nonexecutable awards and an order of making objections against it; and

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- issuing of judgement enforcement order and the period for its execution initiation.

2. Arbitration Agreement

There is a mandatory rule that an arbitration agreement shall be in writing.[1] The agreement may be entered into by parties by: (1) exchange of letters or other documents, including electronic communications;[2] (2) exchange of procedural documents, if one party states that the arbitration agreement exists while the other party does not object;[3] and (3) reference to the arbitration (i.e. an arbitration clause) in another document, if it allows to consider the reference as a part of the main document[4] (e.g., the arbitration clause included into any commercial agreement or rules of tender procedure).

Additional requirements may apply to a particular dispute. For instance, with respect to certain types of corporate disputes, the Law on ICA requires that the arbitration agreement shall be included in a charter of a legal entity. Such an amendment to the legal entity's charter shall be unanimously adopted by all participants (shareholders) of the legal entity.

[1] *See* Art. 7(2) of the Law on ICA.
[2] *See* Art. 7(4) of the Law on ICA.
[3] *See* Art. 7(5) of the Law on ICA.
[4] *See* Art. 7(6)-7(7) of the Law on ICA.

It is notable that the Russian law does not specify any mandatory requirements with regard to the elements of the arbitration agreement. In addition, the Law on ICA provides the following principles applicable to any arbitration agreement:

- Presumption in favour of the validity and enforceability of the agreement;[5]
- Extension of the arbitration agreement to an assignee of rights and obligations under the contract, although the arbitration agreement proceeds to apply to the relations between the assignor and continuing party;[6]
- Extension of the contractual arbitration clause to all disputes related to the enforceability and conclusion of the contract, its amendment or termination,[7] as well as any transactions entered into between the parties in order to fulfil, amend or terminate the contract.[8]

3. Arbitrability

As a general rule, the parties may refer any dispute to arbitration, unless the dispute is considered as non-arbitrable by the Russian law.

[5] *See* Art. 7(9) of the Law on ICA.
[6] *See* Art. 7(11) of the Law on ICA.
[7] *See* Art. 7(12) of the Law on ICA.
[8] *See* Art. 7(10) of the Law on ICA.

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Art. 33 of the Commercial Procedure Code stipulates the following list of disputes that cannot be referred to arbitration:

1) disputes related to insolvency;
2) disputes related to the state registration of legal entities and entrepreneurs;
3) IP disputes involving organizations of collective management of IP right within the jurisdiction of the Intellectual Property Court;
4) public-related and administrative disputes;
5) disputed on the establishment of legally important facts;
6) disputes regarding the compensation for the delay in justice;
7) disputes related to the protection of rights and interests of the groups of persons;
8) certain corporate disputes;
9) privatization disputes;
10) public procurement disputes; and
11) disputes related to environmental damage.[9]

If the dispute is non-arbitrable under Russian law, the respective arbitral award may not be recognized and enforced in Russia. Please also note that the list of non-arbitrable disputes provided by the Russian procedural codes are not exhaustive and may be supplemented by other federal laws.

4. Procedure of Recognition and Enforcement of an Award

Chapter 31 of the Commercial Procedure Code stipulates detailed rules applicable to recognition and enforcement proceeding. The recognition and enforcement of a foreign arbitral award shall be launched by an application of the creditor filed to the state commercial court at the location area or place of living of the debtor. It also can be filed to the court at the place where the debtor's assets are located.[10] The application with all attachments can be filed to the court either in written form or by the Internet.[11]

The particular rules shall be applied to the recognition of foreign arbitral awards that do not require enforcement (such as declaratory award). They are recognized in Russia without any proceeding unless an interested party objects. The interested party has a right to object against the award within one month from the date the party learns about the award.[12]

4.1. Competent Courts Requirements to the Application

The Creditor has to indicate the following information in the application:

[9] *See* Art. 33(2) of the Commercial Procedure Code.
[10] *See* Art. 242(1) of the Commercial Procedure Code.
[11] *See* Art. 242(2) of the Commercial Procedure Code.
[12] *See* Art. 245.1 of the Commercial Procedure Code.

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- Name of the state commercial court, which should handle an application;
- Name, composition and the whereabouts of the international arbitral court;
- Name of the creditor, his location area or place of living;
- Name of the debtor, his location area or place of living;
- Information about the award, which should be enforced;
- Petition for the recognition and enforcement of foreign arbitral award; and
- List of the attached documents.[13]

The following documents shall be attached to the application of the creditor:

- Foreign arbitral award in original or in duly certified copy;
- Arbitration agreement in original or in duly certified copy.[14]

All the documents should be filed with a duly certified translation to Russian.

4.2. Grounds for Refusal

Generally, the state courts do not examine the merits of disputes and do not oversee foreign arbitral awards' reasoning. However, Art. 34 of the Law on ICA[15] stipulates the following exhaustive lists of grounds on which the arbitral award may be set aside:

(a) the debtor makes a petition for setting award aside and presents evidences of at least one of the following circumstances:

- the arbitral award was made in accordance with an arbitration agreement, and one of the parties thereof was incapable at any degree; or
- the arbitration agreement is void according to an applicable law, chosen by the parties, or in absence of such an indication in accordance with the laws of the Russian Federation; or
- the party was not duly notified about either the appointment of an arbitrator or arbitration proceedings (including the time and place of hearings); or due to any other reasonable excuses it could not present its case; or
- the arbitral award was made with respect to a dispute, which was not contemplated by the arbitration agreement or did not fit its conditions; this ground for refusal also relates to the cases when the arbitral award includes decisions beyond the scope of the arbitration agreement (if it is possible to separate the part of the award on matters submitted to the arbitration from the part

[13] *See* Art. 242(2) of the Commercial Procedure Code.
[14] *See* Art. 242(4) of the Commercial Procedure Code.
[15] *Note:* The list is very similar to one provided by Art. 5 of the New York Convention.

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not submitted to arbitration, then only the latter part may be set aside); or

- the composition of a tribunal or arbitration procedure did not comply with the arbitration agreement or with the legislation of the country, where the arbitral proceedings took place;

(b) the state commercial court finds out that:

- the subject matter of the dispute is not capable of settlement by arbitration under the Russian federal law; or
- the award is in conflict with the public policy of the Russian Federation.[16]

The petition on the annulment of the arbitral award shall be filed by the party within three months from the date the party obtained the award.[17]

A list of grounds for refusing recognition or enforcement of arbitral awards is very similar to the above list of grounds for setting the award aside. According to Art. 36 of the Law on ICA, the commercial court can refuse to recognize and enforce the arbitral award if:

(a) at the request of the debtor if it furnishes proof to the court that:

- the arbitral award was made in accordance with an arbitration agreement, and one of the parties thereof was incapable at any degree; or
- the arbitration agreement is void according to an applicable law, chosen by the parties, or in absence of such an indication in accordance with the laws of the country where the award was made; or
- the party was not duly notified about either the appointment of an arbitrator or arbitration proceedings (including the time and place of hearings); or due to any other reasonable excuses it could not present its case; or
- the award was made with respect to a dispute, which was not contemplated by the arbitration agreement or did not fit its conditions; this ground for refusal also relates to the cases when the arbitral award includes decisions beyond the scope of the arbitration agreement (if it is possible to separate the part of the award on matters submitted to the arbitration from the part not submitted to arbitration, then only the latter part may be set aside); or
- the composition of a tribunal or arbitration procedure did not comply with the arbitration agreement or with the legislation of the country, where the arbitral proceedings took place; or
- the arbitral award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of

[16] *See* Art. 34(2) of the Law on ICA.

[17] *See* Art. 34(3) of the Law on ICA.

the country in which, or under the law of which, that award was made;

(b) the state commercial court finds out that:

- the subject matter of the dispute is not capable of settlement by arbitration under the Russian federal law; or
- the arbitral award is in conflict with the public policy of the Russian Federation.[18]

4.3. Public Policy Issues

There are several important things which are worth to be mentioned about *ex officio* application of the public policy exception by the Russian courts. While the Russian legislation does not stipulate clear rules on how to determine the public policy, in 2013 the Supreme Commercial Court of Russia issued a guidance based on state courts' practice regarding the application of the public policy exception in Russia.[19] According to this guidance, the public policy should be considered as "the fundamental legal principles that are most imperative, universal, of special social and public significance, and that form the core the economic, political or legal system of the state. In particular, these principles include the super mandatory rules of the legislation of the Russian Federation (Art. 1192 of the Russian Civil Code), if such actions cause damage to the sovereignty or security of the state, affect large social groups or violates constitutional rights and freedoms of private persons".

The party seeking the recognition and enforcement of the foreign arbitral award should pay attention to the following:

- analysis by the court of weather the foreign arbitral award violates the public policy of the Russian Federation should not lead to the merits review;
- if there are no rules under the Russian law corresponding with those ones applied in the foreign arbitral award sought to be enforced, then it can not be considered as a violation of the Russian public policy
- the Russian state commercial court can also determine foreign arbitral award as complying with the Russian public policy if it states that the applied arbitration procedure guaranteed independence and impartiality of the arbitrators;
- the burden of proof for the allegation that the recognition or enforcement of the arbitral award would be contrary to the Russian public policy lays with the litigant making that allegation.

[18] *See* Art. 36(1) of the Law on ICA.

[19] *See* Information Letter of the Presidium of the Supreme Commercial Court of the Russian Federation No. 156 dated 26 February 2013.

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5. PAI Status of International Arbitration Institutions

While the Russian law regulates international and domestic arbitration differently, foreign arbitral institutions can obtain the status of a so-called "permanent arbitral institution" ("***PAI***") in order to administer certain types of disputes. To date, only two foreign arbitral institutions have obtained this status.

Arbitral Institution	Date of PAI status obtaining	Separate Subdivision in Russia
Hong Kong International Arbitration Centre (HKIAC)	25 April 2019	No
Vienna International Arbitral Centre (VIAC)	04 July 2019	No

Therefore, it should be possible to refer corporate disputes related to ownership of shares and participation interests in Russian companies (for example, disputes associated with the sale and purchase of shares or participation interests as well as enforced recovery against them) to the foreign arbitral institutions with PAI status for resolution.

If any of the foreign arbitral institution with PAI status intends to administer the arbitration of domestic Russian disputes, it must submit documents to the Ministry of Justice confirming that it has a separate subdivision in Russia. According to publicly available information, nobody has submitted such documents to the Ministry, however once a separate subdivision of either HKIAC of VIAC is established in Russia it will be able to administer domestic disputes (between the Russian entities).

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