

Enforcement of international arbitral awards in Russia

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Results of arbitration

In the West – vast majority of awards are performed voluntarily, over 90 % of motions for mandatory enforcement are granted. Almost no awards are set aside by Western courts.

In Russia – almost no awards are performed voluntarily, less than 50 % of foreign arbitral awards are enforced by Russian courts.

The most important international awards rendered in Russia are set aside by Russian state courts.

Growing number of awards rendered against Russian respondents which are enforced not in Russia.

Problems with enforcement

- Russian State courts have general negative attitude to arbitration (*Moravel Investments, Duke Investments*)
- Russian State courts require claimants to submit evidence not required under NYC (*Most, Veronica*)
- Russian State courts “invent” local norms which in their opinion preclude enforcement (Art 333 of the RF Civil Code, Articles 62 and 248 of the *Arbitrazh* Procedural Code)
- Russian State courts misunderstand the notion of public policy (*Moscow Oil Refinery, Yugra*)
- Russian State courts try to favor local companies and State-controlled organizations (*Rosneft, Krasnye Holmy*)
- Russian State courts try to accuse foreign arbitration institutions in breach of rules of arbitration (*Duke Investments, Space Systems, Bummash*)

Other problems in Russia and CIS

- State courts in CIS try to interfere with foreign arbitral proceedings ignoring rules on severability of arbitration clauses (*Storm v Telenor, Cardif S.A. v Russky Standart*)
- Russian courts erroneously believe they are allowed to set aside foreign arbitral awards on the basis of the 1961 European Convention on International Commercial Arbitration (*Mabetex, Krasny Yakor*)
- State courts in CIS often breach Art. II of NYC and refuse to refer disputes to arbitration
- Russian courts ignore arbitration clauses and accept for consideration “indirect claims” thus preparing grounds for denial of enforcement of foreign awards
- Russian courts have no clear approach to resolution of disputes involving invalidation of contracts and shareholders’ agreements
- Ukrainian courts recently passed a judgment refusing enforcement of the foreign arbitral award at the request of the party which has lost arbitration, before the claimant submitted a motion for enforcement

New trends in enforcement

- Awards against Russian respondents are successfully enforced outside Russia (*Sedelmayer, Moravel Investments, Duke Investments, NkAZ, Yukos Capital*)
- Western courts penalize CIS-based companies for attempts to frustrate enforcement of Western awards with the help of local courts (*Storm*)
- Western courts are sometimes ready to pierce the corporate veil of CIS-companies in order to compel their owners to respect arbitral awards (*Storm, Dardana*)
- Western courts issue injunctions precluding CIS companies from attempts to submit claims covered by existing arbitration clauses to CIS state courts (*IPOC, Storm*)

New trends in arbitration

- More cases involving CIS-based companies are submitted to Western arbitration institutes.
- More cases involving *only* CIS-based parties (even with no foreign investments) are submitted to Western arbitration institutes.
- The total figures of arbitration disputes grow significantly.
- Big Russian companies more often submit claims in arbitration proceedings.
- Western courts and arbitral tribunals apply Russian legislation prohibiting State officials from participation in entrepreneurial activity, even though this legislation is openly ignored by Russian courts and politicians.

General advice

- Formulate the relief requested in such a way as to generate the least possible hostility in the minds of the enforcing Court in CIS.
- Always require an original, or certified copy, of the power of attorney granted by the CIS-based company to its lawyer.
- Obtain and preserve delivery receipts for couriers or registered post containing the notice of arbitration and other key documents sent to the CIS-based counterparty.
- Obtain certified copies of the corporate approvals of the contract issued by the Board of Directors and the General Assembly of Shareholders of the CIS-based counterparty if there is any risk that the transaction in question could be characterized as a major or interested party transaction.

Procedural advice

- Feel free to apply to the Western courts seeking interim measures against assets of Russian companies and injunctions precluding Western affiliates of Russian companies from filing “indirect claims” in Russian State courts (*IPOC*)
- Do not ignore the “parallel” litigation before the Russian courts, otherwise chances for enforcement of award in Russia would be even less than average (*Joy Lud v MNPZ*)
- Ask the Tribunal to reflect in the Award that all procedural rules of arbitration were strictly followed and the Russian counter-party was provided with all opportunities to defend its case (*Duke Investments*)

*Recent cases – proper notice
no consistency*

- *Kruken GmbH v. Avtotor-Agro*: receipts of delivery of registered mail to respondent's official address are insufficient as a proof of proper delivery of notice
- *Valars S.A. v Agro-Holding*: respondent's correspondence with the tribunal served as a sufficient proof of proper notice
- *Loral Space Systems v Globalstar*: time of hearing may be communicated to respondent in a separate notice, Presidium of the Supreme *Arbitrazh* Court reversed judgments of lower courts

*Recent cases – public policy
no consistency*

- *Kruken GmbH v. Avtotor-Agro*: considering grounds for denial of enforcement the court must explore if the arbitrated contract was compatible with the award and whether the principle of commensurateness of civil-law remedies to the willful breach [of contract] was observed
- *Open Society v Sector-1*: breach or public policy means breach of good morals, threat to lives and safety of citizens and the State
- *Energo-Management Anstalt v Teplovodokanal*: application of a flexible formula of the Overview concerning public policy may not be justified if no feature of voidness of contract was found