

Securing Enforceability of Arbitral Awards in Russia

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- Presupposition: You have an arbitral award against RusCo.
- *Exequatur*: Russian state court's decision that the Arbitral Award is enforceable in Russia
 - Delimitation against 'ispolnitelnyj list' (a Russian court's decision which *actually enforces* the Arbitral Award)
 - Delimitation against the rest of the procedure before Russian *administrative* enforcement authorities (Sudebnyj Pristav)
- What kind of defence will Russian lawyers typically invoke?

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- 1958 New York Convention Article V:

(1) Recognition and enforcement of the award may be refused ... if [the Defendant] furnishes ... proof that:

(a) The parties to the [arbitration] agreement ... were ... under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it."

- So how about English law and arbitration in London?
 - International private law refers the questions of incapacity and invalidity back to Russian law.
- Russian law contains a number of (very strong) invalidity rules:
 - Representation of companies, major transactions etc
 - Russian judges are formalistic (and some times they don't want you to win)
 - Absolute invalidity *ab initio* = invalid Arbitral Award

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- Solution: Collect evidence in advance of the exequatur proceedings, i.e.
 - (a) before signing the contract; and
 - (b) in connection with the arbitration proceedings.
- What you may need to prove:
 1. Identify who is the debtor (RusCo)
 2. Identify the signatory
 3. Document the signatory's competence to sign on behalf of RusCo
 4. Formal requirements when signing

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1. Identifying Rusco in the text of the contract:

- Full name of company (English + Russian)
- Legal address (+ physical address)
- Organizational numbers: INN number + OGRN number
- Documentation to collect:
 - Transcript from Russian Companies Registry (EGRJuL – Tax Authorities)
 - RusCo's Articles of Association

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2. Identify the person who actually signs the contract:

- Full name of signatory in the contract + his passport number + address
- Proof of signature:
 - Copy of passport
 - Or have witnesses confirm his signature

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3. How do you document the competence of the signatory?

- OAOs, ZAOs, OOOs: The General Director has the signatory right
- But check RusCo's Articles of Association ("Ustav")
 - Amount limitations, other limitations
- Who is the General Director of Rusco?
 - Transcript from the Tax Authorities ("EGRJuL")
 - The decision by which the General Director was appointed
- If it is not the General Director who signs: PoAs!
 - Who is authorized? To do what?
 - Who signed the PoA?
 - RusCo's round seal
- Make PoAs for yourself too.

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Cont'd: The competence of the signatory: Invalidity for "major transactions"

- When is a contract a "major transaction"?
 - 25% vs. 50% of gross assets as per last 4-ly balance sheet
- Solution: Board resolutions or even decisions of the shareholders' meeting
- Keep a copy of the last 4-ly balance sheet as proof AND/OR copies of relevant ratifications
 - Other invalidity rules too, e.g. "transactions with interested party"



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4. The signing of the contract:

- Sign all pages + attachments
- Signing with Russian notary?
- Apostille if border-crossing
- Make a round seal for your own company too...
- Always collect originals. Or copies certified by a notary (+ apostille if border-crossing)



Lessons to learn from this:

- Russian judges are formalist and require documentary evidence.
- Russian invalidity rules apply no matter your Choice of Law.
- When signing the contract, think as though you are litigating for exequatur!



Thanks for your attention