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Pitfalls for Enforcement of the BVI Arbitral
Awards and Court Judgments in Russia
Enforcement of BVI court judgments (1)


No international treaty on the reciprocal enforcement in force between BVI and Russia
Enforcement of BVI court judgments (2)

Nevertheless, examples of successful enforcement of BVI court judgments with references to the generally recognized principles of comity and reciprocity:

- Ruling of the Commercial Court of Saint Petersburg and Leningrad Region dated 4 June 2013 in the case Bank of Saint Petersburg v. Oslo Marine Group Ports (recognition and enforcement of the Order of the BVI High Court of Justice dated 7 May 2012 regarding costs);

- Ruling of the Commercial Court of Moscow City dated 10 March 2015 in the case Latinovich v. Saharov et al. (recognition and enforcement of the Order of the BVI High Court of Justice dated 22 May 2014 regarding invalidity of SPA agreements);

- Ruling of the Commercial Court of Moscow City dated 24 July 2014 in the case Eximtech Investments Ltd (recognition of the Order of the BVI High Court of Justice dated 18 March 2013 regarding liquidation of the company)
Court Judgments v. Arbitral Awards

More reliable basis for the recognition and enforcement in respect of arbitral awards

1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Both BVI and Russia are the Contracting States

Article III: “Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon…”
Pitfalls for Enforcement of Arbitral Awards (1)

Limitations on arbitrability of private-law disputes (Article V(2)(a) of the NYC)

Peculiar system of licensing of arbitral institutions in Russia, including foreign ones

Russian corporate disputes (including out of SPAs, SHAs) are arbitrable only under the condition that the arbitration is administered by an arbitral institution with the Russian license.

Today only two foreign arbitral institutions meet this requirement:
- Hong Kong International Arbitration Centre (HKIAC) and
- Vienna International Arbitral Centre (VIAC)

Arbitration agreements for Russian corporate disputes concluded before 1 February 2017 are inoperative according to the mandatory statutory provision.
Limitations on arbitrability of private-law disputes (Article V(2)(a) of the NYC)

Disputes out of the state procurement contracts (Federal Law No.44) are not arbitrable.

Disputes out of the contracts with companies controlled by the Russian State (Federal Law 223) – only arbitral institutions with the Russian license.

Unsettled case law in respect of other contracts funded from the Russian budget, budgets of Russian territories and municipalities.
Pitfalls for Enforcement of Arbitral Awards (3)

Limitations on arbitrability of private-law disputes (Article V(2)(a) of the NYC)

Unsettled case law in respect of the possibility of referring domestic disputes (between Russian parties only) to the arbitration with a foreign seat

The arbitration agreement is considered to become inoperative, if the respondent (being a Russian company) is declared bankrupt by the Russian court
Pitfalls for Enforcement of Arbitral Awards (4)

Article V(1)(a) – validity of the arbitration agreement

Unilateral (asymmetric) dispute resolution clauses are considered to be contradictory to Russian law and must be interpreted as granting equivalent options to both parties (Sony Ericsson case and Review of the Russian Supreme Court of December 2018)
Impossible to enforce interim and provisional arbitral awards and orders
Article V(1)(e) of the NYC – imprecise Russian translation
“The award has not yet become final for the parties” (instead of binding on the parties)
Example of the interim award demanding the respondent to pay its portion of the arbitral fees to the claimant
Foreign awards and orders granting interim and conservative measures (relief) are also non-enforceable
The only possibility to freeze Russian assets is to make an application to the Russian court in support of the foreign arbitral proceedings
Pitfalls for Enforcement of Arbitral Awards (6)

Article V(2)(b) of the NYC – broad interpretation of the public policy exception

Example of liquidated damages which are considered not proportionate to actual losses of a claimant

“Russian torpedo” – derivative claim of a shareholder of the Russian company to the Russian court requesting the invalidity of a contract between the Russian company and its counter-party (in breach of the arbitration clause). Subsequent refusal of enforcement of a foreign arbitral award with reference to the contradicting Russian court judgment

Anti-suit injunction as a potential tool for struggling with such guerilla tactics
Future Supreme Court Clarifications

Powers of the Russian Supreme Court to issue binding interpretations of statutory provisions

Such detailed interpretations of Russian arbitration laws are expected to be approved shortly in December of 2019. Certain pitfalls might be avoided with the help of this new document.
Thank you for your attention!

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