The Enforcement of Russian Arbitral Awards and Judgments in the BVI

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The Reciprocal Enforcement of Judgments Act (Cap 65)

- **Limitations**
  - Judgment must be final and conclusive
  - “Judgment” is defined as “any judgment or order given or made by a court in any civil proceedings, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration, if the award has, in pursuance of the law in force in the place where it is made, become enforceable in the same manner as a judgment given by a court in that place”
  - A judgment can only be registered from a jurisdiction to which reciprocity has been extended.
  - Reciprocity has been extended by various Order made under the REJ to judgments obtained in a superior court in the UK and to the following states and territories
There are no reciprocal arrangements whether by treaty or convention between the BVI and the Russian Federation for the recognition of judgments.

A Russia Judgment cannot be registered in the BVI but can be recognised at common law.
Recognition of Judgments at common law

- Commenced by issuing an action on the debt
- There is no re-trial of the underlying facts giving rise to the judgment debt. Issue estoppel will operate.
- To expedite matters summary judgment is available.
- Need for permission to serve the claim out of the jurisdiction where the respondent is a foreign party.
- The recognition of judgments at common law only applies where the judgment is for a sum of money.
Key Points

• No reciprocity of between the BVI and Russia
• Russian judgments can only be recognised at common law
• Common law recognition only applies to judgments for a sum of money
• For “some other judgment” the Claimant/Applicant will need to commence a fresh claim in the BVI although rules of issue estoppel whether common identity of parties will apply.
The BVI Arbitration Act (the “Arbitration Act”)

• **Key Features**
  - The provisions of the UNCITRAL Model Law is in force in the BVI subject to the modifications and supplementation provided for in the Arbitration Act.
  - A stated aim of the Arbitration Act is non-interference by the Court in the arbitration of a dispute.
  - Where the Court does interfere in an arbitration it should regard to the wishes of the parties and the provisions of the arbitration agreement.
  - The Arbitration Act is a modern and forward thinking legislation.
  - Hearings are heard in chambers i.e. are not public.
  - Documents disclosed are confidential.
• Where the Court refers the parties in an action to arbitration it shall make an order staying legal proceedings in that action.

• The court has a wide discretion to grant an interim measure in aid of arbitration proceedings but arguably that only applies before and during the arbitration proceedings not after.

• The recognition and enforcement of an award is relatively straightforward.
• By commencing an action or by notice of application.

• The general rule is that an application for permission to enforce an award or to register an award may be made without notice but must be supported by evidence on affidavit.

• A party seeking to enforce an award must produce the following:
  a) The original award or a certified copy of the award
  b) The original arbitration agreement of a certified copy of the arbitration agreement
  c) If the award or agreement is in a language other than the English language, a translation of the award or agreement certified by an official or sworn translator or by a diplomatic or consular agent.
There is a distinction between the recognition of a convention and non-convention award but the court may refused to enforce an award if

A. Party to the arbitration agreement was under some incapacity

B. The arbitration agreement was not valid

C. Proper notice of the appointment of the arbitration or of the arbitral proceedings was not given or a person was otherwise unable to present his case

D. Deals with a difference not contemplated by or falling within the terms of the submissions or contains matters beyond the scope of the submissions to arbitration

E. The composition of the arbitral authority or the procedure is not in accordance with the agreement of the parties or, absent the parties agreement, the law of the country where the arbitration took place.

F. The award has not become binding or has been set aside or suspended by a competent authority.
The court may also refused to enforce an award for reasons relevant to the enforcing court namely

A. The award is in respect of a matter which is not capable of settlement by arbitration under the laws of the Virgin Islands.

B. It would be contrary to the public policy to enforce the award

C. In the case of non-convention awards only, for any other reason that the Court considers it just to so do.
The Recognition and Enforcement of Arbitral Awards

Key Points Relevant for the Russian/CIS client

1. Recognition is relatively straightforward
2. All relevant documents must be in English
3. If the Respondent is domiciled in Russia the BVI court will very likely grant the Applicant permission to serve the enforcement claim out of the jurisdiction in Russia on the Respondent.
4. Once the award is recognised, it is treated as an order of the BVI court and all local enforcement measures against assets located in the BVI are available to the Applicant.
5. Hearings are in chambers.
6. A BVI court will recognize an award irrespective of the relief granted i.e. not limited to an order for the payment a sum of money.
Conclusion

• The choice to litigate or to arbitrate is a complex one. Certain disputes lend themselves to arbitration whereas others may benefit from the rigors and predictability of a court supervised process.

• On balance, the recognition of an award from Russia is easier that the recognition of a judgment from Russia in the BVI. There are no reciprocal enforcement of judgments arrangements between Russia and the BVI although both are signatories to the Model law. This may well be the determinative factor.