

Enforcement of Foreign Judgments in Russia: A Practical Guide

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Legal systems are generally limited territorially. However, in today's global business landscape disputes frequently cross international borders, resulting in non-Russian businesses having to seek assistance of Russian courts. It is well known that potential risks associated with enforcing foreign judgments in Russia may be a cause of concern for foreign companies and individuals seeking to do business with Russian partners, and this guide is intended to provide practical guidance with respect to common questions that arise when a non-Russian judgement creditor seeks to recognise and enforce a foreign judgment in Russia.

1. Sources of Law

1.1. International treaties

Russia is a party to treaty-based schemes for the enforcement of judgments as a member of the Commonwealth of Independent States. A list of applicable multilateral conventions includes:

- Convention of CIS Countries on the Settlement of Disputes Related to Commercial Activity (Kiev, March 20, 1992);
- Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, January 22, 1993);
- Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Kishinev, October 7, 2002).

Additionally, Russia is a party to a range of multilateral and bilateral treaties that may affect the enforcement of non-Russian judgments (for instance, bilateral treaties on legal assistance in civil and criminal matters with China, Cyprus, Egypt, Greece, India, Italy, Spain, Vietnam and other countries).

Note, however, that a specific enforcement regime shall be applied to the judgements of the courts of Belarus under the Treaty between the Republic of Belarus and the Russian Federation on the Procedure for the Mutual Enforcement of Judicial Acts of Economic Courts of the Republic of Belarus and arbitration courts of the Russian Federation (Moscow, January 17, 2001). According to the latter treaty, the judgements of Belarus' courts do not require a special procedure for

recognition within Russia and are enforced in the same manner as domestic judgments, on the basis of the executive documents of the courts that made the decisions.

On July 2, 2019, Russia's representatives signed the Final Act of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. The Convention is a part of the continued efforts of the Hague Conference on Private International Law to promote certainty and legal security in cross-border litigation and recognition of foreign judgments. If the instrument is signed and ratified by the Russian Federation, it would eliminate many difficulties the parties to international disputes face with respect to the recognition and enforcement of foreign judgements in Russia.

1.2. Statutory Law

The substantive law on recognition and enforcement of foreign judgments in Russia derives from the following sources:

- *Civil Procedure Code* (Chapter 45): pertaining to judgments in civil matters, except where the judgment relates to any business or commercial matters or other economic activity, as well as orders made in criminal proceedings for criminal injuries compensations;

- *Commercial (Arbitrazh) Procedure Code* (Chapter 31): applying to judgments in business or commercial matters;
- *Federal Law "On Enforcement Proceeding"* No. 229-FZ of October 2, 2007: relating to the execution of Russia's court orders on the enforcement of recognized foreign judgment.
- *Federal Law "On Insolvency (Bankruptcy)"* No. 127-Φ3 of October 26, 2002: applying to judgements related to insolvency cases;
- *Decree of the Supreme Soviet of the USSR "On the Enforcement of Foreign Judgements and Arbitration awards in the USSR"* No. 9131-XI of June 21, 1988: providing general rules related to the recognition of foreign judgements, unless there are specific provisions of applicable procedure codes.

2. General Rules

2.1. Effect of International Treaties on the Enforcement

As a general rule, foreign judgments may be recognised and enforced in Russia where enforcement and recognition are provided for by an international treaty of the Russian Federation and Russian federal laws.¹ While only the Law on Insolvency provides an ability to recognise and enforce foreign judgments related to insolvency cases

¹ See Civil Procedure Code, Art. 409(1); Commercial (Arbitrazh) Procedure Code, Art. 241(1).

on the basis of a reciprocity principle,² Russian case law suggests that – in the absence of any applicable international treaty – courts can also consider reciprocity and international comity when determining the enforceability of foreign judgments.

Russian courts recognize the principles of reciprocity and international comity as a part of domestic law pursuant to Art. 15 of the Russian Constitution,³ and, as a rule, interpret these principles as follows: (i) the *comity of nations* requires states to treat a foreign legal system with comity and courtesy; and (ii) the *principle of reciprocity* refers to mutual respect by the courts of different countries for each other's judicial acts.⁴

2.2. Limitation Period

According to applicable procedural rules,⁵ three-year limitation period applies to the enforcement of a non-Russian judgments. The limitation period runs from the date when the judgment came into effect. Russian courts can revive an expired limitation period, if it considers a reason for the missed deadline as excusable.

² See Federal Law "On Insolvency (Bankruptcy)", Art. 1(6).

³ Art.15(4) of the Constitution of the Russian Federation provides that, "[u]niversally recognized principles and norms of international law as well as international agreements of the Russian Federation should be an integral part of its legal system. If an international agreement of the

It is also notable that any contractual provision which purports to impose a limitation period shorter than three years will be void.

2.3. Merits Review

Generally, Russian courts are not permitted to review the substance or merits of the foreign judgment (e.g., Art. 243(4) of the Commercial (Arbitrazh) Procedure Code contains express prohibitions on the review of a foreign judgment as to its substance), and, therefore, the enforcement cannot be refused on the basis that the foreign court was wrong on the merits of the case or misapplied the relevant law.

3. Procedure of the Enforcement

3.1. Competent Courts

In order to recognise and enforce a non-Russian judgment, the party seeking enforcement must file an application with a relevant court in a respective part of the Russian Federation:

Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied".

⁴ See, e.g., Ruling of the Supreme Commercial Court of the Russian Federation No. BAC-13688/09 of Dec. 7, 2009, case No. A41-9613/09.

⁵ See Civil Procedure Code, Art. 409(3); Commercial (Arbitrazh) Procedure Code, Art. 246(2).

Commercial (Arbitrazh) Procedure Code⁶ <i>(for judgments in commercial or business matters)</i>	Civil Procedure Code⁷ <i>(for judgments in other civil matters)</i>
a commercial court of a constituent entity of the Russian Federation at: <ol style="list-style-type: none"> (1) the defendant's place of stay or of residence; or (2) if the debtor's place of stay or of residence is unknown, at the location of the defendant 's property. 	a relevant Supreme Court of the Republic, or the territorial or the regional court, or the court of a city of federal importance, or the court of the autonomous region or of an autonomous area at: <ol style="list-style-type: none"> (1) the defendant's place of residence or stay in the Russian Federation; or (2) if the defendant has no place of residence or stay in the Russian Federation, or if the place of his stay is unknown, at the place of location of his property.

Commercial (Arbitrazh) Procedure Code⁸ <i>(for judgments in commercial or business matters)</i>	Civil Procedure Code⁹ <i>(for judgments in other civil matters)</i>
<ol style="list-style-type: none"> (1) a duly certified copy of the judgment; (2) a duly certified document, which confirms that the judgment took legal effect (unless it was expressly specified in the judgement); (3) a duly certified document, which confirms that the debtor was in a timely manner and duly notified regarding the respective proceedings in the foreign court; (4) a power of attorney or another duly certified document confirming the authority of the person who signed the application; (5) a document confirming that a copy of the application was sent to the debtor; 	<ol style="list-style-type: none"> (1) a copy of the judgment certified by the respective foreign court; (2) a document, which confirms that the judgment took legal effect (unless it was expressly specified in the judgement); (3) a document with respect to prior enforcement of the judgement, if it was enforced within the territory of a respective country; (4) a document confirming that the foreign judgment debtor – if the judgment was obtained by default – was in a timely manner and duly notified regarding the time and place for the hearings; (5) duly certified translations of the documents, which accompany the application.

3.2. Formal Requirements

Unless otherwise specified by a relevant international treaty, any application for the recognition and enforcement of a non-Russian judgment must be accompanied by the following documents:

⁶ See Commercial (Arbitrazh) Procedure Code, Art. 242(1).

⁷ See Civil Procedure Code, Art. 410.

⁸ See Commercial (Arbitrazh) Procedure Code, Art. 242(3), 242(5).

⁹ See Civil Procedure Code, Art. 411.

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| <p>(6) duly certified translations of the documents, which accompany the application;</p> <p>(7) a document confirming the payment of the official fee.</p> |
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The application is then considered by the court to make a decision as to whether the foreign judgment is recognisable and enforceable. As stated above, the court does not examine the merits of the case itself and will only consider whether there are any grounds for refusing recognition and enforcement of the foreign judgment.

If the non-Russian judgment is the subject of judicial revision or appeal in the respective foreign jurisdiction, the Russian court can grant a stay on enforcement proceedings.¹⁰

3.3. Notification of the Judgment Debtor

Pursuant to Art. 411(3) of the Civil Procedure Code and Art. 243(2) of the Commercial (Arbitrazh) Procedure Code, the Russian court must notify the judgment debtor of the enforcement proceeding including time, date and place for the hearing. If the judgment debtor fails to appear without valid excuse, it does not prevent the court from granting the enforcement of the foreign judgment.

¹⁰ See Civil Procedure Code, Art. 411(6); Commercial (Arbitrazh) Procedure Code, Art. 243(5).

4. Grounds for Refusal

The recognition and enforcement of the foreign judgment may be refused by the Russian court on the following grounds:

- the foreign judgment has not entered into force pursuant to the laws of the jurisdiction of origin;
- the defendant was not properly and in a timely manner notified of the time and place for the hearing, or could not provide the foreign court with his objections for other reasons;
- the original dispute is subject to the exclusive jurisdiction of a Russian court;
- there exists a previous judgment of a Russian court given in a dispute on the same subject matter and between the same parties;
- a proceeding between the same parties on the same subject matter are pending before a Russian court;
- the limitation period for the recognition and enforcement has expired; and
- the recognition and enforcement the foreign judgment would be contrary to the public policy of the Russian Federation.¹¹

In addition, pursuant to Art. 412(1)(5) of the Civil Procedure Code, the Russian court can refuse to grant the enforcement of the non-Russian

¹¹ See Civil Procedure Code, Art. 412(1); Commercial (Arbitrazh) Procedure Code, Art. 244.

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judgment, if the enforcement undermines sovereignty or threatens the national security of the Russian Federation.

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