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Sovereign Immunity: Russia Adopts a Restrictive Approach on a Reciprocal Basis

On November 3, 2015, the President of the Russian Federation signed the Federal Law № 297-FZ on Jurisdictional Immunities of Foreign States and Property of Foreign States in the Russian Federation (the Law). The Law will take effect from January 1, 2016 (Art. 18).

By passing the Law, Russia has endorsed the restrictive theory of sovereign immunity entirely, and ruled out the dichotomy which exists between the Code of Civil Procedure and the Code of Commercial Procedure. If the former envisages an archaic absolutist approach, the latter sticks to the restrictive theory in terms of jurisdiction and interim measures, but not execution.

The Law resembles the provisions of the UN Convention on Jurisdictional Immunities of States and Their Property of 2004 (Art. 2-21), which was signed by Russia in 2006, but not yet ratified. Unlike the US judiciary, in assessing state activity as *jure gestionis* (commercial), Russian courts shall determine both nature and purpose (Art. 7(4) of the Law).

Notably, what differs the Law distinctly from the UN Convention and similar acts of other states, is Article 4. It stipulates that Russian courts are vested with power to lower the level of foreign state protection based on reciprocity rule. An authorized body of the Russian Federation is empowered to issue opinions on the matter if Russia enjoys the same level of immunity in a respective foreign state as provided by the Law.

Finally, the Law establishes an understandable framework for foreign states and their agencies and instrumentalities in Russia. By giving protection to property of foreign central banks and other monetary authorities (Art. 16(1)), the Law may attract sovereign investments to Russia.

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