Global Arbitration Review

The Guide to Challenging and Enforcing Arbitration Awards

General Editor
J William Rowley QC

Editors
Emmanuel Gaillard and Gordon E Kaiser

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Publisher's Note

Global Arbitration Review is delighted to publish this new volume, *The Guide to Challenging and Enforcing Arbitration Awards*.

For those unfamiliar with Global Arbitration Review, we are the online home for international arbitration specialists, telling them everything they need to know about all the developments that matter. We provide daily news and analysis, and a series of more in-depth books and reviews, and also organise conferences and build work-flow tools. Visit us at www.globalarbitrationreview.com.

As the unofficial journal of international arbitration, sometimes we spot gaps in the literature earlier than other publishers. Recently, as J William Rowley QC observes in his excellent preface, it became obvious that the time spent on post-award matters has increased vastly compared with, say, 10 years ago, and it was high time someone published a reference work focused on this phase.

The Guide to Challenging and Enforcing Arbitration Awards is that book. It is a practical know-how text covering both sides of the coin – challenging and enforcing – first at thematic level, and then country by country. We are delighted to have worked with so many leading firms and individuals to produce it.

If you find it useful, you may also like the other books in the GAR Guides series. They cover energy, construction, M&A and mining disputes in the same unique, practical way. We also have books on advocacy in international arbitration and the assessment of damages.

My thanks to the editors for their vision and energy in pursuing this project and to my colleagues in production for achieving such a polished work.

Contents

Editor's Preface

During the past two decades, the explosive and continuous growth in cross-border trade and investments that began after World War II has jet-propelled the growth of international arbitration. Today, arbitration (whether *ad hoc* or institutional) is the universal first choice over transnational litigation for the resolution of cross-border business disputes.

Why parties choose arbitration for international disputes

During the same period, forests have been destroyed to print the thousands of papers, pamphlets, scholarly treatises and texts that have analysed every aspect of arbitration as a dispute resolution tool. The eight or 10 reasons usually given for why arbitration is the best way to resolve cross-border disputes have remained pretty constant, but their comparative rankings have changed somewhat. At present, two reasons probably outweigh all others.

The first must be the widespread disinclination of those doing business internationally to entrust the resolution of prospective disputes to the national court systems of their foreign counterparties. This unwillingness to trust foreign courts (whether based on knowledge or simply uncertainty as to whether the counterparty's court system is worthy – i.e., efficient, experienced and impartial) leaves international arbitration as the only realistic alternative, assuming the parties have equal bargaining power.

The second is that, unlike court judgments, arbitral awards benefit from a series of international treaties that provide robust and effective means of enforcement. Unquestionably, the most important of these is the 1958 New York Convention, which enables the straightforward enforcement of arbitral awards in approximately 160 countries. When enforcement against a sovereign state is at issue, the ICSID Convention of 1966 requires that ICSID awards are to be treated as final judgments of the courts of the relevant contracting state, of which there are currently 161.

Awards used to be honoured

A decade ago, international corporate counsel who responded to the 2008 Queen Mary/PricewaterhouseCoopers Survey on Corporate Attitudes and Practices in Relation to Investment Arbitration (the 2008 Queen Mary Survey) reported positive outcomes on the use of international arbitration to resolve disputes. A very high percentage (84 per cent) indicated that, in more than 76 per cent of arbitration proceedings, the non-prevailing party voluntarily complied with the arbitral award. Where enforcement was required, 57 per cent said that it took less than a year for awards to be recognised and enforced, 44 per cent received the full value of the award and 84 per cent received more than three-quarters of the award. Of those who experienced problems in enforcement, most described them as complications rather than insurmountable difficulties. The survey results amounted to a stunning endorsement of international arbitration for the resolution of cross-border disputes.

Is the situation changing?

As an arbitrator, my job is done with the delivery of a timely and enforceable award. When the award is issued, my attention invariably turns to other cases, rather than to whether the award produces results. The question of enforcing the award (or challenging it) is for others. This has meant that, until relatively recently, I have not given much thought to whether the recipient of an award would be as sanguine today about its enforceability and payment as those who responded to the 2008 Queen Mary Survey.

My interest in the question of whether international business disputes are still being resolved effectively by the delivery of an award perked up a few years ago. This was a result of the frequency of media reports – pretty well daily - of awards being challenged (either on appeal or by applications to vacate) and of prevailing parties being required to bring enforcement proceedings (often in multiple jurisdictions).

Increasing press reports of awards under attack

During 2018, *Global Arbitration Review*'s daily news reports contained literally hundreds of headlines that suggest that a repeat of the 2008 Queen Mary Survey today could well lead to a significantly different view as to the state of voluntary compliance with awards or the need to seek enforcement.

A sprinkling of last year's headlines on the subject are illustrative:

- 'Well known' arbitrator sees award set aside in London
- Gazprom challenges gas pricing award in Sweden
- ICC award set aside in Paris in Russia–Ukrainian dispute
- Yukos bankruptcy denied recognition in the Netherlands
- Award against Zimbabwe upheld after eight years
- Malaysia to challenge multibillion-dollar 1MBD settlement
- Uzbekistan escapes Swiss enforcement bid
- India wins leave to challenge award on home turf

Regrettably, no source of reliable data is available as yet to test the question of whether challenges to awards are on the increase or the ease of enforcement has changed materially

since 2008. However, given the importance of the subject (without effective enforcement, there really is no effective resolution) and my anecdote-based perception of increasing concerns, last summer I raised the possibility of doing a book on the subject with David Samuels (*Global Arbitration Review*'s publisher). Ultimately, we became convinced that a practical, 'know-how' text that covered both sides of the coin – challenges and enforcement – would be a useful addition to the bookshelves of those who more frequently than in the past may have to deal with challenges to, and enforcement of, international arbitration awards. Being well equipped (and up to date) on how to deal with a client's post-award options is essential for counsel in today's increasingly disputatious environment.

David and I were obviously delighted when Emmanuel Gaillard and Gordon Kaiser agreed to become partners in the project.

Editorial approach

As editors, we have not approached our work with a particular view on whether parties are currently making inappropriate use of mechanisms to challenge or resist the enforcement of awards. Any consideration of that question should be made against an understanding that not every tribunal delivers a flawless award. As Pierre Lalive said in a report 35 years ago:

> *an arbitral award is not always worthy of being respected and enforced; in consequence, appeals against awards [where permitted] or the refusal of enforcement can, in certain cases, be justified both in the general interest and in that of a better quality of arbitration.*

Nevertheless, the 2008 Queen Mary Survey, and the statistics kept by a number of the leading arbitral institutions, suggest that the great majority of awards come to conclusions that should normally be upheld and enforced.

Structure of the guide

This guide is structured to include, in Part I, coverage of general matters that will always need to be considered by parties, wherever situated, when faced with the need to enforce or to challenge an award. In this first edition, the 13 chapters in Part I deal with subjects that include (1) initial strategic considerations in relation to prospective proceedings, (2) how best to achieve an enforceable award, (3) challenges generally, (4) a variety of specific types of challenges, (5) enforcement generally, (6) the enforcement of interim measures, (7) how to prevent asset stripping, (8) grounds to refuse enforcement, and (9) the special case of ICSID awards.

Part II of the book is designed to provide answers to more specific questions that practitioners will need to consider when reaching decisions concerning the use (or avoidance) of a particular national jurisdiction – whether this concerns the choice of that jurisdiction as a seat of an arbitration, as a physical venue for the hearing, as a place for enforcement, or as a place in which to challenge an award. This first edition includes reports on 29 national jurisdictions. The author, or authors, of each chapter have been asked to address the same 35 questions. All relate to essential, practical information on the local approach and requirements relating to challenging or seeking to enforce awards in each jurisdiction. Obviously, the answers to a common set of questions will provide readers

with a straightforward way in which to assess the comparative advantages and disadvantages of competing jurisdictions.

Through this approach, we have tried to produce a coherent and comprehensive coverage of many of the most obvious, recurring or new issues that are now faced by parties who find that they will need to take steps to enforce these awards or, conversely, find themselves with an award that ought not to have been made and should not be enforced.

Quality control and future editions

Having taken on the task, my aim as general editor has been to achieve a substantive quality consistent with *The Guide to Challenging and Enforcing Arbitration Awards* being seen as an essential desktop reference work in our field. To ensure content of high quality, I agreed to go forward only if we could attract as contributors, colleagues who were some of the internationally recognised leaders in the field. Emmanuel, Gordon and I feel blessed to have been able to enlist the support of such an extraordinarily capable list of contributors.

In future editions, we hope to fill in important omissions. In Part I, these could include chapters on successful cross-border asset tracing, the new role played by funders at the enforcement stage, and the special skill sets required by successful enforcement counsel. In Part II, we plan to expand the geographical reach with chapters on China, Saudi Arabia, Turkey and Venezuela.

Without the tireless efforts of the Global Arbitration Review team at Law Business Research, this work never would have been completed within the very tight schedule we allowed ourselves; David Samuels and I are greatly indebted to them. Finally, I am enormously grateful to Doris Hutton Smith (my long-suffering PA), who has managed endless correspondence with our contributors with skill, grace and patience.

I hope that all my friends and colleagues who have helped with this project have saved us from error – but it is I alone who should be charged with the responsibility for such errors as may appear.

Although it should go without saying, this first edition of this publication will obviously benefit from the thoughts and suggestions of our readers on how we might be able to improve the next edition, for which we will be extremely grateful.

J William Rowley QC

April 2019

London

Part II

Challenging and Enforcing Arbitration Awards: Jurisdictional Know-How

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Russia

Dmitry Dyakin, Evgeny Raschevsky, Dmitry Kaysin, Maxim Bezruchenkov and Veronika Lakhno[1]

Applicable requirements as to the form of arbitral awards

Applicable legislation as to the form of awards

1 Must an award take any particular form (e.g., in writing, signed, dated, place, the need for reasons, delivery)?

An applicant must submit an original award or a certified copy thereof. An award must be rendered in writing and must contain the date and place of its rendering. An original award must be signed by all arbitrators (or by a sole arbitrator).

According to Article 237(4) of the Commercial Procedure Code of the Russian Federation (the CPC) and Article 35 of the Law of the Russian Federation on International Commercial Arbitration (the ICA Law), a certified copy of an arbitral award shall be attested by a permanent arbitration institution (if any) or shall be certified by a notary (for an *ad hoc* arbitration).

Applicable procedural law for recourse against an award

Applicable legislation governing recourse against an award

2 Are there provisions governing modification, clarification or correction of an award?

Under Article 33 of the ICA Law, any party may request an arbitral tribunal to correct or clarify an award, to give an interpretation of a specific point or part of an award within

1 Dmitry Dyakin and Evgeny Raschevsky are partners, Dmitry Kaysin is counsel and Maxim Bezruchenkov and Veronika Lakhno are junior associates at Egorov Puginsky Afanasiev and Partners.

30 days of receipt of the award. If an arbitral tribunal considers the request to be justified, it shall make the correction or give the clarification within 30 days of receipt of the request.

Moreover, any party may request an arbitral tribunal to make an additional award as to claims submitted in arbitral proceedings but not resolved in an award, within 30 days of receipt of the award. If an arbitral tribunal considers the request to be justified, it shall deliver an additional award within 60 days. An arbitral tribunal may correct any of its errors on its own initiative within 30 days of rendering an award.

Appeals from an award

3 May an award be appealed to or set aside by the courts? If so, on what grounds and what procedures? What are the differences between appeals and applications for set-aside?

Courts in the Russian Federation are not empowered to hear appeals from arbitral awards. Awards are immune from judicial review on the merits or on the point of Russian law that applied to the merits of the dispute. At the same time, Russian courts can set aside arbitral awards in a limited number of cases within the procedure under Chapter 30 of the CPC.

Article 233 of the CPC provides that an award can be set aside if any of the following grounds exist:

- a party to an arbitration agreement was under some incapacity or the agreement was not valid under the applicable laws;
- an award deals with disputes falling outside an arbitration agreement;
- the composition of an arbitral tribunal or an arbitral procedure was not in accordance with the valid agreement between the parties or imperative requirements of applicable laws;
- a party was not given proper notice of the appointment of an arbitrator or of arbitral proceedings, or was unable to present its case for other valid reasons; or
- an arbitral award may also be set aside if the subject matter of the dispute could not have been resolved by arbitration under the federal law of Russia or an arbitration award is contrary to Russian public policy.

Applicable procedural law for recognition and enforcement of arbitral awards

Applicable legislation for recognition and enforcement

4 What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction? Is your jurisdiction party to treaties facilitating recognition and enforcement of arbitral awards?

Two separate sets of rules apply to the recognition and enforcement of arbitral awards. Articles 236 to 240 of the CPC, Articles 423 to 427 of the Civil Procedure Code, and the Federal Law on Arbitration (Arbitration Proceedings) in the Russian Federation relate to domestic arbitral awards, whereas Articles 241 to 246 of the CPC, Articles 416 and 417 of the Civil Procedure Code, and the ICA Law apply to international arbitral awards.

The Russian Federation is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the European Convention on International Commercial Arbitration 1961. Like some former members of the Council for Mutual Economic Assistance, Russia is still a party to the Moscow Convention on the Settlement by Arbitration of Civil Law Disputes Arising from Relations of Economic, Scientific and Technical Cooperation 1972. Russia is also a signatory to the Washington (ICSID) Convention 1992, but this treaty is not yet ratified.

The New York Convention

5 Is the state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under Article I(3) of the Convention?

Yes, it is. In 1960, this Convention entered into force for the USSR, which made a reservation that reciprocity shall apply to non-parties to the Convention.

Recognition proceedings

Competent court

6 Which court has jurisdiction over an application for recognition and enforcement of arbitral awards?

Both foreign and domestic arbitral awards can be recognised and enforced in Russia by commercial courts of first instance at a debtor's location or, if a debtor's location is unknown, at the location of property owned by the debtor.

Jurisdictional issues

7 What are the requirements for the court to have jurisdiction over an application for recognition and enforcement of arbitral awards? Must the applicant identify assets within the jurisdiction of the court that will be the subject of enforcement for the purpose of recognition proceedings?

As described in question 6, an application for recognition and enforcement of both domestic and foreign arbitral awards shall be filed by an applicant with the commercial court of the constituent entity of the Russian Federation at a debtor's location or, if a debtor's location is unknown, at the location of property owned by the debtor. The latter is the case when an applicant shall specify debtor's property that can be the subject of enforcement at that particular location. Generally, an applicant is required to identify assets within the jurisdiction of the court.

As regards domestic arbitration, parties also can agree that an application may be filed with the commercial court of the constituent entity of the Russian Federation in which territory the arbitral award was rendered, or with the commercial court of the constituent entity at the location of the party to arbitration proceedings in whose favour the arbitral award has been delivered (Article 236(3) of the CPC).

Form of the recognition proceedings

8 Are the recognition proceedings in your jurisdiction adversarial or *ex parte*?

All proceedings on recognition and enforcement of arbitral awards are adversarial.

Form of application and required documentation

9 What documentation is required to obtain the recognition of an arbitral award?

According to Articles 237 and 242 of the CPC, an applicant shall provide the following documents:

- an original of an arbitral award or its properly certified copy;
- an original arbitration agreement or its properly certified copy;
- a document confirming payment of the state fee in the manner and amount established by a federal law;
- proof of delivery or another document confirming that a copy of an application for the recognition and enforcement of an arbitral award has been sent to the other party of the arbitration proceedings; and
- a certificate of authority or another document confirming the powers of the person to sign an application.

Translation of required documentation

10 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition of an arbitral award? If yes, in what form must the translation be?

Proceedings in commercial courts are carried out in Russian only. All documents, including arbitration awards and arbitration agreements, shall be translated into Russian and a translator's signature shall be certified by a public notary. This requirement is mandatory in all cases. In practice, it is possible to submit translations of excerpts from supportive documents.

Other practical requirements

11 What are the other practical requirements relating to recognition and enforcement of arbitral awards?

An application for recognition and enforcement of arbitral awards can be filed by the successful party with the competent court within three years of the date when the award became effective. The application must also be accompanied by a document confirming payment of the state fee (3000 roubles). Other costs can include charges for legal representation, which may be borne by an award debtor if enforcement is successful.

Recognition of interim or partial awards

12 Do courts recognise and enforce partial or interim awards?

Russian courts do not recognise interim awards. In refusing to recognise such awards, the courts rely on Article V(1)(e) of the New York Convention, which – in its Russian translation – provides that a court may refuse enforcement if the award has not yet become 'final' (rather than 'binding' as in the English text of the Convention).

Court practice in regard to partial awards is less consistent. For example, in Case No. A55-27265/2010, the courts recognised and enforced a 'partial final' award rendered by a London Court of International Arbitration tribunal. However, in Case No. A54-3603/2016, the courts refused to enforce the second partial award rendered by a German Arbitration Institute tribunal. Having enforced the first partial award produced in the same arbitration several years earlier, the courts refused recognition of the second partial award, holding (quite controversially) that enforcement of the second partial award would upset the 'finality' of a court judgment and affect the earlier judgment in the same dispute.

Grounds for refusing recognition of an award

13 What are the grounds on which an award may be refused recognition? Are the grounds applied by the courts different from the ones provided under Article V of the Convention?

The grounds for refusing recognition or enforcement of arbitral awards are stipulated in Article 36 of the ICA Law (as referred to by Article 244(3) of the CPC) and are the same as those provided under Article V of the New York Convention.

Effect of a decision recognising an award

14 What is the effect of a decision recognising an award in your jurisdiction? Is it immediately enforceable? What challenges are available against a decision recognising an arbitral award in your jurisdiction?

The decision on recognition and enforcement of an award enters into force on the day when it was rendered. It is thus immediately enforceable.

A decision recognising an arbitral award can be challenged in several instances. Although most disputes need to be taken to a court of appeals, this step is excluded for judgments dealing with enforcement or set-aside proceedings of an arbitral award. A decision recognising an arbitral award may be appealed to a cassation circuit court within one month of the decision being rendered. In high-stake disputes, parties then very often appeal judgments of cassation circuit courts to the Supreme Court. These appeals are subject to a separate admissibility review and only a fraction of cases are revised by the Supreme Court on the merits.

Decisions refusing to recognise an award

15 What challenges are available against a decision refusing to recognise an arbitral award in your jurisdiction?

The decision refusing recognition and enforcement of an arbitral award can be challenged in the same manner as described in question 14.

Stay of recognition or enforcement proceedings pending annulment proceedings

16 Will the courts adjourn the recognition or enforcement proceedings pending the outcome of annulment proceedings at the seat of the arbitration? What trends, if any, are suggested by recent decisions? What are the factors considered by courts to adjourn recognition or enforcement?

As is established in Article 233(5) of the CPC, if an application to set aside or suspend the enforcement of a foreign arbitral award is pending in a foreign court, the court that considers an application for recognition and enforcement of this award may, at the request of one of the parties, stay the recognition or enforcement proceedings pending the outcome of annulment proceedings.

The court considers only one relevant factor – proof of the existence of pending annulment proceedings at the seat of the arbitration.

For example, in Case No. A76-26938/2018, the courts stayed enforcement of a Stockholm Chamber of Commerce award pending annulment proceedings initiated by the award debtor in Sweden.

Security

17 If the courts adjourn the recognition or enforcement proceedings pending the annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security? What are the factors considered by courts to order security? Based on recent case law, what are the form and amount of the security to be posted by the party resisting enforcement?

Article VI of the New York Convention provides a court that is adjourning a decision on enforcement of an arbitral award with the discretion, upon an application by the award creditor, to order the award debtor to provide suitable security. Russian law has the same provision in Article 243(6) of the CPC.

The court shall consider the same factors as for any other interim measure, namely:

- whether a failure to issue these measures may make it difficult or impossible to execute the decision; and
- whether the appellant would suffer significant damage in the absence of such measures.

We were able to locate only one reported case in which the applicant, pending the annulment proceedings, sought the defendant to be ordered to post security (in the amount of US$16,691,176.95, a sum equal to the amount of award). The outcome of that case

was negative as the court found that the appellant failed to prove that the debtor took measures to evade further execution of the award; a person's subjective fear about the future impossibility or difficulty of the execution of an award is not a good enough reason for the court to take interim measures.

Moreover, the court considered the debtor's quarterly report, the balance sheet and the financial results report, and concluded that there was no risk that the debtor would not be in a position to pay under the award. In these circumstances, the court considered that the funds that could be gained from the sale of the debtor's fixed assets would be sufficient to satisfy the interests of the applicant if the award were not to be set aside.

Recognition or enforcement of an award set aside at the seat

18 Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an award is set aside after the decision recognising the award has been issued, what challenges are available against this decision?

Arbitral awards set aside at the seat of arbitration may not be recognised and enforced by the Russian courts (Article 36(1)(6) of the ICA Law).

Formally, there are no challenges available against a decision on the recognition and enforcement of an award under these circumstances. However, one possibility could be to try for a 'revision based on new circumstances' in the court that granted the enforcement. The decision setting aside the award could be presented as the 'new circumstance' (Article 311(3)(1) of the CPC). However, this is likely to be unsuccessful, as the list of permitted 'new' circumstances contained in Article 311(3) of the CPC is a closed one and a decision setting aside an arbitral award is not included.

Service

Service in your jurisdiction

19 What is the applicable procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction?

Service of judicial documents in Russia is governed by Article 123 of the CPC. A natural person is considered to be duly served if the documents are handed to him or her personally, or to an adult living with this person; a receipt or other document indicating the date and time of service should be returned to court. Documents addressed to a legal entity shall be served to the person authorised to receive the correspondence.

If the recipient's domicile in Russia is unknown, then the service is considered to be effected if the documents are sent to the last known location or place of residence of the defendant.

Russian law does not contain any specific provisions on the service of extrajudicial documents.

Service out of your jurisdiction

20 What is the applicable procedure for service of extrajudicial and judicial documents to a defendant out of your jurisdiction?

Pursuant to the CPC, foreign defendants will be informed by letter rogatory. The detailed rules for applying the CPC are set out in a 2017 Decree of the Supreme Court of Russia. It provides, *inter alia*, that for the service of process on foreign parties, a Russian court will issue a letter of rogatory to a foreign court.

Russia is also a party to the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. Thus, if the defendant is located in a country that is a party to this convention, the service will be effected according to the mechanism established in the Convention.

Identification of assets

Asset databases

21 Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction?

A debtor's assets are identified by bailiffs during the process of execution of the judgment. However, certain registers allow the identification of certain types of debtor's assets in Russia:

- Uniform State Register of Legal Entities (subsidiary companies); and
- Federal Institute for Industrial Property database (paid version) (trademarks and licences).

Information available through judicial proceedings

22 Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?

There are no direct mechanisms within the judicial proceedings allowing an award debtor to be ordered to disclose the existence or location of assets.

Enforcement proceedings

Availability of interim measures

23 Are interim measures against assets available in your jurisdiction? May award creditors apply such interim measures against assets owned by a sovereign state?

Yes, as provided in Article 91 of the CPC:

- to impose an arrest on cash or other property owned by a defendant and held by the defendant or other persons;
- to prohibit a defendant and other persons from performing certain actions concerning the subject of the dispute;
- to impose on a defendant the obligation to perform certain actions so as to prevent damage to, or deterioration of the condition of, the disputed property;

- to transfer the property for storage to a claimant or another person;
- to suspend enforcement under the executive or other document disputed by the plaintiff, the enforcement for which is carried out in an indisputable (without acceptance) procedure; and
- to suspend the sale of property in the event that a claim for release of property from arrest has been filed.

The court may impose other interim measures, and several interim measures may be imposed at the same time. All interim measures must be proportionate to the amount of debt.

An award creditor may obtain interim measures against assets owned by a sovereign state, provided that the assets are not subject to immunity (for more details, see question 34).

Procedure for interim measures

24 What is the procedure to apply interim measures against assets in your jurisdiction? Is it a requirement to obtain prior court authorisation before applying interim measures? If yes, are such proceedings *ex parte*?

Interim measures are allowed at any stage of the court proceedings if the failure to take these measures may make it difficult or impossible to execute the judicial act, including if the judicial act is supposed to be performed outside the Russian Federation or to prevent significant damage to the applicant.

An applicant must submit a motion to the court, which must indicate:

- the name of the court with which the motion is filed;
- the name of the claimant and the defendant, and their location or place of residence;
- the subject of the dispute;
- the amount of property claims;
- justification of the reason for filing an application for interim measures;
- the interim measure requested by the claimant; and
- a list of attached documents.

The court will consider an application for interim measures within one day of the date on which the application was submitted to the court, without informing the parties.

Interim measures against immovable property

25 What is the procedure for interim measures against immovable property within your jurisdiction?

The main interim measure against immovable property is an arrest order. The details of the procedure are as discussed in question 24.

Interim measures against movable property

26 What is the procedure for interim measures against movable property within your jurisdiction?

The main interim measure against movable property is an arrest order. The details of procedure are the same as discussed in question 24.

Interim measures against intangible property

27 What is the procedure for interim measures against intangible property within your jurisdiction?

There is no special procedure for interim measures against intangible property, but it could also be arrested. The details of procedure are the same as discussed in question 24.

Attachment proceedings

28 What is the procedure to attach assets in your jurisdiction? Is it a requirement to obtain prior court authorisation before attaching assets? If yes, are such proceedings *ex parte*?

Attachment (execution) procedures are regulated by the Law on Enforcement Procedure and the CPC.

After a judgment enters into force, the claimant will receive a writ of execution from the court that issued the judgment. Based on the writ of execution, the assets can be attached through either the federal bailiffs' service or the debtor's bank. (The federal bailiffs' service is a state authority responsible for the attachment of assets on all types of claims (both monetary and non-monetary).)

Alternatively, judgments relating to monetary claims can be executed by the bank where the debtor has an account. The bank must debit the amount claimed directly from the account of the judgment debtor within five days of the claimant's request. If the claimant does not have information about the debtor's accounts, it can submit an enquiry to the Federal Tax Service, which will provide this information after the debt is confirmed by the court. Executing a judgment through a bank is not a universal way of enforcement and will not help if the debtor has no money in the account, but it is much quicker than executing a judgment through bailiffs.

Attachment against immovable property

29 What is the procedure for enforcement measures against immovable property within your jurisdiction?

There is no special procedure established by the law; see question 28.

Attachment against movable property

30 What is the procedure for enforcement measures against moveable property within your jurisdiction?

There is no special procedure established by the law; see question 28.

Attachment against intangible property

31 What is the procedure for enforcement measures against intangible property within your jurisdiction?

There is no special procedure established by the law; see question 28.

Enforcement against foreign states

Applicable law

32 Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?

Yes. The Federal Law on Jurisdictional Immunities of Foreign States and Assets of Foreign States in the Russian Federation (the Law on Jurisdictional Immunities) came into force on 1 January 2016. The Law largely resembles the rules of the UN Convention on Jurisdictional Immunities of States and Their Property, although Russia has not ratified the latter. Unlike the Convention, the Russian legislator embodied the rule of reciprocity, meaning that Russian courts may not apply the favourable Russian regime to a foreign state if the laws of that state provide for a lower standard of protection.

In addition, civil procedure is governed by Chapter 33.1 of the CPC and Chapter 45.1 of the Civil Procedure Code. Chapter 12.1 of the Federal Law on Enforcement Proceedings laid down the particularities of enforcement (execution) proceedings against the assets of foreign states.

Service of documents to a foreign state

33 What is the applicable procedure for service of extrajudicial and judicial documents to a foreign state?

Service shall be executed under an international bilateral or multilateral treaty if there is one is in effect between Russia and the other debtor state. In the absence of any treaty, the Russian Ministry of Justice shall procure the service through diplomatic channels. Russian courts cannot schedule a preliminary hearing or a main hearing earlier than six months before such a hearing.

Immunity from enforcement

34 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? If yes, are there exceptions to such immunity?

Russia follows the restrictive doctrine of sovereign immunity. Essentially, Russian laws protect the same categories of assets as provided for in Article 21 of the UN Convention on Jurisdictional Immunities of States and Their Property. They are declared immune from pre- and post-judgment measures.

Waiver of immunity from enforcement

35 Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? If yes, what are the requirements of such waiver?

Under Article 6(2) of the Law on Jurisdictional Immunities, foreign states may waive immunity from the jurisdiction of Russian courts trying cases of enforcement of arbitral awards rendered against such states. Having said that, the Russian legislator has specifically provided that such a waiver is not tantamount to a waiver from interim relief or execution. To that extent, and in the absence of developed case law on this point, there are no other regulations in Russia.

Appendix 1

About the Authors

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Dmitry Dyakin, LLM, is a partner and co-head of the litigation practice at Egorov Puginsky Afanasiev & Partners, with more than 20 years of experience in litigation and international arbitration. He particularly specialises in large, complex and multinational disputes involving various jurisdictions.

He has considerable expertise in international arbitration (both commercial and investment cases) with extensive experience of arbitrating under ICC, SCC, LCIA, ICDR, UNCITRAL, GAFTA and ICAC (MKAS) rules.

Dmitry's career milestones include the role of general counsel at a Russian holding company and managing partner roles at two law firms.

GAR 100 lists Dmitry as one of Russia's top arbitration practitioners. He is also recommended by *Chambers Global*, *Chambers Europe*, *Best Lawyers* and *Who's Who Legal*, among others. He holds an Honourable Attorney Award.

Dmitry acts as vice chair of the Presidium of Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs and heads the Russian Arbitration Association workgroup on investment disputes. He is a member of the Advocacy and Notariat Committee of the Association of Lawyers of Russia, the Eurasia/Russia Committee of the American Bar Association, the British Institute of International and Comparative Law, the International Bar Association and the SIAC Users Council.

Dmitry holds a master's degree in law from New York University School of Law (US), an executive MBA from London Business School and Columbia Business School, an honours degree in law from Moscow State Social University and a master's degree in private law from the Russian School of Private Law.

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Evgeny has authored numerous articles in specialised Russian and international legal publications in the area of international arbitration and civil law, and several leading Russian commentaries in the field of international arbitration. He is a member of the Chartered Institute of Arbitrators and the International Council for Commercial Arbitration, and holds a position with the Arbitrators Nominating Committee of the Russian Arbitration Association. He is a member of the SIAC Users Council's Russia Committee.

Evgeny graduated from the Law School of Volgograd State University in 1999, received his master's degree at the Russian School of Private Law in 2001 and his PhD in law in 2004. He has been a member of the Moscow Bar Association since 2003.

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Prior to joining Egorov Puginsky Afanasiev & Partners, Dmitry worked for Russian Standard Corporation as the deputy director of legal affairs, focusing on international commercial litigation and arbitration, and on the resolution of domestic commercial, intellectual property and bankruptcy disputes.

He graduated from Moscow State Academy of Law with distinction. He holds an LLM degree from NYU School of Law in international business transactions, litigation and arbitration, and a PhD from Moscow State Academy of Law.

Dmitry is an author of several articles and studies dedicated to the enforcement of foreign judgments and arbitral awards, sovereign immunity and cross-border insolvency issues.

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His recent highlights include acting for Irish Bank Resolution Corporation under the enforcement against Russian assets, representing a large Danish agricultural company in a corporate dispute before the Arbitration Institute of the Stockholm Chamber of Commerce and advising a construction company headquartered in the UAE on a dispute with a Russian developer arising under the implementation of a large residential development project.

Maxim graduated from the National Research University Higher School of Economics in 2015. He holds the Oxford Russia Fund scholarship.

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Veronika Lakhno, a junior associate at Egorov Puginsky Afanasiev & Partners, focuses on international arbitration and litigation disputes and international trade law. She acts in teams representing clients in complex litigation cases abroad, and is experienced in advising clients on arbitration proceedings in ICC and LCIA.

Her career highlights include many achievements and awards relating to moot courts. In 2016, she was named 12th top advocate at the Foreign Direct Investment Arbitration Moot global oral rounds, and in 2017 received the Martin Domke Award for Individual Oralists of the Willem C Vis International Commercial Arbitration Moot Court. Veronika has also acted as an arbiter of Willem C Vis International Commercial Arbitration Moot, Foreign Direct Investment International Arbitration Moot, The European Human Rights Moot Court Competition, and several national moot court competitions in Russia. She coaches the Moscow State University Vis Moot Team.

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Enforcement used to be an irrelevance in international arbitration. Most losing parties simply paid. Not so any more. The time spent on post-award matters has increased vastly.

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