

# Enforcement of Foreign Judgments

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Fundamental Principles [Russia]

2020



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## **I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)**

### **A. Ability to Apply for Recognition and Enforcement of a Court Judgment**

#### **1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

**Answer:** Yes. Under Article 241 of the Arbitration Procedural Code of the Russian Federation (APCRF), judicial acts of foreign states are recognized and enforced by courts of arbitration within the Russian Federation, if such recognition and enforcement is stipulated by international agreements of the Russian Federation and by federal law.

### **B. Applicable Law: General Rules**

#### **1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

**Answer:** There is an entire chapter of the Arbitration Procedural Code of the Russian Federation dedicated to the regulation of recognizing and enforcing foreign judicial acts and foreign arbitration awards (Articles 241-246).

### **C. Special Rules: European Union**

#### **1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

**Answer:** The recognition and enforcement of foreign arbitration awards in Russia is done in accordance with the Arbitration Procedural Code, the Law “On International Commercial Arbitration”, the European Convention on External Commercial Arbitration of 1961, legal assistance treaties on civil cases, agreements on the stimulation and protection of investments, and trade agreements. On the basis of said acts, a competent Russian court is to decide on the recognition and enforcement of foreign judicial acts and arbitration awards, before they can be executed within the Russian Federation.

#### **2. Does the European Union have a special procedure to enforce court judgments coming its member states?**

**Answer:** No, there is no special procedure for recognizing and enforcing judgments taken by the European Union Member States in the Russian Federation.

#### **D. Average Duration of Enforcement Procedure**

##### **1. What is the average length of time for this kind of procedure?**

**Answer:** Applications to recognize and enforce foreign judicial acts and foreign arbitration awards are considered within three months after they are delivered to the court of arbitration.

#### **II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS**

##### **A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?**

**Answer:** Yes.

The court of arbitration can deny the recognition and enforcement of a foreign judgment, fully or in part, if it contravenes Article 244 of the Arbitration Procedural Code of the Russian Federation, such as where:

- 1) the judgment has not come into force in the state of origin;
- 2) the party, against which the judgment was made, was not promptly nor duly notified of the time and place of the proceedings, or where the party was unable to present its case to the court for other reasons;
- 3) a court of the Russian Federation is exclusively competent to consider the case under an international agreement of the Russian Federation or under a federal law;
- 4) there is a valid judgment adopted in the Russian Federation on a dispute between the same persons, on the same subject matter and for the same motives;
- 5) a dispute between the same persons, on the same subject matter and for the same motives is being considered by a court of the Russian Federation and the proceedings were initiated before those in the foreign court, or where a court in the Russian Federation was the first to accept the claim on the dispute between the same persons, on the same subject matter and for the same motives;
- 6) the limitation period to enforce the foreign judgment has expired and was not reinstated by the court of arbitration;
- 7) the recognition and enforcement of the foreign judgment would contradict the public policy of the Russian Federation.

And the Law of the Russian Federation “On International Commercial Arbitration” of 1993, as well as other international agreements of the Russian Federation.

## **B. Costs and expenses**

### **1. What kind of cost and expenses can a claimant expect in this enforcement procedure?**

**Answer:** Litigation costs, which include the state tax and judicial expenses relating to the case being heard by a court of arbitration.

Judicial expenses include payments to experts, specialists, witnesses and translators as well as expenses related to the examination of the evidence on-site, fees for advocates and other persons rendering legal assistance (representatives), expenses incurred by the legal entity for corporate dispute notice if such notice is required by federal law, and other expenses incurred by the parties in connection with the proceedings.

The fees for experts and witnesses are credited to the deposit account of the court of arbitration by the person who makes the respective request, within the time period fixed by the court of arbitration. If both parties make said request, the required amounts are credited by the parties to the deposit account of the court of arbitration in equal shares.

## **III. FORMAL REQUIREMENTS**

### **A. Time limit**

#### **1. Is there a time limit to apply for enforcement of a foreign court judgment?**

**Answer:** Within 3 years from the date of the judgment.

### **B. Final and Definitive Court Judgment: Provisional Enforcement**

#### **1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?**

**Answer:** The court ruling must be final. According to Article 242 of the APCRF, the following should be annexed to the request to recognize and enforce a foreign judgment:

- 1) a duly attested copy of the foreign judgment or foreign arbitration award, the recognition and enforcement of which the claimant requests;

- 2) duly attested documentary confirmation that the foreign judgment has come into force if this is not already indicated in the text of the judgment itself;
- 3) duly attested documentary confirmation that the debtor was duly and promptly notified of the case before a foreign court, of the recognition and enforcement of the decision requested by the claimant;
- 4) a power of attorney or other document, duly attested and confirming the authority of the signer of the request to the court of application;
- 5) documentary confirmation that a copy of the request to acknowledge and execute a foreign judgment has been sent to the respondent;
- 6) a duly attested Russian translation of the documents indicated in items 1 - 5 hereof.

**C. Necessary Requirements**

**1. What necessary requirements must the foreign court judgment fulfill to be recognized and enforced?**

**Answer:** The following should be annexed to the request to recognize and enforce a foreign arbitration award, unless otherwise stipulated by an international agreement of the Russian Federation:

- 1) a duly attested original foreign arbitration award or its duly authenticated copy;
- 2) the original agreement on the arbitration settlement or its duly authenticated copy;
- 3) a duly attested Russian translation of the documents indicated in items 1 and 2 hereof.
- 4) documentary confirmation of payment of the state tax for the amount and according to the procedure fixed by the federal law on state duty payment at filing to a court of arbitration a request to issue a writ execution for an enforceable execution of an arbitration award is also annexed to the request to acknowledge and execute a foreign judicial act or a foreign arbitration award.
- 5) documents indicated herein are considered duly attested, if they conform to the requirements of Article 255 of this Code.
- 6) documents annexed to the request to acknowledge and execute a foreign judgment or a foreign arbitration award may be submitted to the court in electronic form.



**D. Other Formal Requirements: Court Fees**

**1. Is it mandatory to pay court fees for this kind of application?**

**Answer:** Yes. Litigation costs consist of the state tax and judicial expenses in relation to the court proceedings.

**E. Are there any other formal requirements in your country to enforce a court judgment?**

**Answer:** No.

**IV. PROCEDURE**

**A. Competent court**

**1. Which court or courts are competent to decide an enforcement application?**

**Answer:** The courts of arbitration of republics, territories, regions, cities of federal significance, autonomous regions and autonomous districts consider cases as first instance courts.

The Court of Arbitration of the cassation instance considers cassation requests within the procedure of cassation proceedings.

**B. Informational Requirements for the Application to Enforce a Foreign Court Judgment**

**1. What information must be contained in the enforcement application of a foreign court judgment?**

**Answer:** The application must specify:

- name of the court of arbitration where the application is submitted;
- name and location of the foreign court, or name and composition of the reference tribunal or of the international commercial arbitration and its location;
- name, location or residence of the claimant;
- name, location or residence of the debtor;
- information on the foreign judgment act or the foreign arbitration award, the recognition and enforcement of which are requested by the claimant;
- the claimant's request to acknowledge and execute a foreign judgment or a foreign arbitration award;
- a list of the annexed documents.

The request to acknowledge and execute a foreign judgment or a foreign arbitration award may also specify telephone and fax numbers, e-mail addresses of the claimant, the debtor and their representatives, and other information.

The following should be annexed to the enforcement application of a foreign court judgment:

- 1) a duly attested copy of the foreign judgment or foreign arbitration award, the recognition and enforcement of which the claimant requests;
- 2) duly attested documentary confirmation that the foreign judgment has come into force, if this is not already indicated in the text of the judgment itself;
- 3) duly attested documentary confirmation that the debtor was duly and promptly notified of the case before a foreign court, of the recognition and enforcement of the decision requested by the claimant;
- 4) a power of attorney or other document, duly attested and confirming the authority of the signer of the request to the court of application;
- 5) documentary confirmation that a copy of the request to recognize and enforce a foreign judgment has been sent to the respondent;
- 6) a duly attested Russian translation of the documents indicated in items 1 - 5 hereof.

**C. What documents must be included with/attached to the application to enforce a foreign court judgment?**

**Answer:** The following should be annexed to the request to recognize and enforce a foreign arbitration award, unless otherwise stipulated by an international agreement of the Russian Federation:

- 1) a duly attested original foreign arbitration award or its duly authenticated copy;
- 2) the original agreement on the arbitration settlement or its duly authenticated copy;
- 3) a duly attested Russian translation of the documents indicated in items 1 and 2 hereof.

A documental confirmation of state duty payment in the amount and according to the procedure fixed by the federal law on state duty payment at filing to a court of arbitration a request to issue a writ execution for an enforceable execution of an arbitration award is also annexed to the request to acknowledge and execute a foreign judicial act or a foreign arbitration award.

Documents indicated herein are considered duly attested, if they conform to the requirements of Article 255 of this Code.

Documents annexed to the request to recognize and enforce a foreign judgment or a foreign arbitration award may be submitted to the court in electronic form.

## **D. Phases of the Procedure**

- 1. What are the phases of the procedure to enforce a foreign court judgment?**

**Answer:**

First stage – initiation of the case proceedings, preparation of the case for court hearing, court hearing.

Second stage, optional – cassation proceedings, supervision, and reconsideration of the court of arbitration judgments for newly discovered circumstances, execution proceedings.

## **E. Opposition of the Defendant**

- 1. Can a defendant oppose to this enforcement application?**

**Answer:** Yes.

- 2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?**

**Answer:** This is regulated by common rules of the procedural legislation.

The parties enjoy equal rights to declare challenges and requests, to submit proof, to participate in its examination, to speak during pleadings, to present their explanations and arguments to the court and to exercise other procedural rights and duties.

Judicial proceedings in courts of arbitration are conducted on the basis of competitiveness.

The parties are entitled to be aware of each other's arguments before the hearing. Each participant is guaranteed the right to submit evidence to the court and to the other party, the right to declare requests, to present their arguments and considerations and give explanations to all issues which arise during the consideration of the case and are connected with the evidence submitted.

The parties bear the risk of the consequences of their conducting or not conducting procedural actions.

Third parties are entitled to appeal against the judgment, if it affects their rights and duties. Such persons enjoy the rights and bear the duties of the parties themselves.

The parties are entitled to:

- Review, take extracts and copies of the case materials;
- Declare challenges;
- Submit evidence and examine evidence submitted by other parties, before the court hearing;
- Take part in the examination of evidence;
- Ask the other parties to the arbitration questions, make requests and statements, give explanations to the court of arbitration and give their arguments on all issues arising during the course of the proceedings;
- Review the requests submitted by other persons, object to requests and arguments of other parties;
- Be informed of any complaints filed by other parties and of the judgments for this case, and receive copies of judgments adopted as separate documents;
- Enjoy other procedural rights granted to them under the Arbitration Procedural Code of the Russian Federation and by other federal laws.

The claimant is entitled to drop the claim partially or fully during the proceedings in the court of arbitration of the cassation instance. This will end the examination of the case on its merits.

The respondent is entitled to agree with the claim partially or in full during the proceedings before the courts of arbitration of any instance.

The parties may end the case by amicable agreement.

Courts of arbitration will not permit the case to be dropped by the claimant nor permit the claim to be settled by the respondent, amicably or otherwise, if it is contrary to the law or violates the rights of other persons. In such cases, the court will examine the merits of the case.

Third persons declaring their own claims in connection with the subject matter of the dispute enjoy the same rights and bear the same duties of a claimant.

Third persons not declaring their own claims in connection with the subject matter of the dispute enjoy the rights and bear the duties of a party to the claim, except for the right to drop the claim, to settle the claim or to execute an amicable agreement.

The parties must exercise all their procedural rights in good faith. If they exercise their procedural rights in bad faith, this causes unfavorable circumstances stipulated by the Arbitration Procedural Code of the Russian Federation.

The parties bear the responsibility for the authenticity of submitted evidence pursuant to the CCRF.

Parties to the proceedings bear procedural responsibilities stipulated by the federal laws or imposed by the court of arbitration. Such persons must:

- prove the circumstances they refer to as the basis for their claims and objections (the burden of proof of the circumstances which were the basis for taking decisions, for actions or inaction by public authorities, local authorities, officials, is borne by the respective authority or the official)
- disclose the proof they refer to as the basis for their claims and objections to other case participants before the court session, unless otherwise specified by the Arbitration Procedural Code of the Russian Federation;
- observe the fixed order. The person breaking the order of the court session or disobeying the instructions of the Chairman may be escorted out of the court hall after being warned.

Persons present in the court session room, who film and photograph, video record, provide radio and television broadcasts of the court session, as permitted by the court, must not break the order during the court session. The court may impose time limits on such actions.

## **F. Appeal and its Consequences in this Procedure**

### **1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?**

**Answer:** Requesting a cassation is possible, but unlike the general provisions, only one stage of appeal is relevant instead of the existing two.

### **2. Can this appeal suspend the enforcement?**

**Answer:** The court of arbitration of the cassation instance may, if requested by the parties, suspend the execution of court acts issued by the courts of arbitration of the first and appeal instances, provided the applicant gives justifications for the impossibility or difficulty of undoing the execution or gives surety mentioned below.

The decision of a court of arbitration can be suspended by the court of arbitration of the cassation instance if the person requesting such suspension gives the other party surety for potential losses (counter-surety). This is done by crediting the deposit account of the court of arbitration of the cassation instance with money equal to the disputed sum or by giving a bank guarantee, a warranty or other financial security for the same amount.

## **G. Recovery of judicial costs and expenses**

### **1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

**Answer:** There are no special rules governing this issue so the general rule must be observed.

Court expenses incurred by the winning party are to be obtained by the court of arbitration from the party.

If the claim is partially upheld, the judicial costs are to be shared by the parties in proportion with the upheld claim demands.

The court of arbitration exacts from the other party, the reasonable costs incurred by the winning party for their legal representation.

The state tax, from which the claimant is exempt according to the fixed procedure, is to be obtained from the respondent to the benefit of the federal budget in proportion to the amount of the upheld claim demands, if the respondent is not also exempt from paying the state tax.

If the parties have an agreement to share court expenses, the court of arbitration will allocate the costs in accordance with this agreement.

## **V. RECOVERY OF THE DEBT**

### **A. Means of Enforcement**

#### **1. What types of assets are subject to enforcement of the court's judgment?**

**Answer:** The law "On Executory Process" dated 2 December 2007 gives an exhaustive understanding of this issue.

The penalty may be imposed on property titles, accounts receivable, property of the debtor held by third persons, and on pledged property.

It may also be possible to sequester money in bank accounts or in other credit organization accounts as well as to sequester securities and money in the accounts of professionals in the securities market.

## **VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION**

### **A. Any other issues of interest in your jurisdiction**

**Answer:** The Court of Arbitration of Russia gives many explanations on this issue and so, the legislation continues to develop.

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