

Certain issues relating to recognition of foreign judgments on economic disputes, which do not require enforcement under Arbitrazh [Commercial] Procedure Code of Russian Federation

Summary of the Article published in Journal of Russian Law, N 5, 2017.

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On 1 September 2016 important amendments relating to recognition and enforcement of foreign judgments in Russia came into force¹. The most significant novelty consists in the introduction of Article 245.1 of the Arbitrazh [Commercial] Procedure Code of the Russian Federation (hereinafter referred to as “the APC”) establishing new rules for recognition of those foreign judgements on economic disputes, which do not require enforcement due to their nature².

Introduction of the said article in the APC primarily aims to establish a uniform way of recognition of foreign judgments and to eliminate significant contradictions between the Civil Procedure Code of the Russian Federation (hereinafter “the CPC”) and the APC.

As Art. 409 – 411 of the CPC provide that foreign judgements are subject to recognition and enforcement in Russia only if a competent Russian court grants the respective application. At the same time, under Art. 413 – 415 of the CPC foreign judgements which do not require enforcement due to their nature are recognized in Russia without any further proceedings (*i.e.* their effect in Russia is not subject to any prior approval from Russian court).

Unlike CPC, until recently APC only established a procedure for “recognition **and** enforcement” of foreign judgments³. This circumstance gave rise to uncertainty regarding the how those foreign judgments which do not require enforcement due to their nature (“declaratory judgments”) obtain legal effect in Russia.

Taking into consideration the above we will address several issues regarding application of the new Art. 245.1 of APC in this paper.

I. The legal nature of foreign judgments, which do not require enforcement by their nature.

¹ Federal law of 29 December 2015 N 409-FZ “On amendments to be made to certain Russian legal acts and on nullification of subsection 3 section 2 of Art. 6 of the Federal law on “Self-regulatory bodies” due to the promulgation of the Federal law “On arbitration”.

² Art. 245.1. **Foreign judgments and arbitral awards which do not require enforcement due to their nature**

1. *Foreign judgments and arbitral awards which do not require enforcement due to their nature are recognized in Russia if their recognition is specifically provided by international treaty or federal law;*

2. *Foreign judgments and arbitral awards which do not require enforcement due to their nature are recognised in Russia without any further court proceedings unless an interested party raises objections against it.*

³ Art. 241 of the APC

As noted above, a foreign judgment is now recognized without any further proceedings, if it "*does not require enforcement due to its nature.*" Russian scholars suggest that the term "*enforcement*" traditionally refers to the activities of state bodies aimed at forcing the defendant to perform its obligations under the judgement⁴. It follows from above that a foreign judgment falls under regulation of Art. 245.1 of the APC if it does not prescribe payment of a sum of money and/or transfer of property.

Consequently, Art. 245.1 of APC encompasses, in particular, the following categories of foreign judgments: (i) judgments prescribing nullity of a contract; (ii) judgments on corporate law matters (in particular, on appointment of liquidator/trustee and *etc.*). It needs to be noted that foreign judgments regarding registration of rights to results of intellectual activity (intellectual property) also technically do not require enforcement. However, this kind of disputes falls within exclusive jurisdiction of the Russian courts as per sec. 1 Art. 248 APC⁵.

II. Legal basis for the recognition of foreign judgments under article 245.1 of the APC of the RF.

As per sec. 1 of Art 245.1 of the APC a foreign judgment, which does not require enforcement due to its nature is subject to recognition in Russia under international treaty with the state of origin of judgment and/or under federal law.

The only federal law expressly providing for the recognition of foreign judgements on economic matters is the Federal law N 127-FZ "On insolvency (bankruptcy)". Under sec. 6 article 1 of this Law foreign judgments on insolvency (bankruptcy) matters are recognized in Russia *on the basis of reciprocity* unless any federal law provides otherwise. We believe that exception from this rule is established by sec. 5 – 6 Art. 1202 of the Civil Code of Russia which provides that the capacity of the foreign company is determined under the law of the country of its incorporation. Taking into consideration the above we believe that foreign bankruptcy judgments shall be recognized under sec. 5 – 6 Art. 1202 of the Civil Code of Russia to the extent they provide for the appointment of trustee/liquidator and vest her (him) with powers to act on behalf of the insolvent company. Thus, no condition for reciprocity shall be demanded at this instance.

III Time period for presentation of objections to the recognition of this kind foreign judgements.

⁴ See. Lunts L.A., Marysheva N.I., Course of private international law [Kurs Mezhdunarodnogo Tchastnogo Prava], Volume 3, Legal Literature [Yuridicheskaya literatura], Moscow, 1976. P. 167-168. See also Yarkov V.V. Procedural aspects of recognition and enforcement of foreign judgments and arbitral awards (concise commentary on Chapter 31 of APC) [Proizvodstvo po delam o priznanii i privedenii v ispolneniye resheniy inostrannykh sudov i inostrannykh arbitrazhnykh resheniy], Arbitrazh and Civil Procedure Law Journal [Arbitrazhnyi i Grazhdanskiy Process] 2003, N 5.

⁵ ("The exclusive jurisdiction of the Russian arbitrazh [commercial] courts shall include the following kinds of disputes: <...> any disputes relating to the registration or issue of the patents, registration or issue of the trademark certificates, utility model certificates, and registration of other rights pertaining to intellectual property, which require registration or issue of patent or certificate in Russian Federation").- subsection 3, section 1 Art. 248 of Arbitrazh Procedure Code.

Under sec. 3 Art. 245.1 of the APC, any person affected by a foreign judgment may present objections to its recognition within one month from the moment *when he (she) became learns about it*.

The present wording of Art. 245.1 significantly differs from paragraph 10 of the Decree of the Presidium of the Supreme Court of the USSR of 1988 which provided that these objections shall be raised within “*one month from the moment when the affected person learnt about the presentation of the foreign judgment*”.

We believe that the term “learnt” used in Art. 245.1 of the APC is not sufficiently clear to establish the particular moment when the person actually became aware of the foreign judgment. For instance, is it permissible to say that the person “learns” about the judgment when he (she) sees his name in the electronic dossier of the foreign court? Or where such person otherwise becomes aware of the foreign judgment from mass media? Evidently, in those instances the affected person typically does not have even the text of the foreign judgment and the time period for the filing of objections (one month) may not be sufficient to raise objections regarding it.

(IV) Concluding remarks

We believe that enactment of Art. 245.1 of APC has become a key step in resolution of the discrepancies between CPC and APC. However, we should admit that the mentioned article is not entirely free from some deficiencies. For instance, the present wording of its section 3 does not clearly determine when the person learns about the foreign judgment to raise objection against its recognition.