

Enforcement of decisions of foreign courts

In order to bring economic standards up to western levels, establishing a market economy and attracting inward investment are among the Russian government's top priorities. Years of prejudice have to be overcome, as many potential foreign investors still see investment in Russia as unduly risky. The government is working hard to address these issues and has been prepared to back its promises to potential investors with legal guarantees.

Potential investors in any given economy are concerned to know about the infrastructure of the "host" country, including the commercial and legal infrastructure. They want the reassurance that, if disputes arise, there is a transparent and impartial legal system to ensure that they get a fair hearing and that their rights are protected in the same way as citizens of the host country. The Russian legal system has come in for a great deal of criticism over the years. In response, the government has pushed through many reforms and passed new laws to streamline and update the legal system. Even so, there is much to be done to alter the attitudes of some of those in the system and to finally eliminate corruption.

This will need investment, not only in money, but also in time to change entrenched attitudes. Even with modern laws and a modern procedural framework, it is likely to take years to eliminate the inappropriate attitudes and change the culture. The government is continuing to press ahead with law reform, with excellent results. However, one significant opportunity was missed when the Civil Procedural Code of Russia ("CPC") was introduced in the State Duma of the Russian Federation namely the opportunity to bring the law relating to enforcement of decisions of foreign courts up to international standards.

It almost goes without saying that potential investors will feel more secure if they know that a legal decision legitimately obtained in their home territory or in a third country can be enforced in the host country. It would have been easy for Russia to achieve this at little or no cost when the CPC was drafted, but the opportunity was missed.

Instead, clause 409 of the CPC restricts enforceability of foreign judgments to countries which have signed treaties with Russia for the purpose. Therefore investors from other non-treaty countries, even if they have obtained a judgment in their home country, must start again with an action in the Russian courts if they wish to obtain a judgment that is enforceable in Russia. The number of such countries is still significant.

This inevitably introduces a major element of uncertainty and discourages investment. Moreover, the law itself is made to appear illogical and inconsistent. Under clause 402 of the CPC disputes involving foreign persons or entities should be heard in the same way as those involving Russians. The competent court is the court of the region in which the defendant resides. The logical result is that if a foreigner is the defendant in a case, the competent court is that of the foreigner's residence. However, the judgment of that court would not be enforceable in Russia unless it was in a country that has signed a treaty with Russia on enforceability. This gives rise to the anomaly that a decision of competent court acting in accordance with the CPC would be unenforceable under the CPC.

As noted above, the foreigner has the right to be heard in a Russian court under clause 402 of CPC, but parties that have already obtained a legitimate judgment in another country will most likely consider it unreasonable to have to start the whole action again.

This involves not only legal costs and time delays, but also the disadvantage of litigating in an unfamiliar legal environment, with proceedings in a foreign language.

There is no doubt that, however impartially the Russian courts try to act, foreigners will feel disadvantaged by the current situation. They will consider the courts of their own country to be at least as competent and trustworthy as the Russian courts, and they will not understand why Russia does not recognise their decisions. Of course the Russian court should have the power to confirm that the claim was brought to the foreign court in accordance its rules well as in accordance with the laws of the Russian Federation. But if compliance is established, then the judgment should be enforceable.

It might be argued that the legal infrastructure is only one of many factors influencing the choice of investment location, and that if other things (labour skills and costs, availability of materials and proximity to markets etc) are favourable, foreigners will invest anyway. However, as competition for inward investment increases, it is important that all the factors are right. Furthermore, potential investors may, however unreasonably, see the inconsistency in the law as a sign of a wider problem.

The author accepts that some of the views in this article may be controversial, and that there is a wide range of opinions on some of the issues. Nevertheless, the central premise – that the law should grant similar rights and obligations to all, irrespective of factors such as nationality – is incontrovertible.

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