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Litigating in "Critical" Countries: Russia, China and India

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РОССИЯ

RUSSIA

Russia
as a Jurisdiction of Choice

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A. Introduction

The Russian legal system still remains terra incognita for many countries in spite of the fact that the Soviet Union was broken up more than 20 years ago. Russia is completely open for foreign investments and is actively involved in global trade and production. At the present time considerable changes have been and continue to be made to the Civil Code of the Russian Federation of 1994 ("*CC RF*"), which reflect the changes in business and the economy in the 20 years of the post-Soviet era.

The World Bank puts Russia at 11th place in its "Enforcing Contracts" rankings in 2012. Such a high ranking can be explained by the considerable efforts of the Russian government to increase the openness and efficiency of the Russian judicial system.

At the present time there are many advantages in Russian civil proceedings, such as:

– court rulings and other procedural documents are available on the Internet;

– the status of any claim can be traced through a court site;

– the claim can be submitted to a court via the court's site on the Internet;

– Russian proceedings are relatively inexpensive;

– courts actively use videoconferences for participation of the parties and interrogation of the witnesses located in other regions;

– the Arbitration Procedure Code recognizes e-commerce and other realities of modern commercial practice by admitting video and audio records and "other media" as legitimate evidence.

– it also provides that electronic transmissions acknowledged by digital signature are treated as written documents;

– short proceedings: consideration of a case in the arbitration court of the first instance usually takes about 3 months and 8-10 months to pass all three instances.

Openness of the courts is also important in connection with the fight against corruption - all judicial acts are without fail posted on the Internet and are available to any person.

Taking into consideration all the positive changes, Russian court could be recommended as a place for dispute resolution arising from the distribution contracts when it comes to smaller claims (in the range of several million dollars). At the same time, transactions involving significant amounts of money, as well as those agreements that are not well-regulated by Russian law such as shareholders

agreements and joint venture agreements, should continue to be governed by foreign law and litigated or decided in foreign courts and arbitral tribunals.

The Russian legal system is a continental legal system, where statutory law is generally more important than judicial precedents. The contemporary legal system of Russia has several features typical for the Roman-Germanic legal system, i.e.:

- a uniform hierarchical system of sources of written law, dominated by legislation and other normative acts;
- the leading role of the legislature in the formation of law;
- the existence of a written constitution having supreme legal force;
- a large number of codified normative acts. At present, there are about twenty applicable codes in Russia. These include the civil, civil procedural, arbitration, arbitration procedural, criminal, criminal procedural, land, budgetary, customs, tax, air, forestry and water codes, as well as the code on administrative violations, etc.;
- the importance of subordinate normative acts of the bodies of executive power (rules, instructions, etc.);
- the division of the legal system into public and private law, and also into branches;
- court judgments in Russia are not officially considered to be sources of law and are not binding precedents for future cases. However, the Supreme Arbitration Court and the Supreme Court of the Russian Federation summarize lower court practice and issue court practice explanations in the forms of informational letters and overviews. Such letters and explanations are used as interpretative recommendations and guidelines for lower courts when dealing with similar issues (more weight to a precedent).

Russian legislation does not provide for the specific regulation of distribution contracts. The possibility of concluding distribution contract is provided for by Sec. 2 Art. 421 of the CC RF, which states that parties may conclude a contract, which may or may not be provided for by statute or another legal act. As a distribution contract contains elements of several kinds of contracts named under the CC RF (supply, provision of services, agency, licensing and other), it is considered a mixed contract. The provisions applicable to certain kinds of contracts, elements of which are contained in distribution contract, govern the respective parts of distribution contract, unless otherwise follows from the contract or essence of the contract.

Russian procedural legislation does not provide any special regulations regarding the settlement of disputes arising from a distribution contract. Foreign companies doing business with Russian counterparties have several dispute resolution options to choose from at the contract signing stage:

- International commercial arbitration (either ad hoc or with a Russian / foreign arbitration institute, with the venue of arbitration in Russia or abroad);
- ADR – as alternative, pre-trial methods of dispute resolution (mediation, etc);
- National court of a foreign country (not Russia);
- Russian national court (State arbitration courts).

B. Basic Structure

The structure of the Russian judicial system is established by the Federal Constitutional Law #1-FZ of 31.12.1996 "On Judicial System of the Russian Federation" ("*Federal Law on Judicial System*").

The judicial system of Russia is divided into both federal courts and courts of the various subjects of the Russian Federation. Federal courts include:

- The Constitutional Court of the Russian Federation.
- The Supreme Court of the Russian Federation, the supreme courts of the subjects of the Russian Federation, district and city courts, and military and specialized courts. All of these comprise the system of federal courts of general jurisdiction.
- The Supreme Arbitration Court of the Russian Federation, federal circuit arbitration courts, arbitration appeals courts, the arbitration courts of the subjects of the Russian Federation, comprising the system of federal arbitration courts.

The courts of the subjects of the Russian Federation include constitutional (statutory) courts of the subjects of the Russian Federation and magistrates' courts.

The Russian court system recognizes separate jurisdiction for civil disputes between natural persons and commercial disputes between legal persons. These disputes, as well as proceedings on the recognition and enforcement of foreign judgments on them, are accordingly subject to the jurisdiction of either general state courts (civil disputes) or state arbitration courts (commercial disputes). Both procedural regimes (on civil and commercial disputes) are regulated by their respective procedural codes: the Civil Procedure Code ("*CPC*") and the Arbitration Procedure Code ("*APC*"), respectively.

Russia has an effective system of state arbitration (commercial) courts that exercise justice by way of resolution of commercial disputes. This system is comprised of: the Supreme Arbitration Court of the Russian Federation; 10 federal arbitration courts of circuits (arbitration cassational courts), 20 arbitration appeals courts and arbitration courts of the first instance in each subject of the Russian Federation. The main purpose of arbitration courts is to protect and uphold the rights and legal interests of legal entities and citizens in the business and other spheres of economic activity.

C. Jurisdiction

(a) Jurisdiction of each court

The judiciary is primarily regulated by the Constitution of Russia, the Code of Criminal Procedure, the Civil Procedure Code, the Arbitration Procedure Code and the Federal Law on Judicial System. The Constitution states that the judicial branch is independent of the legislative and executive branches, but there have been serious violations of the accepted separation of powers doctrine.

- The Constitutional Court of the Russian Federation is the supreme judicial body and does not belong to either of the judicial branches. It plays an important role in the Russian legal system as the only judicial body competent to strike down legislative acts for noncompliance with the RF Constitution. The Constitutional Court is also competent to interpret the RF Constitution and to invalidate acts of the executive bodies for noncompliance with the RF Constitution. Rulings of the Constitutional Court are final and cannot be appealed. The Court, however, does not hear private cases and does not give executable judgments.
- General jurisdiction courts consider disputes between private individuals, private individuals and companies, private individuals and state bodies, appeals by private individuals and companies against government acts, and also hear administrative and criminal cases.

The system of general jurisdiction courts also includes a standalone chain of military courts that are competent to consider the same types of cases as courts of general jurisdiction, but only if the case involves military personnel.

- Arbitration courts have jurisdiction over commercial disputes between companies and individual entrepreneurs, appeals of companies and individual entrepreneurs against authorities' acts, and disputes between companies and their shareholders. In fact, arbitration courts are specialized state commercial courts which resolve property and commercial disputes between almost all economic agents.

An important achievement of the APC of the RF is the elimination of concurrent jurisdiction of general and commercial courts. Now all corporate disputes (including those relating to minority shareholders rights) and procedures relating to commercial arbitration and administrative cases involving economic actors are within the exclusive domain of arbitration courts. This is important because concurrent jurisdiction and differences in interpretation of laws among the two branches of judicial system sometimes led to conflicting rulings in basically the same dispute. For instance, the alternative venue for claims relating to shareholders' rights was a cause of virtual anarchy in this area. An appeal against a corporate resolution on a merger could go to a general jurisdiction court in cases where the claimants are private individuals and to commercial courts if shareholders are corporations. Since cross-referral between different branches of court systems was not possible, such proceedings could take radically different courses and sometimes led to a corporation with two struggling boards of directors and two CEO's each having its powers confirmed by a court decision.

All proceedings relating to international arbitration (including ancillary proceedings, setting aside and enforcement proceedings) are now within the domain of commercial courts, which have become the primary venue for resolution of disputes relating to economic activity.

(b) Territorial Jurisdiction

Russian procedural rules provide for the same rules for bringing a claim before Russian state courts against a foreign counterparty by Russian distributors or suppliers.

Generally the proper venue for the action is the court having jurisdiction over the locality where the defendant, if an individual, resides, or, if a legal entity, has its principal business, i.e. a management office or a branch (Art. 35 of the APC).

Contracts establishing the jurisdiction of a particular court are enforceable, with the exception of matters for which an exclusive venue is prescribed by the law. Exclusive venues are provided for the following categories of cases: (1) disputes over title to real property must be considered by the court where the relevant object is located; (2) claims for the rights to maritime and air vessels, inland navigation vessels and non-terrestrial objects shall be lodged with the court at the place of the state registration thereof; (3) disputes under a contract of carriage where a carrier is named as a principal or codefendant must be filed at the place of the location of the carrier agency; (4) bankruptcy cases shall be considered by the court which has jurisdiction where the defendant has its principal business.

A Russian distributor or supplier can bring a claim before a Russian state court only if the following requirements are met: if a defendant has a place of residence or domicile in Russia, and also if such defendant has movable or immovable property, or a management body, affiliate or representative office located on the territory of Russia, or if the dispute has arisen from an contract which was or should be executed on the territory of Russia. This is provided in Article 247 of the APC and Article 402 of the CPC.

D. Civil procedures rules

There are two main legislative acts that regulate civil procedure (the term "civil procedure" is applicable to the procedure in both courts): the Civil Procedure Code, adopted on 23.10.2002 and entered into force on 01.02.2003, and the Arbitration Procedure Code, adopted on 14.06.2002 and entered into force on 01.09.2002.

Both Codes distinguish among several kinds of proceedings within general civil procedure. Depending on the nature of the dispute, the case is subject to adjudication by the court under the provisions for one of the proceedings. Those differences are a result of the fact that in the adjudication of certain categories of cases, the court plays a more active role in the process of obtaining and collecting evidence.

Civil proceedings in both courts are generally similar, but there are some significant differences. The general similarity of procedure is arises from the fact that the same principles govern the procedure in both courts. It is important for the court to address the following principles:

- equality of parties to the proceedings (Art. 8 APC, Art. 12 CPC);
- adversary proceedings (Art. 9 APC, Art. 12 CPC).

(a) Timelines for proceeding

The principle of the right to judicial protection in arbitration courts of the RF and the execution of the court's judicial acts within a reasonable timeframe are among the advantages of the arbitration court procedure. This principle was codified in the Federal law #68-FZ dated 30.04.2010 "On compensation for the violation of the right to trial within a reasonable time or performance rights judicial act within a reasonable time", defining the main terms and ordering monetary compensation for violation of this law. The criteria for determining the reasonable timeframe for proceedings include the legal and factual complexity of the case, behaviour of the parties to the judicial process, the sufficiency and effectiveness of the court's action, the timely consideration of the case, as well as the total duration of the trial.

The timelines for proceedings in the Russian state courts are as follows (Articles 134, 152 APC):

- 1 month for acceptance of a claim and preparation for the court proceeding.
- 2 months for consideration of a case in the court of first instance. The case is considered one judge. Due to the possible suspensions or interruptions of the proceedings the trial period can be extended. As a general rule, the court of first instance examines the case within 3-4 months. The awarded judgment shall be the result of such examination.
- 1 month for entry of the decision into force. One can file an appeal to the appeal court within this period of time. The appeal court reconsiders the case and, if any good cause is shown, it can set aside prior judgment and deliver a new one. If the appeal is not filed within the stated period, the plaintiff shall be entitled to receive an enforcement order (which is then filed to the Bailiff Service for enforcement).
- 1 month for investigation of the case in the court of appeal.
- Within 2 months from the entry of the decision into legal force, it can be appealed in the court of cassation.

(b) Evidence

As to the standard of proof required in civil proceedings, the court shall freely exercise its discretion in determining whether evidence submitted by the parties prove that a certain fact is true (Art. 71 APC, Art. 67 CPC). There is no differentiation between higher and lower standard of proof in Russian civil procedural law like, for example, in Germany, where a lower standard of proof applies in preliminary proceedings aiming at injunctive relief, and a claimant only needs to show a preponderant probability of the alleged facts in order to be granted injunctive relief.

Russian civil procedural law does not have rules on disclosure and pre-trial discovery as independent court procedure. There are provisions in the APC that parties have to disclose evidences before a hearing in a court. A party may not rely on any document that he fails to disclose unless the court gives permission. This provision is not so much a sanction as an application of the general principle that a party cannot rely on evidence without giving adequate advance notice to the opponent.

Both Codes provide for the definition of the term "evidence". Evidence is defined as information, obtained according to the APC (or CPC) and other federal laws, about the facts on the basis of which the court establishes the presence or absence of circumstances supporting the demands and objections of the parties and other circumstances material to deciding the case correctly (Art. 64 (1) APC and Art. 55 (1) CPC). In the course of evaluating evidence a court has to consider its admissibility, relevance and sufficiency. Russian procedural law provides for five kinds of evidence which are common for the Courts of general jurisdiction and arbitration courts, namely written evidence, material evidence, expert opinions, witness testimony, explanations of persons participating in the case. The APC also specifies two other kinds of evidence: audio and video records and "any other documents and materials". The introduction of "any other documents and materials" was made to include new forms of information (electronic evidence).

Who has the obligation to collect evidence? The court should determine which circumstances are relevant for the case and which of the parties should provide proof. As a rule, the parties bear the responsibility for presenting the law and facts. But in a case where it is difficult for the parties to obtain and present the necessary proof, the judge can participate in the process of evidence collection. However, the court does not perform the investigatory functions for civil cases.

(c) Interim proceedings

While interim measures are available according to the law, Russian courts are quite reluctant to impose them unless serious grounds showing that a debtor wishes to escape its obligations are presented. Interim measures are allowed at any stage of the process, if rejection of these measures can complicate or make impossible performance of the judicial act including if performance of the judicial act is to take place outside the Russian Federation, and also for prevention of significant damage to the applicant. The mere fact that the respondent doesn't pay is not enough to justify interim measures according to the current court practice. Interim measures as well as preliminary interim measures have to be proportional to the declared requirement, be directly related to the subject matter of the dispute, and necessary and sufficient to ensure the fulfillment of a judicial act or prevent significant damage to the applicant.

Interim measures can include:

1) seizure of money (including funds on the bank account) or other property, belonging to the respondent;

2) prohibition to the respondent and other persons from certain actions concerning a subject of dispute;

3) imposition upon the respondent a duty to undertake certain actions to prevent damage, deterioration of a condition of disputable property;

4) transfer of disputable property for storage by the claimant or other person;

5) suspension of recovery of a judgment on the basis of an order or other document subject to automatic execution that is challenged by a claimant ; and

6) suspension of a property sale due to a claim for release of the property from arrest being presented..The arbitration court may grant other interim measures and may also grant several kinds of interim measures at the same time. Arbitration courts of all instances are obliged to consider applications for interim measures within one business day of receiving an application.

A respondent who had won a case but suffered damage as a result of adverse interim measures may claim "compensation" not exceeding 1 million rubles (approximately 24000 Euro) awarded at the court's discretion. In claiming compensation, a party is not obliged to prove that it has suffered damages nor the amount of such damages.

(d) Costs

Legal fees are not fixed by law. Although the law does not stipulate any caps or limits, it is problematic to claim very significant legal fees in Russian court proceedings, as local courts tend to only grant claims for reasonable costs (Russian courts only view very small costs as reasonable).

Russian court practice has established that only the costs actually borne by the parties can be reimbursed as costs. Therefore, some tribunals comprising Russian law practitioners may be reluctant to grant claims for costs that have not been settled (for example, invoices which have not been issued and paid before claiming).

Contingency fees are not expressly prohibited by law but state courts find them inconsistent with the nature of legal services agreements. The Russian Constitutional Court held in 2007 that contingency fees were against the fundamental principles of Russian law. State arbitration courts have also held that contingency fee arrangements are unenforceable. Therefore, it is very likely that an award granting contingency fees would be unenforceable in Russia.

Of course the advantage of litigation in Russia is that it is considered to be relatively inexpensive, but sometimes this depends on the amounts actually spent on legal assistance.

(e) Appeals

In the commercial court system it is possible to challenge the decisions of the court of first instance at two levels – the so called appeal and cassation levels. Appeal is possible when the court decision has not come into legal force, whereas cassation is possible when it has already come into legal force. Thus, appeals can be moved directly to the second appellate level - cassation. There is also the possibility having a court decision reviewed by the Supreme Arbitration Court (in exceptional cases). The Supreme Arbitration Court may review and cancel any or all previous decisions and issue a new decision on the merits or return the case for a new trial to the court of first instance.

In the courts of general jurisdiction there is also the possibility to appeal the decision of the court of first instance. Appeal is possible in relation to decisions rendered by magistrates' courts. Cassation is possible in relation to the decisions rendered by other courts of first instance which have not come into legal force. There is a further possibility of having decisions that have already come into legal force reviewed by the Supreme Court of the RF (supervisory review) or, in the case of review following discovery of new facts, by the court which rendered the decision.

E. Enforcement of Foreign Judgments

Recognition and enforcement of foreign judgments in Russia is subject to the jurisdiction of the state courts. Questions concerning jurisdiction of the state courts of Russia as well as recognition and enforcement of foreign judgments are regulated by the CPC, the APC and Federal Law #229-FZ dated 02.10.2007 "On Execution Proceedings" and a number of international agreements entered into by Russia on legal assistance. The APC, for example, establishes the principle of recognition and enforcement of foreign judgments in commercial disputes <u>if it is stipulated by international agreement and federal law</u>.

At present there is a debate on the feasibility of recognizing and enforcing the rulings of foreign state courts by way of reciprocity. Court practice is also tending to develop in this direction. The principle of reciprocity is laid down in some of the norms of Russian law, for instance, in the bankruptcy legislation. The Federal Law "On insolvency (bankruptcy)" currently in force directly contemplates that in the absence of international treaties to which the Russian Federation is a party, rulings of foreign state courts on matters of insolvency (bankruptcy) are recognized on the basis of reciprocity.

Neither law nor court practice define what is meant by the "reciprocity principle". Thus the question of applying this principle when making decisions on the recognition of foreign court judgments is rather controversial. Analysis of Russian jurisprudence shows that Russian courts share the following approach in applying the reciprocity principle: recognition of decisions on the basis of reciprocity refers to the recognition of foreign decisions only when a foreign state also acknowledges the decisions of the courts of the Russian Federation.

There are examples when Russian courts refuse to recognize foreign court decisions on the basis of the absence of an international treaty, in which the court expressly pointed out that the existence of an international treaty on reciprocal enforcement of foreign judgments is a necessary condition for the recognition and enforcement of the decisions of foreign courts.

A US company, Pan Am Pharmaceuticals Inc., appealed to the Arbitration Court of Moscow for recognition and enforcement of decisions of the District Court, Central Islip, New York, United States. The Russian court denied the company's motion pointing to the absence of a treaty between the Russian Federation and the United States of America on the mutual enforcement of state court judgments. The findings of the Arbitration Court of Moscow were supported at the cassation level.[1]

The principle of comity (comitas gentium) can be widely found in international relations. For example, "Rentpool B.V." vs. "Lifting Technologies", LLC: the courts of the first and cassation levels held that decision of a court of the Kingdom of the Netherlands may be recognized and enforced in the territory of the Russian Federation on the basis of generally recognized principles of international law. The debtor did not agree with the abovementioned conclusion of the courts of both levels and appealed to the Supreme Arbitration Court. The latter in turn supported the conclusions of the Russian courts and held that despite the lack of an international treaty between the Russian Federation and the Kingdom of the Netherlands, a foreign court decision is subject to recognition and enforcement under the universally accepted principle of international reciprocity requiring states to respectfully apply foreign law, and the principles of comity and mutual respect for the courts of the various states. However, the Supreme Arbitration Court noted that during the trial "Rentpool B.V." identified examples of mutual enforcement of decisions of the state courts of the Russian Federation in the territory of the Kingdom of the Netherlands.

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[1] Ruling of the Federal Arbitration Court of Moscow District dated November 17, 2004, case #KG-A40-10556-04.

In all cases, please note that Russian judges pay the utmost attention to formalities. Therefore, at all stages of the litigation process, the utmost attention should be paid to proper certification, translations, notarization, etc. of all legal documents.

F. Enforcement of Arbitral Awards

(a) Legal regulation

The parties to a distribution contract are free to choose whether a dispute should be resolved by way of arbitration or by litigation through the courts. This choice applies regardless of whether the distributor is a physical person, a company or a partnership.

The legislation governing international arbitration in Russia is Federal law #5338-1 dated 07.07.1993 "On International Commercial Arbitration" which is mostly based on the UNCITRAL Model Law. The Appendix to this Law contains provisions on two permanently acting Russian arbitration institutions: the International Commercial Arbitration Court ("*ICAC*") and the Maritime Arbitration Court ("*MAC*") of the Chamber of Trade and Commerce of the Russian Federation.

The ICAC acts on the basis of international conventions to which the Russian Federation is a party and the Law on international commercial arbitration. It considers disputes arising out of contractual and other civil legal relations and the performance of foreign trade contracts (including distributor contracts), if at least one of the parties is located abroad or if at least one of the parties is an enterprise with foreign investments.

Pursuant to the MAC Regulations, this permanently acting arbitration tribunal resolves disputes on the chartering of vessels, maritime transportation of cargoes, maritime towing, sea rescue of vessels; disputes relating to the raising of sunken vessels and other property; disputes connected to the collision of vessels, including with damage inflicted by port installations, and other disputes arising from contractual and other civil legal relations connected to commercial navigation, irrespective of whether the parties to such relations are subjects of Russian or foreign law, or just Russian and just foreign law.

It is also noteworthy regarding the recognition and enforcement of foreign arbitral awards that the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) prevails over any contradictory Russian law provision.

The manner in which general arbitration tribunals function is governed by Federal Law #102-FZ dated 24.07.2002 "On arbitration tribunals in the Russian Federation", the APC and the CPC.

Russia is also party to a number of other international treaties, both multilateral and bilateral, that ensure the recognition and enforcement of foreign state court rulings. Such treaties envisage, *inter alia*, mutual recognition and enforcement of court rulings on particular kinds of civil (including family law) cases.

(b) Procedure

In enforcement and recognition proceedings, the court does not review the case on the merits. It only examines whether one of a limited number of reasons for denying enforcement is present. The following grounds for refusal to recognize and enforce a foreign judgment commonly found in international agreements are set out in Art. 244 of the APC and Art. 412 of the CPC:

- A party's right to defense was violated during the trial;

- A dispute falls under the exclusive competence of the RF courts;
- The three year period for requesting enforcement of a judgment has expired;
- The judgment did not become legally binding under the law of the state where it was rendered;
- There exists a valid judgment of a Russian court in the dispute involving the same subject matter, grounds and the same parties, or legal proceedings involving the same subject matter, grounds and the same parties were brought before a Russian court prior to the time when the corresponding proceedings were initiated in a foreign court (*res judicata* and *lis pendens*); and
- Enforcement of a judgment jeopardizes sovereignty, national security or contradicts fundamental principles of Russian law (public order).

These rules are equally applicable in cases where enforcement is requested on a reciprocity basis.

Motions on enforcement are resolved in a court hearing. The parties are invited to attend and are given the option of presenting their arguments on the subject matter. On the basis of the hearing, a judge issues a ruling (resolution) to allow or deny enforcement of the judgment. This ruling has the same effect as the judgment of a national court and once it becomes effective (one month following promulgation, unless appealed), it may be enforced.

Judicial decisions that do not require enforcement (such as termination/rescission of a contract or decisions that deny claims in their entirety) are recognized without the need for special domestic proceedings. However, persons affected by such decisions may challenge the decision. Annulment proceedings culminate in a decision of the national court to recognize or to deny recognition to a decision of a foreign court.

According to Article 243 of the APC, enforcement proceedings must be completed within one month, but this rarely happens in practice. Taking into account that proceedings may be held at 3 (in general state courts) or 4 (in arbitration courts) judicial levels, they may last from half a year to two to three years.

(c) Public order

It is often suggested that courts invoke Russian public order to a large extent in order to avoid enforcing decisions against Russian debtors. This assertion may have had some relevance historically, but is definitely overstated by commentators as far as current practice is concerned. Today, the public policy defense remains one of the favorite defenses to raise in an attempt to avoid enforcing decisions if all else fails. Currently, commercial courts will generally dismiss unsubstantiated references by a losing party to public policy grounds as a defense against enforcement. Today, therefore, the application of the public policy concept to fend off enforcement of a foreign arbitration award is rather the exception and not the rule.

In accordance with the law "On International Commercial Arbitration", the CPC and the APC provide that a Russian court may refuse to recognize or enforce an award, irrespective of the country in which it was delivered, if recognition and enforcement of the arbitral award violates public policy. Article 248 of the APC lists the cases in which arbitration courts have exclusive competence over disputes involving a foreign party (including disputes involving federal property, privatization of federal property, real estate located in Russia and granting and registering intellectual property rights).

Violations of public order in international commercial arbitration include, in particular: invalidity of the arbitration agreement; non-compliance with requirements of the establishment of the

arbitration tribunal and manner in which the dispute was considered, including cases where one of the parties to the proceedings did not receive proper notice; the decision not having come into force yet; and decisions of the arbitration tribunal in disputes that are not covered by or are outside the scope of the arbitration provision.

(d) Non-arbitrability

One specific requirements is the possibility of the dispute being considered in an arbitration proceeding, the so-called arbitrability of the dispute. This requirement is considered as an independent and separate norm from the lack of violation of public order requirement.

Generally, the following matters are held to be non-arbitrable:

a) Matters subject to the exclusive jurisdiction of Russian courts. Article 248 of the APC lists cases in which arbitration courts have exclusive competence over disputes involving a foreign party (including disputes involving federal property, privatization of federal property, real estate located in Russia and granting and registering intellectual property rights).

b) Insolvency & bankruptcy. The current trend is that once an insolvency (bankruptcy) proceeding is commenced, all claims must be resolved and determined by a state court in Russia. In respect of arbitration awards issued prior to the bankruptcy, the enforcement of such awards must be sought in the court handling the bankruptcy proceedings. An existing award remains valid despite the commencement of bankruptcy proceedings.

c) Shareholders disputes. In recent cases Russian courts have denied enforcement of arbitral awards in disputes between shareholders of a Russian company stating that all corporate disputes must be settled in the national courts of the Russian Federation. This trend towards non-arbitrability of corporate disputes has generated unrest in the business community. A legislative proposal currently pending would expressly allow the arbitrability of certain categories of shareholders disputes.

d) Real estate titles.

e) Antitrust disputes.

f) Employment disputes.

G. Summary

Russian civil procedure contains certain distinctive features that do not exist in civil law or common law procedural models. These include:

- The role of the judge in the process of gathering evidence;
- The role of the procurator in the civil process;
- The review of judgments in a "supervisory" hearing.

At the present time there are many advantages to Russian civil trials, such as:

- court rulings and other procedural documents are available on the Internet;
- the status of any lawsuit can be traced through a court site;
- the claim can be submitted to the court through a court site on the Internet;
- Russian judicial proceedings are relatively inexpensive;

- courts actively use videoconferencing to allow parties to participate in the proceedings and interrogate witnesses located in other regions of Russia;
- the APC recognizes e-commerce and other realities of modern commercial practice by admitting video and audio records and “other media” as legitimate evidence.
- the APC also provides that digitally signed electronic transmissions are treated as written documents;
- short trial time: consideration of a case in an arbitration court of first instance usually takes approximately 3 months and 8-10 months to complete the entire legal process from tiral court through two levels of appeals.

Taking into consideration all the positive changes, Russian court could be recommended as a place for dispute resolution arising from the distribution contracts when it comes to smaller claims (in the range of several million dollars). At the same time, transactions involving significant amounts of money, as well as those agreements that are not well-regulated by Russian law such as shareholders agreements and joint venture agreements, should continue to be governed by foreign law and litigated or decided in foreign courts and arbitral tribunals.