

The nitty-gritty of cross-border dispute resolution in Russia

When dealing with a Russian counterparty or otherwise entering the Russian market, foreign companies tend to be wary of their dispute resolution prospects in the country.

Russian litigation, while markedly more affordable and swift than English, is governed by a complex set of rules that discourage foreign players from filing lawsuits in Russia. In 2017, Russia's Supreme Court summarised its approach to cross-border commercial disputes in an attempt to remove this hurdle.

Overriding Russian Jurisdiction

Irrespective of the parties' contractually stipulated jurisdiction of choice and even of any existing English court ruling, Russian courts have an overriding jurisdiction in cases concerning, among other things:

- property located in Russia;
- IP registration with Russian authorities;
- validity of records entered into registers maintained by Russian authorities;
- incorporation and winding down of Russian companies; and
- domain disputes relating to .RU domain names and other domain names hosting pages available in Russian or otherwise targeted at Russia-based audience.

In cases other than those falling within the ambit of Russian courts' exclusive jurisdiction, it

is important to remember that an objection to Russian jurisdiction must be raised as soon as possible before any statement as to the substance of the dispute is made, as by responding to the claim one will be treated as having waived the right to object.

Representation

For the purposes of ascertaining the foreign participant's capacity, Russian courts ordinarily require an excerpt from the respective foreign company (trade) register. Russian courts have been directed to accept publicly available information from the official registrars' websites.

A power of attorney issued abroad and destined to be used in Russian courts need not be notarised, apostilled or legalised, however the court may, when in doubt as to the authenticity of the document, require a notarised and apostilled power of attorney, so it remains preferable to have it executed in this manner to begin with.

Foreign Law

If directed by the court to explain the legal treatment of an issue under a foreign law, a party must restrict the scope of the legal opinion sought from an expert (such as a barrister) to applicable principles and legal tests. The opinion can be rejected by the Russian court if it purports to provide an analysis of the facts of the case in question.

Interim Relief

Finally, the Supreme Court has clarified Russian commercial courts' powers as to the implementation of interim measures pursuant to foreign courts' requests.

In case of litigation, an application to a Russian court for interim measures can be made if the applicant or the assets in question are based (located) in Russia, or if the applicant rights were violated in Russia.



In case of international arbitration, the interim measures may be applied if the defendant or the assets in question are based (located) in Russia.

If you would like to know more about this development, please get in touch with Svetlana London.

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