

Commercial Court of Moscow terminates recognition and enforcement proceedings because debtor registered outside jurisdiction

- **Resource type:** Legal update: case report
- **Status:** Published on 18-Jan-2017
- **Jurisdiction:** Russian Federation

In *Case No. A40-183971/2016*, the Commercial Court of Moscow considered whether to terminate recognition and enforcement proceedings on the basis that the debtor was registered outside the jurisdiction although it had assets in Russia.

Maxim Kulkov (Managing Partner), Elena Zaltser (Associate), KK&P

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The Commercial Court of Moscow has terminated recognition and enforcement proceedings relating to a London Court of International Arbitration (LCIA) award, reasoning that the debtor was registered in Cyprus which was known to the creditor prior to filing the enforcement application.

The Commercial Court considered that Article 242 of the Commercial Procedure Code provides that an application to recognise and enforce an arbitration award must be filed with the commercial court of the Russian Federation where the debtor is situated or, if such place is unknown, where the property is located.

If the creditor appeals, it is likely that the ruling will be corrected by higher courts. Otherwise it may signal the beginning of a bad trend. (*Case No. A40-183971/2016*.)

The Commercial Court of Moscow (Commercial Court) has terminated recognition and enforcement proceedings related to a London Court of International Arbitration (LCIA) award, reasoning that the debtor was registered in Cyprus which was known to the creditor.

A Cypriot company applied to the Commercial Court to recognise and enforce an LCIA award against another Cypriot company, stating that it had assets in the Russian Federation (shares in a Russian company).

The Commercial Court held that Article 242 of the Commercial Procedure Code (CPC) provides that an application to recognise and enforce an arbitration award must be filed with the commercial court where the debtor is situated or, if such place is unknown, where the property is located.

Article 242 is aimed at selecting the appropriate Russian commercial court, competent to consider an application to recognise and enforce an arbitral award (domestic territorial jurisdiction). It is only applicable when the debtor is located in Russia that is, in domestic proceedings. However, the Commercial Court stated that since the creditor knew the debtor was registered abroad, there were no grounds for applying to a Russian court for recognition and enforcement of the award. In addition, the Commercial Court was silent on the application of the Convention on Recognition and Enforcement of Foreign Arbitral Awards (***New York Convention*** (www.practicallaw.com/6-205-5196)) which does not impose such a requirement.

Fortunately, this reasoning is not common in Russian case law. For example, in *Ruling No. VAS-6430/10 (28 June 2010)*, the Supreme Commercial Court considered whether a foreign judgment should be recognised and enforced. Applying Article 241 of the CPC, it found that nothing precluded enforcement of a judgment against assets located in Russia, notwithstanding the fact that the parties to the dispute were registered in Ukraine and Moldova. (Article 241 of the CPC provides that foreign judgments and arbitral awards can be enforced by Russian commercial courts if recognition and enforcement is provided for in international agreements ratified by the Russian Federation and in federal law).

Later, in *Case No. A40-105056/10*, the Commercial Court of the Moscow Region stated that "The New York Convention does not require that an application for recognition and enforcement be made where the assets of the debtor are located only if the debtor is registered in that jurisdiction".

Therefore, it is likely that the ruling will be corrected by higher courts if the creditor appeals, otherwise this could start a bad trend.

Case: *Case No. A40-183971/2016* (www.practicallaw.com/w-005-4344) (Commercial Court of Moscow).

Resource information

Resource ID: w-005-4351

Published: 18-Jan-2017

Products: Arbitration (All jurisdictions), PLC Arbitration Email, PLC US Law Department

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