

## The Russian Supreme Court introduces updated guidelines for the cases with foreign parties involvement

July 14, 2017

Dear Ladies and Gentlemen,

We would like to inform you that on 27 June 2017 the Supreme Court of the Russian Federation (the “**SC RF**”) has adopted the Resolution of the Plenum No. 23 “On consideration of commercial cases arising from relationships complicated by an international element” (the “**Resolution of the Plenum**”).

During presentation of the draft Resolution of the Plenum, Judge Natalia Pavlova of the SC RF mentioned that the number of cases in the Russian arbitrazh (state commercial) courts involving foreign parties had increased fourfold since 2010, and 60% of them were decided in favour of foreign investors. The new Resolution of the Plenum envisages further improvements to litigation involving foreign parties with the following most significant developments:

### **1 Resolution of the Plenum aims to simplify the existing formal requirements to notification of the foreign parties about the court proceedings in the Russian arbitrazh courts:**

- (A) The SC RF introduced further development of the “effective notification” concept, which was previously approached by the Russian supreme judiciary in 2014 Nortel v. UNI case dealing with notification of the Russian company about the UK proceedings. In that case, the court held that actual knowledge of the Russian party about foreign proceedings was not per se sufficient for it to be deemed duly notified, although if the party decides to participate in the foreign proceedings it may no longer rely on the deficient service.

In the present Resolution, the SC RF considered an opposite situation with the Russian court notifying a foreign party about the Russian proceedings. Distinct to the approach in Nortel v. UNI, the Resolution explicitly states that a foreign party shall be deemed aware of the proceedings if, inter alia, there is sufficient evidence to prove it (e.g. registered correspondence, e-mails, public statements of the opposite party, etc.). In this case, there is no need to observe formal notification rules.

- (B) Upon confirmed receipt of the first judicial act about the Russian proceedings a foreign party is deemed to be notified about their further development and shall take due care to keep itself informed of the case progress through an official electronic database of the arbitrazh courts (“Electronic justice”) available at [www.kad.arbitr.ru](http://www.kad.arbitr.ru).

The website is however available in Russian only and there may be difficulties to access it outside Russia without a registered account.

- (C) Further, if a foreign party has a legal representative in Russia authorised to receive court summonses and other documents from the court, the arbitrazh courts are now entitled to send notifications directly to such representatives without further need to serve them out of Russia to the registered address of a foreign party.

- (D) Finally, the SC RF clarified that where a number of international (either multilateral or bilateral) treaties of Russia are in place to govern notification of a foreign party about the court proceedings, arbitrazh courts shall apply the one which envisages more expedited and less formal procedures of service.

## **2 The Resolution of the Plenum introduces clarifications to determination of Russian arbitrazh courts competence over the cases involving international element:**

- (A) The Resolution of the Plenum includes detailed guidelines and tests to establish jurisdiction of arbitrazh courts:
- (i) In addition to the traditional criteria of tense connection to Russia (e.g. main place of contract performance, assets or evidence location, applicable Russian law), the Resolution confirmed competence of the Russian courts to consider disputes with regard to web-sites registered in the Russian domain zones (.ru, .su, .рф), which conduct business and are oriented primarily for the Russian audience and entities;
  - (ii) Further, a foreign entity may be deemed to have a permanent representation in Russia and thus fall under jurisdiction of the arbitrazh court regardless of lack of its formal registration in Russia if it however continuously operates in the Russian market, has a web-site with description of its business activities in the Russian language registered in the Russian domain zone.
- (B) A number of improvements have been introduced to significantly expand applicability of forum selection clauses (*prorogation agreements*) to a broader scope of contractual and non-contractual disputes, including those arising from the fact of entry into an contract, its effect, validity, amendment, expiry, termination, etc. The SC RF explicitly stated that forum selection clauses could be entered into between foreign parties, and offered a less formalistic approach to their written form, which on the analogy of arbitration clauses can now be observed by means of correspondence or procedural (litigation) documents exchange.
- (C) The Resolution also addresses competence of the Russian courts to grant injunction in support of foreign litigation. In order to do so arbitrazh court shall have an “effective jurisdiction”, i.e. the requested injunction shall be quickly and properly enforceable in Russia. Considering that Russian courts are not entitled to enforce foreign injunction judgments, such approach may facilitate obtaining effective remedies over the Russian assets.

The improvements introduced in the Resolution of the Plenum shall contribute to further elimination of formal approach and facilitate more expedited procedure, although they also may create certain additional risks for foreign parties, which require close attention to the relations with Russian counterparties.

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this message. If you would like to learn more about our **Dispute Resolution practice**, please let us know about it in reply to this email. We will be glad to provide you with our materials.

If you have any questions, please, do not hesitate to contact the Partner of ALRUD Law Firm **Vassily Rudomino** at [VRudomino@alrud.com](mailto:VRudomino@alrud.com).

Kind regards,

**ALRUD Law Firm**

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