

# Kluwer Arbitration Blog

## Are Russian Commercial Courts Becoming More Cooperative (and Predictable) in Aid of Foreign Arbitration and Litigation?

David Goldberg (White & Case LLP) · Tuesday, August 31st, 2010 · White & Case

The clearest indication of a shift in the approach of the Russian arbitrazh (commercial) courts\* came in April 2010, when the Presidium of Russia's Supreme Arbitrazh (Commercial) Court issued a precedential decision, holding that interim relief measures may be ordered by Russian arbitrazh courts in aid of foreign arbitration. The ruling has resolved an ongoing debate over the issue in the lower courts, and has suggested a positive shift in the attitude of the Russian judiciary towards supporting foreign dispute resolution proceedings.

In the underlying case, proceedings in Russia arose in connection with an arbitration commenced in 2009 in the London Court of International Arbitration ("LCIA") by a Cypriot company "Edimax" against the Russian businessman Shalva Chigirinsky. Edimax is claiming approximately \$32 million from Chigirinsky for debts allegedly owed by companies under his control, on the basis that he had issued a personal guarantee in the companies' favour. In an effort to ensure any future enforcement of a potential LCIA award, Edimax applied to the Moscow Arbitrazh Court for interim relief in the form of an attachment over Chigirinsky's Moscow apartment.

The issue of whether such relief may be ordered by Russian arbitrazh courts to support foreign arbitration has remained unclear for some time. Article 90(3) of the Russian Arbitrazh Procedure Code states that a party to arbitral proceedings may apply to an arbitrazh court to seek relief at either the place of arbitration, the debtor's place of residence, or the place where the debtor or the debtor's assets are located. Although the statutory provision does not on its face limit the availability of interim relief to a particular kind of arbitration, it was previously uncertain whether it extends to an international arbitration with a seat outside Russia.

Indeed, the lack of clarity on the availability of interim relief in such a scenario was illustrated by the progression of the *Edimax v. Chigirinsky* case through the Russian court hierarchy. The first instance arbitrazh court refused to grant Edimax interim relief on the basis that the request was not justified under the requirements of Article 90 of the Russian Arbitrazh Procedure Code. The Ninth Court of Appeal disagreed and reversed the decision, issuing the order of attachment. Chigirinsky then appealed to the Moscow Circuit Cassation Court, which annulled the decision below on the basis that the case did not involve a "commercial" element. The Cassation ruling stated that such a "commercial" element is necessary since Article 27(1) of the Procedure Code of the Russian Federation limits the jurisdiction of the arbitrazh (commercial) courts to matters involving entrepreneurial or other economic/commercial activities. In the opinion of the Cassation Court, Chigirinsky provided the personal guarantee in his private capacity, and not as an entrepreneur

engaged in a business activity, and this placed his assets outside the jurisdiction of the arbitrazh (commercial) courts.

The issues in the proceedings were finally resolved by the Supreme Commercial Court, Russia's highest court of commercial jurisdiction. The Presidium of the court decided that an individual in Chigirinsky's position could be considered as an entrepreneur acting in his economic interests when issuing a guarantee against the debts of companies under his control. As such, Russia's arbitrazh courts are competent to order provisional relief against him as a personal guarantor of corporate debts. Perhaps most significantly, the Supreme Commercial Court set a precedent in concluding that Russian arbitrazh courts can rely on Article 90(3) of the Arbitrazh Procedure Code to provide interim relief, such as an order of attachment over assets located in Russia, in aid of foreign arbitration.

The decision is a clear demonstration of a recent trend within the Russian judiciary towards greater support of arbitration and litigation taking place abroad. In the past, Russian authorities have exhibited some reluctance to enforce arbitration awards or court decisions rendered outside Russia against Russian entities. Although Russia is a party to the 1958 New York Convention and is therefore bound to enforce valid arbitration awards, domestic courts have previously refused enforcement on the basis of very broad interpretations of public policy. In the realm of litigation, Russia is not bound by any international obligation to recognize and enforce foreign judgments, and Russian courts have in the past commonly refused enforcement of judgments rendered abroad. However, the Russian Supreme Commercial Court appears to be changing its stance. In a 2009 decision, *Rentpool BV v. Podyemnye Tekhnologii LLC*, the court enforced a Dutch judgment in the absence of a treaty obligation to do so, citing international law principles of "comity" and "reciprocity." On the arbitration side, following the ruling of the Supreme Commercial Court in *Edimax v. Chigirinsky*, Russia's Ministry of Economic Development has reportedly requested information from Russian Embassies in Europe on other nations' practices on granting provisional measures. Russian authorities are also said to be considering the adoption of the UN Model Law on International Commercial Arbitration that, with amendments as adopted in 2006, includes extended provisions on interim relief.

In addition to the positive court decisions coming out of the arbitrazh courts, as discussed above, there are other factors that support the view of the positive developments in the Russian courts, at least as far as the arbitrazh (commercial) courts are concerned. In particular, the Chairman of the Supreme Arbitrazh Court has issued clear instructions to the lower courts to treat decisions of the more senior courts as precedents. This combined with the recent practice of placing decisions of the Supreme Arbitrazh Court on-line is likely to be another major step in developing transparency and consistency in the arbitrazh court system in Russia.

One other development that is taking place is the introduction of electronic document systems into the arbitrazh courts, whereby it is possible to file court documents through electronic means. This system is in the process of being developed and, once the system is fully operational, it will arguably put the Russian commercial courts ahead of the latest accepted technological practices in the leading courts around the world.

While it remains to be seen whether the positive trend of Russian judicial co-operation with international dispute resolution will continue, the recent position of the Supreme Commercial Court and the other developments highlighted above certainly signal a positive message for foreign investors seeking to do business in Russia.

By David Goldberg and Eugenia Levine

\* Arbitrazh courts in Russia are a system of State courts within the Russian judiciary with jurisdiction over most commercial disputes and various business entities. These arbitrazh courts are not arbitration tribunals and do not resolve arbitral disputes. They are commercial courts in the general sense of the phrase.

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The graphic features a dark background with white text and a circular icon. The icon depicts a group of stylized human figures, with one figure in the center being magnified by a magnifying glass. The background is accented with horizontal lines in blue and green.

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