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Belarusian Courts on Granting Post-Award Interest

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According to paragraph 1.2.2. of the [Guidelines for Arbitrators on how to approach the making of awards on interest](#) adopted by the Chartered Institute of Arbitrators “*an arbitrator should make an award or awards of interest to cover two distinct periods (a) the period up to the date of issue of the award; (b) the period between the issue of the award and the date of payment*”.

Although the legislation of the Republic of Belarus does not prohibit the enforcement of awards on interest, it does not contain any provision on enforceability and further execution of the awards containing post-award interest. This post analyses the approaches exercised by the Belarusian courts towards payment of *post-award* interest when deciding on the recognition and enforcement of foreign arbitral awards.

The courts tended to refuse the enforcement of foreign arbitral awards in part, in which the defined amount of interest is not specified. In 2005 the Supreme Economic Court of the Republic of Belarus granted the recognition and enforcement of a foreign arbitral award rendered under the Rules of the Grain and Feed Trade Association (“the GAFTA”) in London, upon request of the claimant. According to the GAFTA arbitral award, the respondent was obliged to pay to the claimant the principal debt for the goods delivered, the costs of arbitration and the compound interest in the amount of 5% per annum. The Supreme Economic Court limited the recognition and enforcement of the foreign arbitral award to the part concerning the recovery of principal debt and costs of arbitration. The Supreme Economic Court refused to grant the application for the recognition and enforcement of the foreign arbitral award in the part concerning the recovery of compound interest, as the amount of interest had not been defined in monetary equivalent and the mechanism of its calculation has not been determined.

On September 9, 2014, the Minsk Economic Court recognized and enforced the award rendered in the arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (“the SCC”) of June 4, 2012 in the case No V 145/2011. The SCC award granted the monetary relief to the claimant, including the interests on the sum of the unpaid loan from the date of rendering of the arbitration award, based on the per year rate of London Interbank Offered Rate, with additional 2 per cents before its payment in entirety. The Minsk Economic Court applied the mechanism for determination of interest stated in the SCC award, and, subsequently, calculated and converted the post-award interest into monetary equivalent on the date of the ruling of the recognition and enforcement of the foreign arbitral award. In that way, the Minsk Economic Court

changed the substantive part of SCC award by adding the specific calculated amount of interest – USD 34,453.044. The Supreme Court of the Republic of Belarus in its Decision rendered on October 16, 2014, (Case No 9-9??/2014/925?) partially upheld the Ruling of the lower court but stated that the economic courts of the Republic of Belarus do not have authority to change the substantive provisions of foreign arbitral awards, including the provisions on the determination of the penalty and interest. By determining the amount of interest payable by the respondent on the date of making the ruling on the recognition and enforcement of the foreign arbitral award, the Economic Court has changed the provisions of the foreign arbitral award. More specifically, in the words of the Supreme Court, “[b]y *determining the size of the per cents payable by [respondent] on the date of making the decision on the recognition and enforcement of the arbitration award, the economic court has changed the provisions of the foreign arbitration award about paying this sum of money ‘before its payment in entirety’*”. Taking into account all the above mentioned, the Supreme Court of the Republic of Belarus granted the enforcement of post-award interest, but changed the Ruling of the Minsk Economic Court in the following way: the specific calculated amounts of interest that were not indicated in the substantive part of the SCC award were excluded from the Ruling of the Minsk Economic Court.

The decision of the Supreme Court of the Republic of Belarus at least theoretically allowed enforcement of the post-award interest in arbitral awards. Nevertheless, the new approach raises several practical issues:

First, according to the Article 250 of the Code of Economic Procedure of the Republic of Belarus (the “CEP”), further execution of foreign arbitral award should be made on the basis of the writ of execution issued by the economic court that issued the ruling on the recognition and enforcement of foreign arbitral award. At the present moment, the legislation of the Republic of Belarus does not contain any provisions on the court’s authorization to indicate the specific amount of interest in the writ of execution.

Second, according to Articles 355-356 of CEP, the claimant should send the writ of execution together with application on initiation of executive proceedings to bailiff service. The application on initiation of executive proceedings should contain the specific amount to be recovered according to the writ of execution. Therefore, the writ of execution should contain the specific, calculated amount of interest.

Third, at the present moment the legislation of the Republic of Belarus does not contain any provisions whether the claimant, court or bailiff officer are authorized to calculate the amount of interest payable according to the foreign arbitral award or foreign court judgment.


Therefore, while the recent court practice shows that the foreign arbitral awards containing *post-award* interest are enforceable, the question of further execution of such awards remains unanswered.

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