

# Russian Courts break mould with freezing order



CLIENT ALERT

## Breakthrough decision from the Russian Supreme Commercial Court on security ordered in support of international arbitration claims

The Presidium of the Russian Federation Supreme Commercial (Arbitrazh) Court has confirmed that Russian Commercial Courts have the power to freeze assets and grant other interim security measures in support of foreign arbitration proceedings. Salans' St. Petersburg office obtained the ruling on behalf of a client involved in LCIA proceedings brought by Salans' London office against a high-profile Russian property developer.

*'Russian Commercial Courts have the power to freeze assets and grant other interim security measures in support of foreign arbitration proceedings.'*

## A Groundbreaking Development

Since the introduction of the 2002 Commercial (Arbitrazh) Procedure Code, Russian Commercial Courts have theoretically had the power to order interim security measures if problems arise in enforcing a final award or to prevent the applicant suffering significant losses. However, this power has been exercised on very few occasions, and until this ruling, there was significant uncertainty as to the true position.

## The Ruling

Our client's application for a freezing order in support of its LCIA proceedings was initially denied by the Commercial Court, granted on appeal, then set aside on further appeal (cassation) on jurisdictional grounds. At the Supreme Commercial Court, the debtor argued that neither general nor commercial Russian courts have the power to grant security measures in support of foreign arbitrations. The matter was then referred to the Presidium of the Supreme Commercial Court and the freezing order restored pending the outcome of the Presidium's review.

The Presidium's ruling confirmed that:

- Russian courts can grant freezing orders and other interim security measures in support of foreign arbitrations; and
- It is the commercial courts (not the general courts) which have the power to make such orders against any individual who conducts

economic activity in Russia, whether or not that individual is registered as an individual entrepreneur.

In issuing the ruling, the Presidium has implicitly confirmed that the proper venue for disputes on the recognition and enforcement of foreign awards issued against such individuals is the Russian commercial courts.

## A New Precedent

The Presidium's ruling creates a precedent which will serve as a guideline for the lower courts.

This appears to reflect a changing mood in the Russian Federation and an increasing willingness to protect the interests of foreign parties, potentially at the expense of Russian parties, where justice so requires.

The Russian Federation is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, permitting the enforcement of final arbitration awards. However, the Russian courts have not been permitted to enforce interim security measures awarded by foreign tribunals because the Convention does not refer to awards of interim security measures. This may be changing. The Presidium's ruling comes at a time when the Ministry of Economic Development has asked for reports on this topic from Russian Embassies in other European countries which permit enforcement of interim security measures.

## What It Means for Doing Business in Russia

This ruling potentially has significant implications for companies and individuals doing business in Russia and, in particular, those in disputes with Russian parties.

Firstly, it underlines the importance of having an effective arbitration clause in any underlying contract, since the courts' powers extend only to supporting foreign arbitrations, not foreign litigation.

Secondly, it demonstrates the importance of obtaining as much information as possible about a Russian counterpart's assets as early as possible when a dispute arises. This is necessary to determine whether there are any assets which could be frozen.

Thirdly, by the same token, parties with assets in Russia need to be aware of the possibility that they might be on the receiving end of an application for a freezing order issued in support of foreign arbitral proceedings.

Overall, this is a significant development for parties considering or actively doing business in Russia or with Russian parties, and, in creating a more reliable legal environment, one which bodes well for international investors.

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