

**REALITIES OF THE RUSSIAN LEGAL SYSTEM 2016:  
PROTECTION OF RUSSIA-RELATED INVESTMENTS**

**РЕАЛИИ РОССИЙСКОЙ ЮРИДИЧЕСКОЙ СИСТЕМЫ 2016:  
ЗАЩИТА ИНВЕСТИЦИЙ, СВЯЗАННЫХ С РОССИЕЙ**



**MAY 10, 2016  
Philadelphia, USA**

# INVESTMENT TREATY ARBITRATION: DOES ANYONE OTHER THAN RUSSIA EVER WIN?



## **THE RUSSIAN FEDERATION versus VETERAN PETROLEUM LIMITED**

(cause list number: C/09/477160 / HA ZA 15-1)

## **THE RUSSIAN FEDERATION versus YUKOS UNIVERSAL LIMITED**

(cause list number: C/09/477162 / HA ZA 15-2)

## **THE RUSSIAN FEDERATION versus HULLEY ENTERPRISES LIMITED**

(cause list number: C/09/481619 / HA ZA 15-112)



•Hague District Court April 20, 2016 IN RE: Yukos case. Energy Charter Treaty Does Not Apply Because The Russian Legislature Has Not ratified the Energy Charter Treaty



•Investment Arbitration Against Russia Can Be Brought Based On A Bilateral Investment Treaty with Russia



•Enforcement against Russia, the only successful private creditor of Russia to date: *Sedelmayer v. Russian Federation* (Award entered in 1998 by Arbitration Institute of the Stockholm Chamber of Commerce, Under Agreement Concerning the Promotion and Reciprocal Protection of Investments between Federal Republic of Germany and Union of Soviet Socialist Republics signed at Bonn in 1989)



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## **REFUSAL TO RECOGNIZE AN ARBITRAL AWARD ON “PUBLIC POLICY” GROUNDS**

### **ARTICLE V.2(b) of The UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York in 1958 (the “1958 New York Convention”)**

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

...

**(b) The recognition or enforcement of the award would be contrary to the public policy of that country.**

### **ARTICLE 244 OF THE ARBITRAZH PROCEDURAL CODE OF THE RUSSIAN FEDERATION**

1. The arbitrazh court shall refuse to recognize and enforce a decision of a foreign court, in full or in part, if:

.....

(7) the execution of the decision of the foreign court would contradict the public order in the Russian Federation.

2. The arbitrazh court shall refuse to recognize and enforcement of a foreign arbitral award in full or in part on the grounds provided for in part 1 (7) of the present article.....unless otherwise provided for in an international treaty of the Russian Federation.

### **ARTICLE 36 OF THE RUSSIAN LAW “ON INTERNATIONAL COMMERCIAL ARBITRATION”**

Recognition and enforcement of an arbitral decision, regardless of the country it was rendered in, can only be refused in case:

2.The court finds that

.....

Recognition and enforcement of the arbitral decision is counter to the **public order** of the Russian Federation.



## **THE “PUBLIC POLICY” EXCEPTION IN RUSSIA: 2013 SUPREME ARBITRAZH COURT LETTER**

**Supreme Arbitrazh Court Letter # 156, dated February 26, 2013 (12 cases)**



**Article 243(4) of the Arbitrazh Procedural Code of the Russian Federation:**

“When considering the case, the arbitrazh court shall have no right to revise the merits of the foreign court’s decision”.



11 of 12 cases: actions to enforce a foreign arbitral award

1 of 12 cases: action to enforce a foreign judgment

9 cases of 12 cases - enforcement granted

### **ENFORCEMENT DENIED ON PUBLIC POLICY GROUNDS 2 of 12 cases**



Russian criminal court determined the contracts containing arbitration clause was procured by bribery.

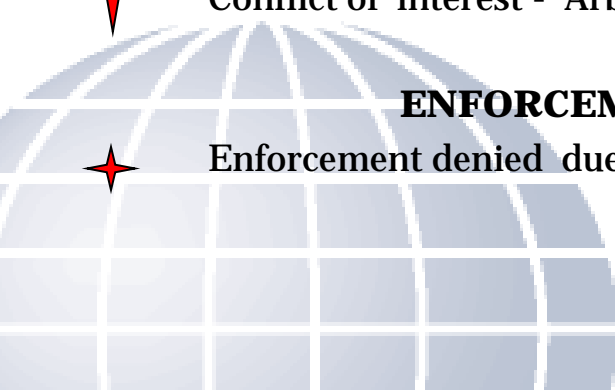


Conflict of interest - Arbitrator

### **ENFORCEMENT DENIED ON OTHER GROUNDS 1 of 12 cases**



Enforcement denied due to improper notice



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## “PUBLIC POLICY” AFTER 2013 SUPREME ARBITRAZH COURT LETTER



*Core Carbon Group ApS v. RosGazificatsiya, OOO “Tsentrگazservice”* - Order of Supreme Court Judge Pavlova N.V. № 305-ЭC16-1939, dated April 11, 2016

**December 11, 2015** - Arbitrazh Court for Moscow Region on December 11, 2015 upheld Moscow City Court refusal dated August 5, 2015 to recognize award in case N V2013/097 issued by Arbitration Institute of the Stockholm Chamber of Commerce on October 10, 2014. Moscow City Court found that the arbitral award was based on agreement which, according to a decision of Russian court in a different matter, was invalid. The recognition was refused on public policy grounds.

**April 11, 2016** - Supreme Court judge Pavlova N.V. refused to transfer the cassation appeal of December 11, 2015 decision for review by judicial bench on economic matters of the Supreme Court. Judge Pavlova found that arguments in the cassation appeal “do not make a showing of material violations of provisions of substantive law and (or) provisions of procedural law, which affected the resolution in the case, and do not constitute sufficient grounds for review of judicial acts in cassation”.



### INTERIM MEASURES IN AID OF FOREIGN-SEATED ARBITRATIONS

*Edimax Ltd v SP Chigirinsky*, Resolution of the Presidium of Supreme Arbitrazh Court of the Russian Federation #17095/09 in case # A40-19/09-OT-13, dated April 20, 2010

Edimax sought attachment of certain property in Russia in aid of LCIA proceedings. Presidium of the Supreme Arbitrazh Court ruled that arbitrazh courts have jurisdiction to grant interim measures in support of foreign arbitral proceedings.



# AMERICAN LITIGATION: NO HOME COURT ADVANTAGE



## **Personal Jurisdiction**

*Archangel Diamond Corporation Liquidating Trust v. OAO Lukoil*, 2012 Colo. App. LEXIS 1406 ;  
certiorari denied 2013 Colo. LEXIS 455 (Colo., July 1, 2013)



## **Forum non Conveniens**


*Archangel Diamond Corporation Liquidation Trust v. OAO LukOil*, 75 F. Supp. 3d 1343;  
*affirmed 10th Cir. Colo., Feb. 9, 2016*



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# ENFORCEABILITY OF FOREIGN JUDGMENTS WITH ENGLISH ACCENT



*Rentpool B.V. v. Podyemnye Technologg LLC*

The court pointed to the Partnership and Cooperation Agreement between Russia and the European Union and its Member States (including the Netherlands) of 1994. The court stated that the lack of such a treaty does not preclude the enforcement of foreign judgments in Russia and could be enforced on the basis of international comity and reciprocity. The Supreme Arbitrazh Court upheld, stated the lower courts have correctly identified the grounds for recognition and enforcement of the judgment -- the Partnership and Cooperation Agreement and the principles of international comity and reciprocity. **December 2009**



*Boegli-Gravures SA v Darsail-ASP LLC and AI Pyzhov*

The court followed *Rentpool*, referred Article 11 of the Russia-UK Agreement of 9 November 1992., states enforcement of a cost order should be granted on the basis of principles of reciprocity and international comity. **April 2012** (Supreme Arbitrazh Court refused supervisory review of lower court's decision July 2012)



*RE: Demesne Investments Limited*

Presidium of Supreme Arbitrazh Court reversed lower courts, recognized judgment from a Northern Irish court referencing treaties international treaties on cooperation in legal and judicial fields. **October 2013**



*RE: VIS Trading Co., Ltd*

Supreme Court rejected to accept cassation appeal on Moscow Region courts decision recognizing UK judgement. **November 2015** (review on newly revealed circumstances denied February 2016, denial affirmed April 2016)



*RE: AO BTA Bank*

Supreme Court rejected to accept cassation appeal on the decision of lower court recognizing UK judgment, **January 2016**

**THANK YOU FOR ATTENDING!**

**СПАСИБО ЗА ВНИМАНИЕ!**

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