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The contravention of a foreign judicial judgment to the national public order is deemed as a sufficient ground to reject recognition and enforcement of foreign court and foreign commercial court judgments in the international law instruments (the New York Convention of 1958), as well as in the law of the Russian Federation.

According to the article 1193 of the Russian Civil Code, the applicable provision of foreign law shall not be applied in certain cases when the consequences of its application would have obviously been in conflict with the fundamentals of law and order (public order) of the Russian Federation. The Russian Civil Code provides that in this case corresponding provision of Russian legislation should be applied if necessary. At the same time rejection in application of the foreign law provision should not be based solely on differences in legal, political or economic systems between a relevant foreign state and the Russian Federation.

According to the established case law in Russian Federation, the fundamentals of the social order of the Russian Federation, the foundations of morality, religious tenets, the basic economic and cultural traditions that have formed the Russian civil society, as well as the fundamental principles of Russian law, including the basic principles of civil law pertain to the public order.

As to the upcoming amendments to the Russian Civil Code, some changes will affect the regulation of the public order clause. Thus, it is assumed that the nature of the relationship, involving a foreign element may become an additional criterion to decide on the matter of enforcement of the foreign law, the consequences of which may obviously be inconsistent with the public order of Russia. Such changes may lead to the expansion of the limits of discretion of the court in deciding on applicability of the foreign law which should be applied to settle legal relations according to the choice of the parties or according to the law.

In early December 2012 the Supreme Arbitration Court of the Russian Federation has published on its website the Draft Information Letter of the Presidium of the Supreme Arbitration Court concerning the case law of the arbitration courts in application of the public order agreement as a ground to reject recognition and enforcement of foreign court judgments and foreign commercial court rulings on its website.

Among the key points highlighted in the Draft, the following should be mentioned:

1) The arbitration court should not reconsider its judgment on the merits in connection with the impact assessments of its enforcement for the basics of the violation of the public order of the Russian Federation.

2) The arbitration court rejects recognition and enforcement of foreign judgments or rulings of the foreign commercial courts on its own, if it determines that such recognition and enforcement is found to be contrary to the public order of the Russian Federation;

3) The arbitration court examines parties' arguments that prove the existence of the contravention to the public order in Russian Federation during the process of the determination if such a conflict exists.

4) The arbitration courts apply the public order clause as a ground to decline recognition and enforcement of the foreign court and commercial court judgments only as exceptions, thus not replacing existing special grounds to reject such recognition and enforcement, referred to the sub-paragraphs 1-6 of the part 1 and part 2 of the article 244 of the Arbitration Procedure Code of Russian Federation.

Thus, recognition and enforcement of a foreign court or foreign commercial court judgments should not be considered as a violation of public order of the Russian Federation in the following cases:

- The only reason is that the application of foreign law provisions differs from the corresponding provisions of the Russian law;
- Evidences provided by the debtor do not lead to the conclusion that the liquidated damages agreed by the parties (penalties, compound interests, etc.) collected on the bases of a civil contact are punitive in nature;
- There is an obligation delivered by the foreign court for the Russian bodies as parties of the lawsuit to pay the collateral as a term of appeal and it's failure to execute;
- There is a failure to comply with the order of the approval of the major transactions by the foreign legal entity provided by his personal law;
- There is a legal regime of spousal common property which provides the possibility of forfeiture of the property of one of them to the property of another one based on the foreign court or foreign commercial court judgment given without the involvement in the court hearings of the spouse of the debtor;
- There is a misprint in the body of the foreign court judgment or in the body of the foreign commercial court ruling which does not effect it's substance and meaning;
- Arbitration court found that the arbitration procedure provided compliance of the guarantees of the independence and impartiality of arbitrators.

Recognition and enforcement of a foreign commercial court ruling,

- if made in the absence of the arbitrator who was appointed by one of the parties in violation of the principle of the procedural equality of the parties of the dispute;
- if made by the arbitrator who by the virtue of his official status and his authority was able to influence on the actions of one of the parties - should be rejected on the basis of the contradictions of these circumstances to the public order of the Russian Federation.

In addition, if the arbitration court finds that a foreign court judgment has been delivered in violation of the international law principle of sovereign equality of States, than recognition and its enforcement on the territory of the Russian Federation would also be rejected.

The Draft considering is appointed to take place during the meeting of the Presidium of the Supreme Arbitration Court of the Russian Federation on December 20, 2012.