

Russia: lack of spousal consent as a barrier to enforcement

In Russia, unlike the UK and many other jurisdictions, certain actions, such as the disposal of property, require the consent of both spouses. This is not to be overlooked, as enforcing awards can prove difficult without proper consent.

When Russian law applies

The need for spousal consent only arises as a matter of Russian law if the spouses' family home is in Russia – or, for those spouses who do not live together, if their last shared residence was there.

What Russian law says

Subject to any nuptial agreement, which remain rare, the statutory matrimonial property regime applies: under Russia's Family Code, all property (including cash) acquired during marriage by either spouse becomes the property of both, and any disposal must be consented to by both.

The consent is usually presumed, but it will have to be notarised if the transaction in question requires state registration or involves disposal of title that requires state registration, or when the transaction must be certified by a notary. Common examples include disposal of real property or shares in

a Russian company.

If presumed consent had not, in fact, been given, the dissenting spouse may apply to court to have the transaction set aside, but in order for the application to succeed they would need to prove that the counterparty knew or ought to have known of the dissent. If notarised consent had not been obtained, the dissenting spouse may apply to court to have the transaction set aside regardless of the counterparty's knowledge of the fact.

Practical implications

While a transaction concluded without the requisite consent can be disputed by the aggrieved spouse at any time, in practice the issue most commonly arises at the enforcement stage. Having gone through the time-consuming and costly dispute resolution process, some claimants ultimately find themselves unable to enforce their LCIA awards and the like against the assets of a Russian individual.

It is therefore essential to obtain a notarised consent of your Russian counterparty's spouse when the transaction concerns real property or shares in a Russian company – for instance, when these assets are pledged as part of the deal.

Personal guarantees by Russian individuals, which are pervasive, account for a significant proportion of cases complicated by a lack of spousal consent. While personal guarantees do not require notarial certification or registration (meaning the creditor can presume the consent unless it knows or should know otherwise), it is always best to obtain the guarantor spouse's written

consent and thus protect the transaction from the spouse' claims, however unfounded.

CIS London has advised extensively on cross-border transactions involving Russian individuals, from early negotiation to enforcement stage. Please get in touch if you believe this guidance could affect you.



Contacts

Svetlana London
Managing Partner

svetlana.london@cislondon.com
+44 (0) 20 7242 0484