



Cross Border Co-Operation Between England & Russia

Enforcing Foreign Court Judgments in England, Principles, Procedure, Examples (Part II)

25 January 2010

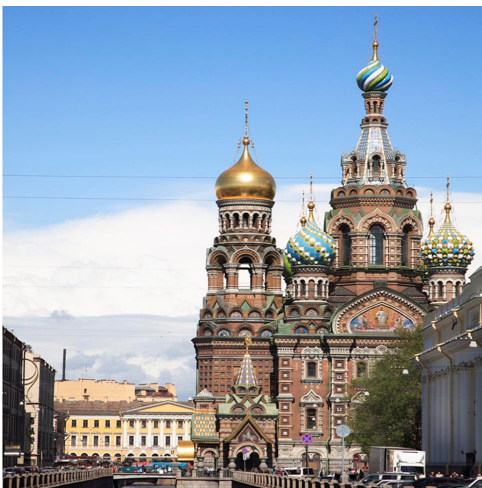
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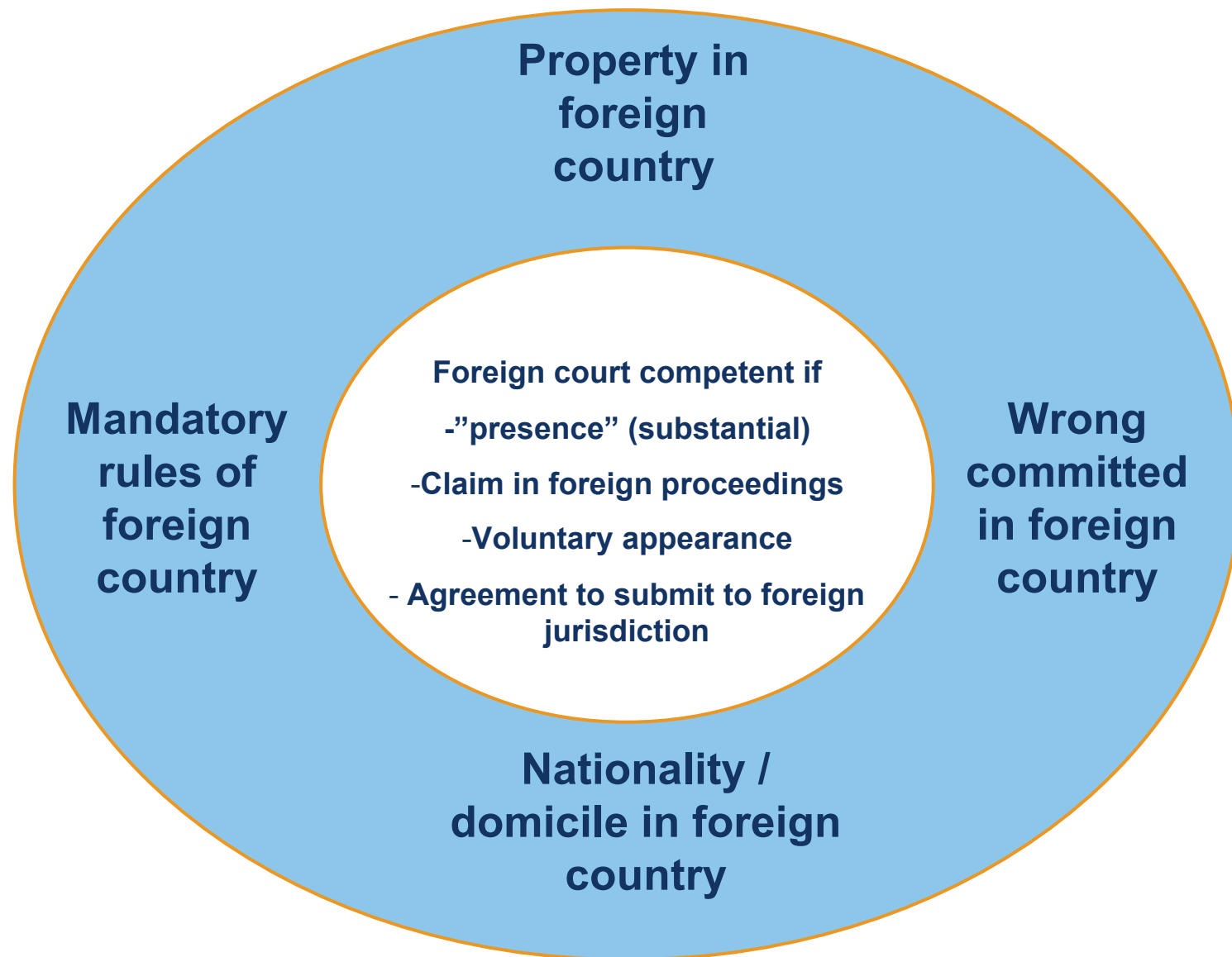
Agenda

- 1 What does not give jurisdiction (competence) to foreign court
 - 2 Conclusiveness of foreign judgments
 - 3 Defences
 - 4 Closing remarks
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Recap: What gives jurisdiction to foreign court?

- For a foreign judgment to be enforced in England ...
 - Foreign court must have jurisdiction (competence) according to English rules
 - ‘Presence’ in foreign country *at time proceedings started*
 - Counterclaim in foreign proceedings
 - Submission by voluntary appearance
 - Agreement to submit (e.g.. by jurisdiction clause)
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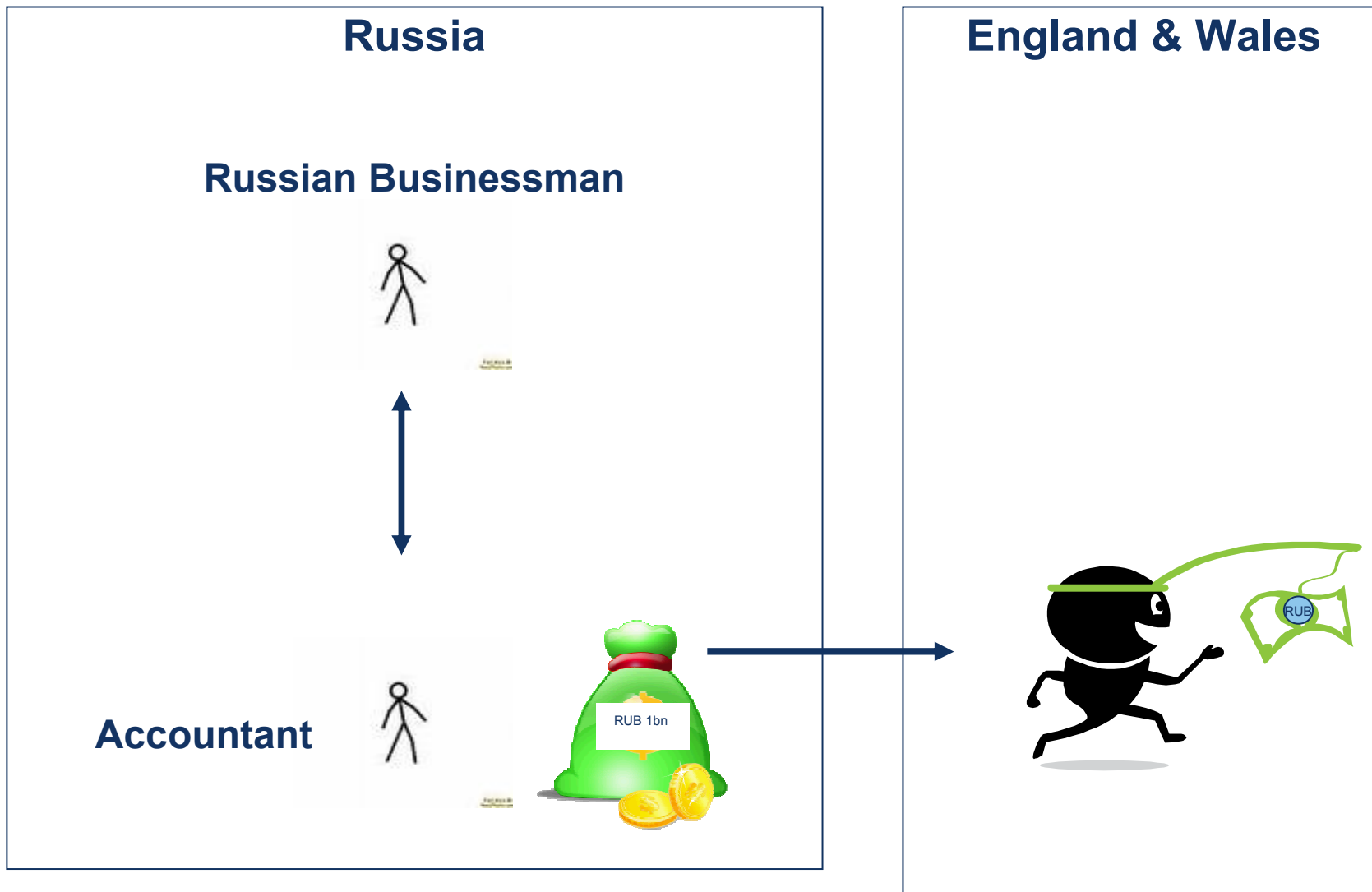
Jurisdiction according to English rules



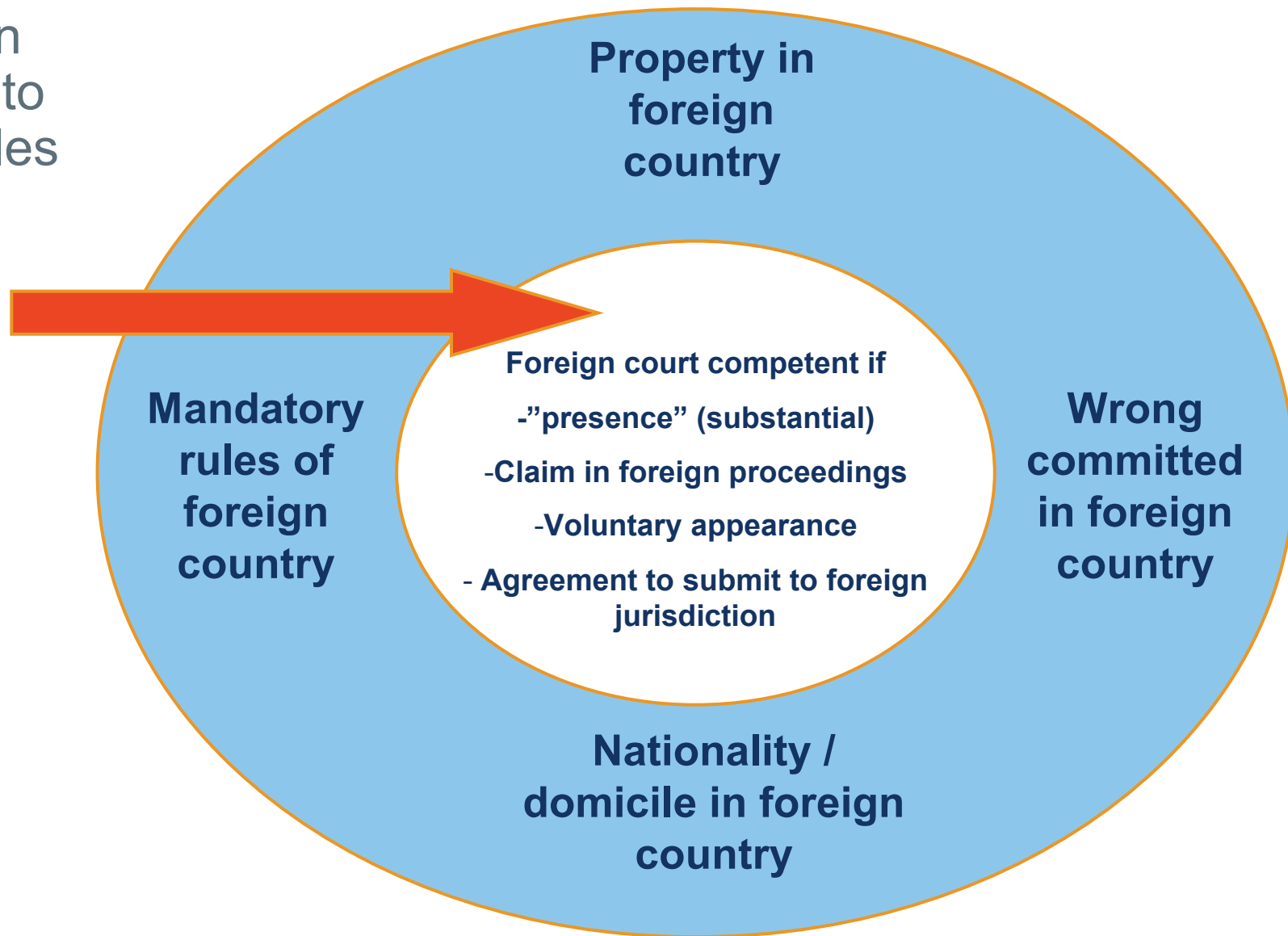
What does not give foreign court competence in eyes of English Court

- The following do not give foreign court competence, under English rules
 - Possession of property
 - Present when wrong committed
 - Defendant a national of foreign country
 - Defendant domiciled in foreign country
 - Reciprocity
-

Illustration



Jurisdiction according to English rules



Arbitration Clauses

- Foreign court not competent if ignores arbitration clause (s. 32 Civil Jurisdiction & Judgments Act 1982)
 - Problems common because e.g.
 - Strategic industry
 - Civil law formalities not followed
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Examples –
Foreign courts
ignore
arbitration

- Ingoring: Brazil: 'Fat cow' case
 - Formalities: Sudan peanuts (*Tracomina v Sudan Oil Seeds*) (1983)
 - Contaminated peanuts
 - FOSFA arbitration in London
 - Buyers sued in Swiss courts
 - Swiss court ignored arbitration clause – not valid in Swiss law – not highlighted
 - English courts not recognise Swiss judgment
 - Validity of arbitration clause to be decided by English courts under English rules
 - Strategic Asset: Venezuela - Power station and justice minister
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Conclusiveness of Foreign Judgment

- An English court will not challenge a “final and conclusive” foreign judgment even if
 - Obviously wrong
 - Facts wrong
 - Law wrong
 - Even if foreign court wrongly applied English law
 - Why?
 - An end to litigation is in the public interest
-

Defences to Enforcement of Foreign Judgment

- Very limited defences:
 - No jurisdiction (competence) in eyes of English court
 - Judgment obtained by fraud (*Abouloff v Oppenheimer – Tiflis – 1882*)
 - Breach of public policy
 - Breach of natural justice
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New evidence

- What if new evidence arises between foreign judgment and enforcement in England?
 - Old cases suggest no defence
 - Probably old cases would not be followed now
 - Probably a defence available where new and material evidence arises before enforcement
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Recent cases concerning Russia

- *Commercial Innovation Bank Alfa v Victor Kozeny* (2002, Privy Council (Bahamas))
 - Russian default judgment enforced
 - *Deripaska v Cherney* (2008)
 - Dispute – control of Rusal interests
 - Contract made in London
 - Should trial be held in Russia or London?
 - English Court found fair trial could not be had in Russia
 - *Yugraneft v Abramovitch* (2008)
 - Y accuse A of a complex fraud
 - Same judge as Cherney
 - Fair trial can be had in Russia
 - Each case will turn on facts
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Closing Remarks

- Enforcement in England usually simple and fast
 - No special rules treatment for Russian judgements
 - Think ahead – plan for enforcement?
 - Can I demonstrate Russian jurisdiction
 - What advice do I need to maximise chances?
 - What evidence do I need?
 - Would it be better to sue in England / to use arbitration clause?
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Thank you!

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