



**BRITISH**  
**RUSSIAN**  
LAW ASSOCIATION

**NEWSLETTER**

**SPRING 2010**

Dear Members and Friends of the BRLA,

**INTRODUCTION**

Welcome to the Spring 2010 issue of our Newsletter.

Since our last Winter 2009 Newsletter we have held 3 events:

- a seminar on Libel Tourism (in December);
- a seminar on Cross Border Co-operation between Russia and England & Wales (in January in Moscow);
- our AGM (in April);

In this Newsletter we review our recent events. We are particularly proud of the seminar on *Cross Border Co-operation between Russia and England & Wales* which was held in Moscow and was a great success.

## BRLA EVENTS: SEPT 2009 – MAY 2010, A REVIEW

### ➤ **LIBEL TOURISM: Why Russian Claimants choose English Courts – 2 December 2009**



On 2<sup>nd</sup> December the BRLA in association with *Michael Simkins LLP* and *MGAP Attorney at Law* held a seminar on **LIBEL TOURISM: Why Russian Claimants Choose English Courts**. The key speakers were **Oliver Smith**, partner at *Michael Simkins LLP* and **Tatiana Menshenina**, partner at *MGAP Attorney at Law* and the seminar was held at the offices of *Michael Simkins LLP* and was chaired by **Rupert D’Cruz**, Secretary of the BRLA.

**Oliver Smith** presented an English law perspective on the matter including the issues of jurisdiction, burden of proof, damages and interim relief under English law. He outlined advantages for the claimant of English libel law such as (i) the presumption of good reputation, (ii) placing of the burden to prove truth on the defendant, (iii) fear of huge costs if the defendant loses and (iv) a possibility to obtain a so-called super-injunction where even its existence is declared secret. These factors attract foreign claimants to bring their libel claims in English courts. However, they have to qualify for English jurisdiction and establish sufficient connections to England in order to be able to bring their libel claims in England. The English courts’ approach to the jurisdiction in libel cases was illustrated on examples of high profile libel cases of *Berezovsky v Forbes*, *Chada v Dow Jones* and *Dow Jones v Jameel*.

The speaker explained that the question of damages in libel cases depends on the extent of publication and interim injunctions are not available if the defendant will prove truth. The tendency of English courts has so far been to grant injunctions to restrain a breach of confidence, like in the case of *Trafigura –v- Guardian*, which is likely to continue. The presentation of the English law perspective on libel was concluded with an overview of future reforms of libel law which include proposals (i) to remove “no win, no fee” agreements, (ii) to

cap damages at £10,000, (iii) to introduce an apology instead of damages as the main remedy, and (iv) to require a minimum of 10% of publications to be in England for the English courts to find jurisdiction.

A Russian perspective on the matter including the issues of jurisdiction, burden of proof, damages under Russian law and the use of libel for commercial advantage was presented by **Tatiana Menshenina** and was accompanied by detailed slides which should be accessible shortly on the BRLA web site.

The speaker gave a very detailed overview of Russian libel law including:

- a definition of libel and what intangible values are protected by Russian law;
- who can bring a defamation claim (with examples of cases and a parallel with English law which does not allow governmental bodies to sue for defamation whereas under Russian law this is possible);
- proper defendants;
- jurisdiction (arbitrazh courts for cases on protection of business reputation in the course of business -v- courts of general jurisdiction for disputes of non-commercial nature; *Yury Luzhkov (Moscow Mayor) –v- Eduard Limonov and Radio “Svoboda”*);
- procedural issues under Russian law (no limitation period, no pre-action protocol, special procedure for establishing defamatory nature of a statement made anonymously, etc.);
- elements of defamation to be established for a successful claim and the division of the burden to proof between the claimant and defendant;
- possible defences
- damage, remedies and compensation of loss (*OAO Alpha Bank v Kommersant*);
- approach of Russian courts to interim injunctions (on an example of *Rusal –v- Eurostep (Cyprus)*);
- defamation as a form of unfair competition and the relevant procedure under Russian anti-monopoly legislation.

The presentations were followed by a question and answer session and a drinks reception.



The British-Russian Law Association is grateful to *Michael Simkins LLP* and *MGAP Attorneys at Law* for providing key speakers and co-sponsoring the drinks reception.

➤ **CROSS BORDER CO-OPERATION BETWEEN RUSSIA AND ENGLAND & WALES: interim remedies and enforcing foreign judgments and arbitral awards – 25 January 2010 (Moscow)**

On Monday, 25 January 2010 the **British-Russian Law Association** and the **British Embassy in Moscow** (in association with **UK Trade & Investment London International**) held a half-day seminar and panel discussion on **Cross Border Co-Operation between England & Wales: interim remedies and the enforcement of foreign judgments and arbitral awards**.

The ability of companies from each country to enforce judgments and awards in the other plays an important role in sustaining the strong trading relationship that exists between the United Kingdom and Russia. Bilateral assistance in relation to enforcement and interim remedies is therefore an issue that is both topical and of widespread relevance to UK and Russian businesses and those who advise them. This was demonstrated by the excellent turnout of 133 people who attended the seminar, (including representatives of Russian and international law firms based in Moscow, investment bankers, accountants, in-house counsel, and businesses representatives).

The event, which was opened by **Caroline Wilson** (*Minister Counsellor (Economic and Trade & Investment) at the British Embassy*) and was chaired jointly by **Rupert D’Cruz** (*Secretary of the British-Russian Law Association*) and **Fiona Kushvid** (*Second Secretary Commercial at the British Embassy*), comprised three sessions:

**Session 1:**

*The Enforcement of Foreign Court Judgments in England & Wales and Russia*

The English experience was outlined by:

- (i) **Christopher Coffin** (a partner at *Withers LLP*), who spoke about the different methods of enforcement and the three regimes available for the enforcement of foreign judgments in England & Wales:
  - EU and EFTA registration schemes,
  - statutory codes,
  - multilateral and bilateral conventions; and
  - the English common law; and
- (ii) **Andrew Tobin** (a Legal Director at *Clyde & Co*) who:
  - explained what types of foreign judgments an English court will and will not be prepared to enforce; and

- identified the limited number of defences that may be available to a defendant seeking to resist the enforcement of a foreign judgment.

The Russian perspective was provided by:

- (i) **Khristofor Ivanyan** (the managing partner at *Ivanyan & Partners*), who:
  - provided an overview of the enforcement procedure in Russian;
  - identified the applicable rules and general requirements for recognition and enforcement of foreign awards; and
  - highlighted possible objections to recognition;
 and
- (ii) **Tatiana Menshenina** (a partner at *MGAP Attorneys at Law*), who:
  - provided specific case examples in which the Russian courts had been asked to enforce a foreign court decision; and
  - discussed the approach taken by the courts in each case.

## **Session 2:**

### *The Enforcement of Foreign Arbitral Awards in England & Wales and Russia*

The position in England & Wales was dealt with by:

- (i) **Mark Brown** (a partner at *Bristows*), who spoke about the four means of enforcing a foreign arbitral awards in England & Wales:
  - the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (“the New York Convention”),
  - s.66 of the Arbitration Act 1996,
  - the English common law; and
  - the Geneva Convention on the Execution of Foreign Arbitral Awards 1927); and
- (ii) **Justin Williams** (a partner at *Akin Gump Strauss Hauer & Feld*) who outlined the grounds on which an English court may refuse to recognise and enforce a foreign arbitral award:

- s.103 of the New York Convention,
- ss.66 and 99 of the Arbitration Act 1996; and
- under English common law.

The Russian position was covered by:

(i) **Katerina Haslam-Jones** (a partner at *Padva Haslam-Jones & Partners LLP*), who:

- spoke about the grounds (under Article 5 of the New York Convention and the principle of reciprocity) on which a Russian court would be prepared to enforce a foreign arbitral award;
- paid particular emphasis on the ‘public policy’ principle and how (both in theory and in practice) that can prevent enforcement); and
- explained the procedure for applying to the Russian courts for the enforcement of a foreign award (under Article 242 of the RF Arbitration Procedure Code); and

(ii) **Victor Dumler** (a senior lawyer at *Egorov, Puginskiy & Afanasiev*), who:

- discussed recent cases that had come before the Russian courts in which the enforcement of foreign arbitral awards was sought;
- drew out common themes and trends arising from those cases; and
- provided some practical advice about how to avoid recurring problems associated with such enforcement.

### **Session 3:**

*Obtaining Interim Relief in Support of Foreign Proceedings in England & Wales and Russia.*

**Rupert D’Cruz** (a barrister practising at *Littleton Chambers* and the Secretary of the *BRLA*):

- explained when and how the English courts would be able to assist a claimant in foreign proceedings to protect its position while those proceedings are progressing; and
- spoke about the relevant principles and the range of interim remedies that an English court is able to grant.

**Anna Zhukova** (an Associate at *Salans*):

- dealt with the same points in the Russian context; and

- also shared her experience of a recent case in which she had been involved in which this issue had arisen.

Each session included a question and answer session during which the delegates shared their experiences and quizzed the speakers about various aspects of each topic.

Among legal companies present at the event were: Alexandrov & Partners, Allen & Overy, Alrud, Baker & McKenzie, Clifford Chance, Denton Wilde Sapte, Filatov Musatov & Goldberg, Freshfields, Georgiev & Partners, Goremikina Tsokol & Partners, Gronner Bridge Legal Services, Herbert Smith, Lidings Law Firm, Lovells, Linklaters, MGAP Attorneys at Law, Nadmitov & Partners, Norton Rose, Squire Saunders & Dempsey, Vetta Legal, Withers and Zhigachov & Christophoroff.

There were also legal specialists and business representatives from a number of financial institutions and corporations including: Alfa Bank, Atomstroyexport, Association of Russian Banks, BNP Paribas, Britur, Comstar, Debevoise & Plimpton, Deutsche Bank, Ernst & Young, Gazpromneft, Gazprom Media, Glenic Investment Financial Group, Group Onexim, CJSC “Kapital Re”, Institute for the Development of the Financial Market, InTurCon, IPPro, JP Morgan, Lbit, Mirax Group, Morgan Stanley, National Reserve Bank, Nitol Group, Novatek, PWC, Rencap, Rosselhozbank, Savelovsky, Severenergia, STT Group, SUEK, Sundrio Development, Trinfico Investment Company, TT Services, Vimbildan, Vostoknafta and Zurich Insurance Company.

The seminar was followed by a networking drinks reception held at the premises of the British Embassy.

The British-Russian Law Association is grateful to Akin Gump Hauer Strauss & Feld, Bristows, Clyde & Co, Salans, Withers, MGAP Attorneys at Law and UKTI Investment London International for co-sponsoring this event.

➤ **AGM – 14 April 2010**

On the 14<sup>th</sup> April the BRLA held its 2010 **ANNUAL GENERAL MEETING**, drinks reception and dinner at the Law Society on Chancery Lane, London.





The following were elected as officers of the BRLA for 2010:

**The Officers:**

The Chairman – Professor Bill Bowring  
The Vice-Chairman – Robert Brown  
The Secretary – Rupert D’Cruz  
The Treasurer – Pavel Klimov  
The Social Secretary - Alexandra Jacobs

The following were elected to the Committee of the BRLA for 2010:

**The Committee:**

- (1) Katerina Haslam-Jones (Pavda, Haslam-Jones & Partners)
- (2) Andrew Tobin (Clyde & Co)
- (3) Arthur Abdulin (Almaty Chamber of Commerce)
- (4) Ludmila Lipskaya (Pavda, Haslam-Jones & Partners)
- (5) Tamar Halevy (Lewis Silkin)
- (6) Nellie Alexandrova (Denton Wilde Sapte)
- (7) Tatiana Menshenina (MGAP Attorneys at Law)
- (8) Victoria Novikova (Svetlova LLP)
- (9) Pavel Klimov (Unisys)
- (10) Alexandra Jacobs
- (11) Bill Bowring (BirkbeckCollege, Field Court Chambers)
- (12) Robert Brown (Corker Binning)
- (13) Rupert D’Cruz (Littleton Chambers)

The meeting also reviewed and approved the Association's accounts for the period 3rd February 2009 to 14th April 2010 which were presented to the AGM by the Treasurer. All major expenses for last year's events, save for the 2009 AGM, were met by the relevant sponsors leaving a healthy closing balance on the account.

The AGM was followed by a drinks reception and a dinner at which **Darko Hadjukovic**, International Product Manager, Primary Markets, at the *London Stock Exchange* gave an after dinner speech on "RUSSIAN AND CIS LISTINGS IN LONDON AND THE COMPETITION FROM FOREIGN EXCHANGES".



#### **IMPENDING BRLA EVENTS FEATURING IN OUR NEXT NEWSLETTER**

- *Seminar on **MATRIMONIAL LAW IN ENGLAND & WALES AND RUSSIA: an analysis of relevant bilateral issues (jurisdiction, ancillary relief, child custody and cross-border enforcement)** - 17 June 2010 at the offices of Withers LLP*
- ***SUMMER DRINKS AND NETWORKING PARTY** – date and venue to be confirmed*

**Newsletter Feedback - Contact details:**

For contributions, comments, suggestions, etc. in relation to this Newsletter and its contents, please contact us at [editor@thebrla.com](mailto:editor@thebrla.com)

Details of how to join the BRLA can be found on our website: [www.thebrla.com](http://www.thebrla.com)

*The BRLA would like to thank Victoria Novikova for her work in producing this Newsletter.*

***Disclaimer:***

This Newsletter is not intended to provide legal advice on any specific matter or to be relied upon as the legal opinion of the BRLA or its members. The contents of the Newsletter have been prepared for information purposes of BRLA members and contacts only.