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**За долгами в
иностранном суде:
«МИССИЯ НЕВЫПОЛНИМА?»**

для конференции Federal Legal Forum

Денис Алмакаев,

Партнёр, LEVEL Legal Services

Глава практики международных споров

Москва, 2022 год

Три вопроса

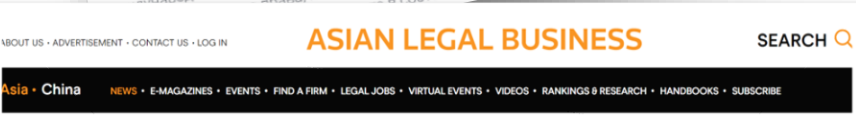
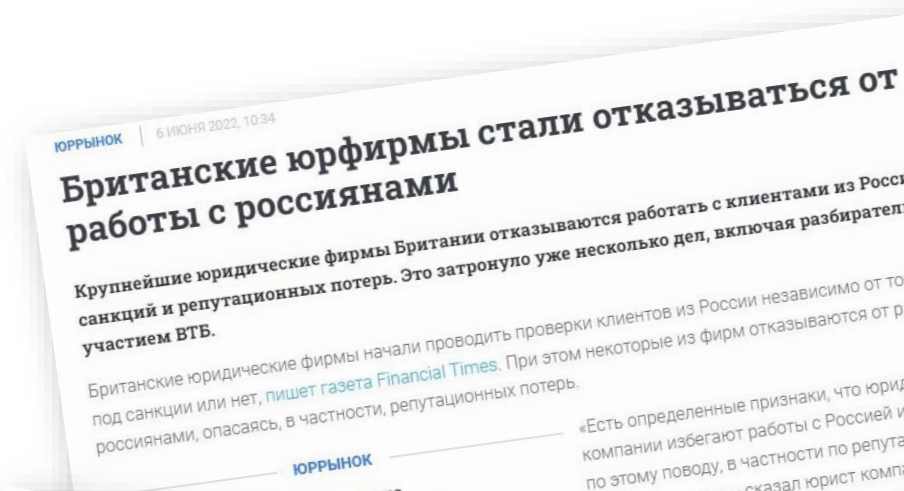
1. Как в условиях санкций управлять зарубежными спорами?
2. Как иностранные суды относятся к российским сторонам?
3. А стоит ли вообще судиться за рубежом?..



Управление зарубежными спорами

Разрушение инфраструктуры трансграничных разбирательств:

- i. Иностранные адвокаты
- ii. Детективы
- iii. Судебные управляющие активами (receivers)



***Thomas Schansman et al v. Sberbank of
Russia PJSC et al S.D.N.Y., No. 1:19-cv-02985***

GABRIEL W. GORENSTEIN, United States Magistrate Judge

The motion (Docket # 316) filed by the attorneys from the firm Latham & Watkins to withdraw as attorneys for VTB Bank PJSC (“VTB”) will be granted conditionally. Specifically, the motion to withdraw will be granted effective June 3, 2022, provided Latham & Watkins fulfills the obligations in the final two sentences of the next paragraph.

***JSC VTB Bank v. Alexander Katunin
BVIHC (COM) 2014/0062***

Conclusion

Accordingly:

- (a) I refuse Ogier’s application to come off the record. They must continue to represent VTB including advising them and advocating on their behalf in Court to the best of their skill and ability. This is subject to a liberty to apply if adequate and lawful measures cannot be put in place for VTB to pay for

Управление трансграничными спорами (ii): раскрытие доказательств



Gorbachev v. Guriev [2022] EWHC 1907 (Comm)

The Claimant in these proceedings wishes to obtain, pursuant to CPR 31.17, third party disclosure of certain documents which are held by the First Respondent, Forsters LLP (“Forsters”), a firm of English solicitors. Forsters allege that the documents are held on behalf of the Second and Third Respondents (“the Trustees”), that the Trustees were the only proper parties to the application under CPR 31.17, and that it would therefore be inappropriate to require Forsters to give disclosure.

By an order made on 11 April 2022 (“the Order”), HHJ Pelling QC granted permission to the Claimant, pursuant to CPR Practice Direction 6B, to serve the application for third party disclosure out of the jurisdiction. The basis of the Claimant’s application

The Trustees now apply to set aside the Order. The application gives rise to a number of issues.

Accordingly, the Trustees’ application fails.

Ukraine v. PAO Tatneft (In re Subpoenas Served on JSC State Export-Import Bank of Ukr.)

ORDERED that the requested moratorium on discovery and discovery-related proceedings until further order of the Court is GRANTED; it is further

PJSC National Bank Trust v. J.P. Morgan Chase et al

The Court has determined that the foregoing factors have been satisfied for issuance of the Order requested. Accordingly, it is hereby Ordered that NBT’s Application is granted, and that NBT may issue and serve subpoenas for the requested records on Respondents.

The Clerk shall administratively close the matter.

J. M. Watt, U.S.D.J.

Naumets (Trustee), in the matter of Dorokhov (Bankrupt) v. Dorokhov [2022] FCA 748

Kireeva v. Bedzhamov [2022] EWHC 1047

As to sanctions, it would not be appropriate for me to make a finding about the current sanctions position, and I was not asked to do so. I disputed what is said on Mr Bedzhamov's behalf about the recent Court decision, instead relying on sanctions not being relevant. I am assisted by Legal and Keystone, solicitors to the Trustee and Vnesheconombank respectively, are alive to the position on sanctions and continue to monitor it. What I can say, however, is that **even assuming sanctions are not applicable, the risk of them being engaged cannot sensibly be discounted in the circumstances of a fast-developing situation, and bearing in mind the identities of those involved.** In particular, VTB 24 is now part of VTB Bank, which has been sanctioned by the UK, the EU and the US. **The Trustee was appointed by the Russian Deposit Insurance Agency (the "DIA"), which is also the liquidator of VPB. The DIA is a Russian state corporation that is controlled by the Central Bank of the Russian Federation, which is currently the subject of certain sanctions, albeit claimed not to be relevant to the current proceedings.**

THE COURT ORDERS THAT:

1. The proceeding in the Arbitration Court of Primorsky Krai 690091, Vladivostok, 27 Oktyabrskaya Street in the Russian Federation, case number A 51 – 3180/2019 (the **Foreign Proceeding**) in relation to Mr Igor Anatolievich Dorokhov as bankrupt be recognised as a foreign proceeding pursuant to Article 17(1) of the *Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law* (the **Model Law**) and s 6 of the *Cross-Border Insolvency Act 2008* (Cth).
2. The Foreign Proceeding be recognised as a foreign main proceeding pursuant to Article 17(2) of the Model Law.
3. The administration, realisation and distribution of the respondent's assets located in Australia be entrusted to the applicant pursuant to Article 21(1)(e) of the Model Law.
4. All powers normally available to a trustee in bankruptcy appointed under the provisions of the *Bankruptcy Act 1966* (Cth) be made available to the applicant pursuant to Article 21(1)(g) of the Model Law.

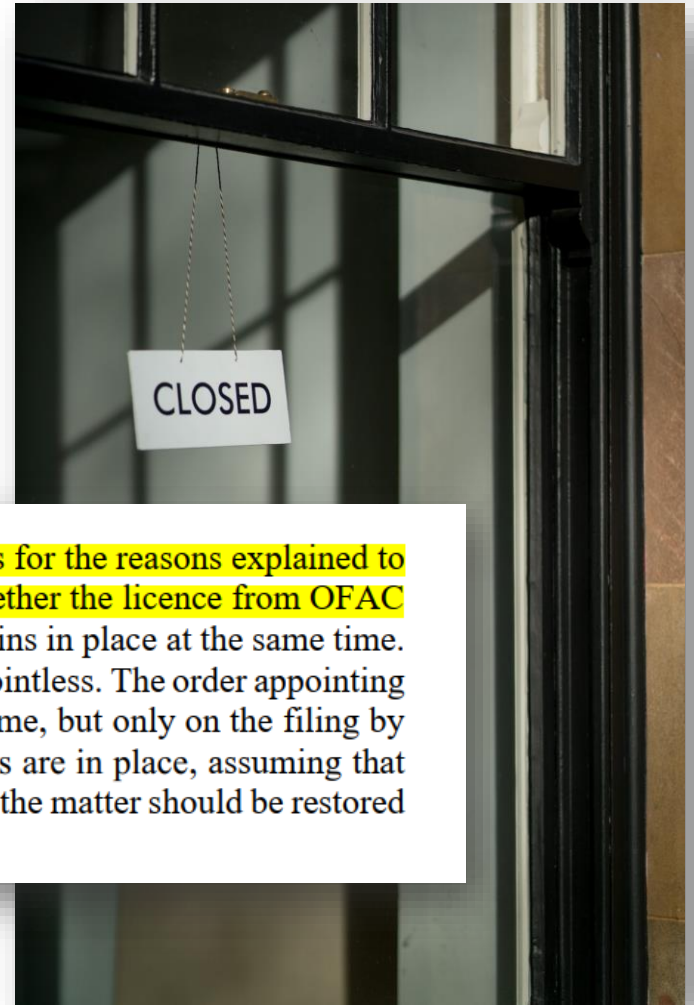
Управление трансграничными спорами (iv): получение лицензий для лиц под санкциями

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VTB Capital Plc [2022] EWHC 1106

- 25 **However, although the court is minded to appoint administrators for the reasons explained to me, the appointment should not take effect until it is known whether the licence from OFAC will in fact materialise; and provided that the OFSI licence remains in place at the same time. Otherwise, on the evidence before me, the appointment will be pointless. The order appointing the administrators will therefore not be made or sealed at this time, but only on the filing by CE file by the directors' solicitors of evidence that both licences are in place, assuming that there is no other relevant change in circumstances, in which case the matter should be restored for a further hearing.**



Подход иностранных судов: «до» и «после» на примере Швейцарии

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до 24 февраля 2022

Решение Федерального суда №
4A_84/2021 от 2 февраля 2022

Суд признал незаконным
действия PostFinance по
закрытию счета Виктора
Вексельберга (с 2018 внесен в
SDN).

после 24 февраля 2022

Решение Федерального уголовного суда
№ RR.2021.239 + RR.2021.246 от 17 мая
2022

Суд отказал России в оказании
международной правовой помощи в
рамках уголовного дела в связи с
событиями в Украине.

Решение Федерального суда №
2C_219/2022 от 31 мая 2022

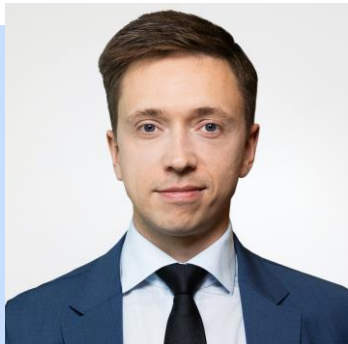
Суд приостановил процедуру оказания
административной помощи
российскому налоговому органу по
предоставлению сведений о счетах
ряда лиц в Швейцарии.

Стоит ли судиться за рубежом?



Васнецов В.М., *Витязь на распутье* (1878)

О СПИКЕРЕ



Денис Алмакаев

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Образование

Колумбийский университет, факультет права, Нью-Йорк, LL.M, с отличием, 2013

Московский Государственный университет им. М.В. Ломоносова, с отличием, 2009

Денис Алмакаев возглавляет практику международных судебных споров **LEVEL Legal Services** и является адвокатом, допущенным к практике в трёх юрисдикциях: России, Англии и Уэльсе, а также в штате Нью-Йорк.

Специализируется на международном арбитраже и разбирательствах, связанных с поиском и обращением взыскания на активы, находящиеся за рубежом. Денис обладает опытом представления интересов клиентов в таких юрисдикциях как Англия, Франция, США, Швейцария, Кипр, Люксембург, Монако, Каймановы острова, Лихтенштейн, Гибралтар и др.

The Legal 500 отмечает Дениса как одного из ведущих юристов России в области международного арбитража и разрешения судебных споров. Денис рекомендован рейтингом **The Best Lawyers** в качестве ведущего эксперта в категориях «Международный арбитраж», «Арбитраж и медиация», «Реорганизация и несостоятельность» и «Разрешение судебных споров». **Российский рейтинг Pravo.ru** рекомендует Дениса в категории «Международный арбитраж и судебное разрешение споров».

Спасибо за внимание!

