

## In focus

# Onshore: Russia

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This section compares law and practice of various jurisdictions in particular areas. We use the Q&A format familiar to readers of the World Trust Survey, but the In Focus section asks for more detailed answers than in the Survey. For 2009 the subject is succession, looking particularly at forced heirship rights, the division of community property and the recognition and enforcement of foreign judgments. In this issue, we deal with the onshore position in Russia and the offshore position in the Cayman Islands.

### Introduction

This In Focus survey looks at Russian law on certain matters concerning succession, forced heirship and matrimonial rights. The answers are necessary brief and no substitute for proper exhaustive legal advice.

### I. Type of system

- **Civil law, common law or other (specifying closest to which system).**

The Russian legal system is a civil law system. The subject matter dealt with in this survey is predominantly regulated by the provisions of the Russian Civil Code and the Russian Family Code. Decisions of Russian court are only of persuasive nature, but in practice, they are very influential and often followed by other courts.

### 2. Applicable law

- **Which law will govern succession to moveable and immovable assets in deceased's estate—nationality, domicile or habitual residence? Explain these concepts.**

Habitual residence of the deceased governs the succession to his movable assets, and the succession to his immovable assets by the law of the place where they are situated (the *lex situs*). 'Habitual residence' is traditionally understood as the last place of residence of the deceased, except for cases where the last place of residence is unknown, or is situated outside Russia.

'Habitual residence' is defined in Article 20 of the Civil Code as the place where an individual permanently or primarily lives. There are no statutory rules on what constitutes habitual residence. State registration,<sup>1</sup> for example, is often viewed as a clear indication of habitual residence. However, the Russian Constitution Court in its Ruling of 2 February 1998 stated that such registration was only of notifying nature and did not impose any rights or obligations on individuals. Hence, Russian state registration should be taken into consideration when determining habitual residence of a deceased, but it is not a sole decisive factor. Law commentators state that various factors such as length of living at a place, links to a local community (e.g. job commitments, schools for children, where a spouse lives), legal status (e.g. entry clearance or permanent leave to remain) and intentions (e.g. an intention to be

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1. Russians citizens and visitors staying in Russia for longer than 3 months need to register with a local police unit in the area of their stay.

permanently based somewhere) should be taken into consideration when deciding on what constitutes habitual residence of a deceased.

‘Nationality’ is almost exclusively a matter of public law. ‘Domicile’ is a concept unknown to Russian domestic law.

### 3. Jurisdiction and conflict of law aspects

- **When deceased has foreign domicile/nationality, when will another court make a grant of representation in relation to property in his estate?**
- **What is the order of priority of persons entitled to take a grant?**
- **Does the court of domicile/nationality take precedence?**

Russian courts have jurisdiction to make a grant of representation in relation to property in the deceased estate, if the last place of residence of the deceased was Russia, or if any part of heritage is immovable property situated or registered in Russia. If the last place of residence of the deceased is unknown, or is situated outside Russia, inheritance must be opened in the place where the immovable property (or its most valuable part) is situated, but if there is no immovable property, then the inheritance must be opened in the place where the most valuable movables are situated.

The law applied by the Russian court is usually Russian law, however, if a part of the grant is immovable property abroad, then the relevant foreign inheritance law should apply.

Russian courts do not necessarily hear the succession proceedings. If there is no dispute, then a local public notary sanctions the acceptance of an inheritance, and can issue certificates for the right of inheritance. Russian public notaries apply Russian law to all activities connected with the protection of the inheritance and with the issuance of the inheritance certificates.

### 4. Forced heirship rights

- **Are there compulsory shares in your system of law? If so please describe them.**
- **Inter vivos gifts or testamentary dispositions that defeat forced heirship rights: is the gift or testamentary disposition valid (on grounds of public policy or other wise)? Or do forced heirs have right of claw back? How does this work—does it give heirs money claims against donees?**

Under Russian law, an inheritance can be passed on either by a will or by law. A will allows a person to dispose of his possessions after death in accordance with his own wishes.

Terms of a will are overridden by the Russian forced heirship rules, which state that if a deceased left dependant relatives, they inherit no less than half of what they would receive by operation of law.

If the deceased has left no will, the inheritance will be transferred in accordance with the rules of law. Law regulates disposition of the property to relatives depending on closeness of their family and blood ties with the deceased. The heirs in law (physical persons only) include children of the deceased, his/her spouse and parents, and disabled dependants of the deceased are divided into eight priorities. The heirs in the higher priorities inherit statutory intestate shares preferentially to the heirs in the lower priorities. For example, heirs of the first priority are children, a spouse and parents of the deceased. The sizes of these shares depend on the number of heirs involved in the succession. In the absence of heirs in law, the estate is declared heirless, and passes to the state of Russia.

Dependant relatives for purposes of forced heirship rules are defined as:

- (i) parents, grandparents and a spouse of the deceased if they are 60-years old (or older) for men and 55 (or older) for women, or if they are handicapped, or have limited ability to undertake employment;

- (ii) one parent or a spouse or a sibling or a child of the deceased if she/he is a carer for children, siblings, grandchildren of the deceased, who are under 14-years old, and are not employed and have a right to receive a statutory pension for a loss of a provider;
- (iii) children, siblings or grandchildren of the deceased up to 18-years old, or children up to 23-years old, and in full time education, or children of the deceased who became handicapped before 18-years old and have limited ability to work. Siblings and grandchildren are only considered dependent if they do not have their parents, who are able to work.
- (iv) Any other dependants, in receipt of a full financial support from the deceased and for whom such support is a permanent and sole source of income and such dependent person is not able to work.

Under Russian law, inter vivos gifts are valid. Testamentary dispositions form a part of the heritage and are valid as long as the share received by the heirs in accordance with the forced heirship rules is not affected.

## 5. Community of property between husband and wife

### • Which law governs matrimonial domicile?

Russian law would apply to matrimonial disputes and to ownership rights of all property accumulated by the spouses during their marriage, if at the time of the inquiry spouses are living on the territory of Russia, or Russia was the last place of their joint place of living.

### • What property is subject to community of property regime?

Russian family law provides that ownership of property of a couple can be governed by either

Russian law or by an agreement between the spouses. The law provides that all property, accumulated by a couple during period of their marriage, is owned jointly by both spouses in equal shares, in other words, it is community property. However, spouses can agree a different treatment of communal property in an agreement. Such agreement can be entered into either before marriage or during marriage, and it can be changed or repealed at any time thereafter. If an agreement between the spouses transfers all property in favour of one spouse, position of another spouse can be viewed as 'extremely unfavourable' and such agreement can be potentially voidable and reviewed by court.

### • How is surviving spouse's property to be identified and segregated from deceased's estate?

When one of the spouses dies and the property in question is subject to community property rules, common ownership is dissolved as a consequence of the end of the marriage. It is generally deemed that the division of property in common ownership has to precede the division of the estate of the deceased spouse. The division of property in common ownership is effected by dividing assets and liabilities into equal parts, so the surviving spouse is entitled to obtain one-half of the property in common ownership and the remaining half of the common ownership and all property excluded from the community of property shall be divided among the heirs (spouse included) of the deceased person.

## 6. Recognition and enforcement of judgments

### • Will foreign community property and/or forced heirship rights be recognised?

Foreign judgments are generally not recognized and enforced by the Russian courts. A claimant need to file a separate claim to a Russian court regardless of the stage of proceedings the same subject matter has

reached abroad. If a foreign judgment was obtained prior to initiating legal proceedings in Russia, such judgment may be filed as an evidence to a Russian court. Russian court will apply Russian or foreign inheritance law depending on the conflict of law rules.

- **Describe the scope and effect of relevant firewall legislation protecting trusts against foreign judgments based on forced heirship or matrimonial property rights. Describe any relevant reported decisions.**

Anglo-Saxon trusts are very often used by Russians in practice. However, the common law concept of the trust is alien to the Russian law. Russia has not signed the 1985 Hague Convention on the Law Applicable to Trusts and on their Recognition and generally analysis of Russian legal consequences of use of trusts received surprisingly little attention from both the legislators and practitioners. Hence, there is no legislation protecting trusts against foreign judgments.

- **Describe practical steps to protect foreign situs assets from claims based on forced heirship/matrimonial property.**

One of the most popular practical solutions is a use of Anglo-Saxon trust due to the following.

From Russian family law perspective, if spouses have segregated property in accordance with pre- or post-nuptial agreement, each spouse can dispose of his assets as s/he sees fit, subject to an issue of 'extremely unfavourable' position described above.

In community property situation, an individual spouse can solely dispose of property jointly owned by a couple, as there is a presumption of mutual spousal consent for such disposal. No formalities for such transfer are usually required, unless a property to be transferred is immovable property located in Russia, or property ownership is subject to Russian state registration. In such cases, a notarized consent of another spouse is required.

The above means that if a spouse would like to transfer all of his assets to a trust, he should be likely to be able to do so without too many technical formalities; however, it is recommended to obtain a written consent of another spouse.

From inheritance law perspective, property subject to Russian inheritance law is defined as any property, including property rights and duties, which are owned by the deceased at the time of opening of the inheritance. The law states that inheritance does not include any rights or duties inseparably connected with the personality of the deceased. The above means that if an individual has made bona fide transfers of all of his assets to a trust, he will cease to own his assets and therefore, they will cease to be a part of the inheritance as defined by the Russian law.

Please note, however, that as trusts are alien to Russian law, the above analysis is based on application of general principles of the law. Should use of trusts by Russians be specifically looked at by the Russian legislator or by court, these issues might be regulated differently.