EXAMINATION OF THE LEGAL FRAMEWORK AND OTHER FACTORS AFFECTING AN IFA ENGAGEMENT IN RUSSIA: LIMITATIONS, POSSIBILITIES AND LOCAL REALITIES

Research Project for Emerging Issues/ Advanced Topics Course

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Executive summary

The era of liberal capitalism started after the collapse of the Soviet Union in 1987 and brought a need for a completely new legal system. Russian lawmakers used western societies as a model. However, as a result of recent attempts to combine a liberal economy with a totalitarian state, many laws and regulations are contradictory and not

efficient. For the last 20 years, Russia took its place in the global economy. Canadian businesses have interests in Russia; Russian businesses are looking for opportunities in Canada. More business between two countries means more disputes.

Initially, the lack of familiarity with the dispute resolution processes in the Russian Federation, concerns over legal, cultural, linguistic, economic and political peculiarities of the country, fear of local bias all tended to lead foreign companies to favor the use of arbitration tribunals in third countries for resolving business disputes with Russian parties. However, due to delays and inconveniences of using third country arbitration, the use of dispute resolution mechanisms within the Russian Federation has increased during the last few years. Especially when it comes to smaller contracts, smaller businesses, or limited disputes, the high costs of litigation does not warrant use of third country courts.

This study is motivated by the problem that significant confusion persists among Canadian and other foreign businesses and legal specialists about the domestic Russian mechanisms for the resolution of business disputes and the roles played by different bodies. A Canadian IFA working with a team of international lawyers or conducting an IFA engagement alone would encounter challenges and discover that many things in reality are very different from what could be expected.

This paper is intended to increase an IFA's awareness of the Russian legal environment and local specificities pertaining to an IFA engagement in the field of business valuation. Confusion over the structure and function of the dispute resolution bodies may

discourage some IFAs from pursuing opportunities in Russia, or make it difficult for them to understand and assist the legal counsel. This paper provides information that could substantially increase the effectiveness of an IFA. Lessons learned from selected case law may help to understand hidden motives and agenda's of all parties from clients to judges.

The first section of the research provides a description the legal framework. An assessment will be made of the judicial system and parties involved in business valuation including agencies charged with the responsibility for control of the valuation industry in Russia, their resource capability and the effectiveness or limitations of the methods employed.

The second section describes the role which the IFA could play in commercial disputes arising from different approaches used by local parties in determining of value of a business or property. This paper provides details about the process of consideration of commercial disputes, presents summaries of selected cases and develops country-specific recommendations

The third section will describe other factors; such as corruption, criminality of economy, business ethics and attitudes, social and cultural environment, which may affect the effectiveness of an IFA engagement in Russia.

Scope of Review and Limitations

(a)

The laws and cases reviewed relate only to commercial disputes arising from different views that parties have in respect to the value of business or property.

(b)

Traditionally, in Russia there was no judge-made common law, and court judgements cited only the constitution, codes, statutes and regulations. Past cases are not referred to in opinions, but attorneys may introduce them in their arguments. However, court judgments generally are not considered future precedents. More recently, the courts of the Russian Federation have allowed more reliance on precedent for efficiency and consistency, referring to precedent as "settled judicial practice." While not totally considered outside sources of law, judges increasingly rely on published judicial opinions to supplement their decisions. Nevertheless, these judgments are not binding to lower courts, but are persuasive. The cases presented in the paper are intended to illustrate judges reasoning and behaiviour

(c)

The cases reviewed are those that were considered by the Supreme Court of the Russian Federation, the Supreme Arbitrage Court and the Federal Circuit Arbitrage Courts. There might be other decisions of lower courts related to the opinion of an expert, but since

legal precedent is not a source of law and these cases were not commented on nor reviewed by higher courts their significance is minor.

(d)

The Russian legal system is still in the process of change. Legislators are attempting to eliminate gaps in the laws, and correct problems observed in the use and application of recently created institutions and procedures. A reader should be aware that substantial changes in law and attitudes of bodies involved in commercial dispute resolution could occur.

(e)

This report is not intended as a guide used for improving the business decision process. The recommendations provided are the author's opinion and could not be considered a legal advice. The author does not assume any responsibility or liability for losses occasioned to reader, or to other parties as a result of circulation, publication, reproduction or use of the report contrary to the provisions of this paragraph.

(f)

Some confusion might arise due to translation of titles of laws and names of relevant bodies. All titles and names in the report are given in English, corresponding titles and names in Russian are provided in Appendix A.

(g)

In the Russia, all amounts specified by law are given in rubles and are multiplies of the minimum monthly wage. There are two different minimum monthly wages: one is for use in a legal context and another for labor contracts. Both minimum monthly wages were changed several times during past decade due to inflation and changes in government social policy. At the time of writing this paper minimum monthly wage used in the legal context was 100 rubles; exchange rate used for conversion was 20 rubles per one Canadian dollar. In this paper amounts are presented in Canadian dollars rounded to the nearest hundred dollars and are intended only to illustrate the inefficiency of penalties due to their low amounts.

(i)

The terms "bankruptcy commissioner" and "arbitrage manager", "bailiff" and "court enforcer" are used interchangeably. IFA means litigation support specialist with education obtained in Canada or the United States and a member of one of Canadian self-regulating bodies. The term "forensic expert" refers to an expert being employed by the Government Bureau of Forensic Examination of Russia or by a similar body.

Section 1 Legal Environment

1.1 Background

In Russia the transition to liberal capitalism began in the midst of a severe economic crisis which prompted the authorities to opt for a 'big bang' approach to reforms. The initial reform package was followed by several years of high inflation and falling output. Russia's privatization policies have attracted much criticism; however, the evidence suggests that privatization has improved enterprise performance. The Asian crisis in 1998 and falling commodity prices finally rendered the situation unsustainable and government defaulted on its internal obligations and at the same time devalued currency, which led to the collapse of the banking system and bankruptcies of many small businesses.

Due to increased oil prices the post-crisis recovery began sooner and has lasted longer than most observers expected. Russian industry has raised productivity rapidly since the crisis. The post-crisis expansion has coincided with a period of renewed structural reform. If privatization, the elimination of subsidies and macroeconomic stabilization dominated the reform agenda in the early years of the market transformation, only in recent years has attention been focused on reforming the courts, the civil service and the major regulatory institutions.

An extensive package of judicial reform legislation was adopted beginning in late 2001. This included, among other measures, a new code of civil procedure, as well as a new procedural code for the arbitration courts, part 3 of the Civil Code, and new laws on the status of judges and on the constitutional court. The adoption of these statutes, which faced considerable opposition from an array of vested interests, represents a significant

achievement. Judicial reforms have ended some abusive legal practices but the administration of law remains uneven.

Doubts about the independence, competence and probity of the courts, the prosecutors and the police persist. Moreover, there remain good reasons to question the 'relative autonomy' of the state: state bodies are sometimes penetrated by, or even captive to, particular private interests – if not simply those of the officials who control them.

As believed by authors of the report on corporate governance and ownership rights in Russia[1], multiple occurrences of inefficiencies in the functioning of property related transactions in post-communist countries after mass privatization, are results of specific problems typical for all transitional economies. The issue, above all, has to do with the deep divergence between formal laws and realistic abilities to enforce the laws, with the absence of serious sanctions that should follow the infringement of a contract and violations of property laws, and with ineffective bankruptcy procedures and the existence of legal and quasi -legal forms of property redistribution for personal benefit of political decision-makers.

The changes in Russia's economy and Russia's vast economic potential have attracted many companies to business opportunities in the Russian Federation. Foreign businesses have become more involved in the Russian economy — not only contracting with

[1] A. D Rafygin, R. M. Entov, N. A. Shmeleva (2001*) " Korporptivnoie upravlenie I prava sobstvennosti: aktualnie napravlenyia reform*",[Electronic Version] The Institute for the Economy in Transition Publications. Retrieved May 15, 2006 from http://www.iet.ru/publication.php?folder-id=44&publication-id=2068

Russian businesses but creating subsidiaries in the Russian Federation and investing in existing Russian companies.

The dramatic increase in business relations between foreign and Russian companies has been accompanied by a natural rise in the number of business-related disputes.

1.2 General Description of Legal System

The Russian Constitution, adopted in 1993, is the supreme law of the country guiding courts as well as federal and local laws

Statutes, the major source of Russian law, are enacted only through the legislative process. The basic arrangement of existing laws and codes needs to be supplemented with legislation to obtain certain provisions. Codes are flexibly interpreted on the basis of "general principles." General principles are listed in the preface to a specific law to explain a specific piece of legislation. Reasoning by analogy can also be used.

The Civil Code of the Russian Federation is implemented by courts of general jurisdiction. The Arbitrage Code (ACR) of the Russian Federation is implemented by commercial courts. Both codes, approved simultaneously, are related to a great extent; drawing experts to participate in a legal procedure is almost identical in both codes.

The President can issue normative/ non-normative decrees that don't conflict with the constitution. Parliament, however, restricts this power since presidential decrees may not contravene the Civil Code. Government is allowed to issue "normative" directives containing rules of the civil law.

Agencies may enact regulations, limited by the constitution and relevant codes, through their general competency. Consequently, statutes may limit the power of agencies. The Civil Code authorizes supplementary rules by "statute" since the broader term "legislation" would encompass other secondary laws.

Independence of judges is provided in the Constitution of the Russian Federation and the Federal Law as of 26.06.1992 № 3132-1 "On the status of judges in the Russian Federation": court power is independent and acts independently from legislative and executive powers.

All international laws and international treaties of the Russian Federation are part of the Russian domestic legal system. Domestic law gives way to international law according to Article 15 of the Constitution. The Constitutional Court has the greatest expertise in applying international law

1.3 Bodies Involved in Commercial Dispute Resolution

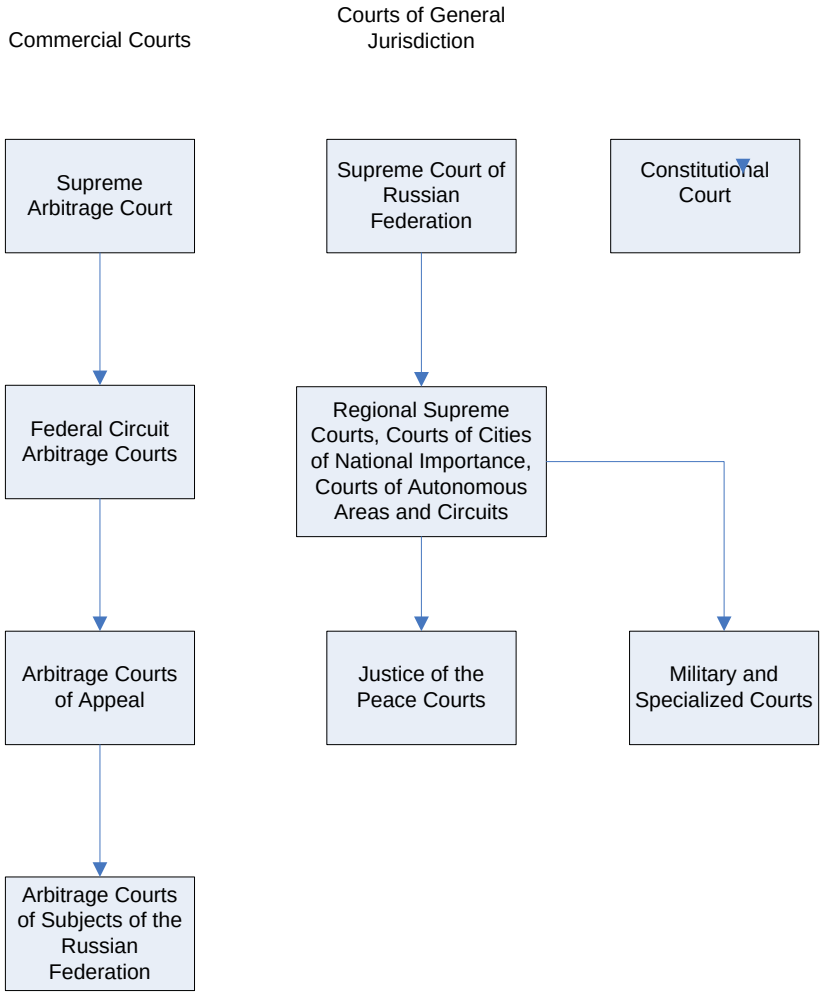
In Russia there are a number of bodies and institutions that may play a role in dispute resolution. To understand available options, and anticipate possible developments, it is

important for the IFA to know which bodies and officials exist and what their roles are in the legal system and in the dispute resolution process.

1.3.1 Structure of the Russian Court System

The Russian Court System is comprised of Courts of General Jurisdiction, Arbitrage (Commercial Courts), Constitutional Court and Justice of Peace Courts of the Russian Federation subjects.

Figure 1. The Federal Court System in Russia



1.3.2 The Courts of General Jurisdiction

All criminal cases and civil disputes concerning citizens (excluding individual entrepreneurs), administrative appeals (provided they do not fall within the jurisdiction of other courts), cases concerning family matters (custody of children, division of property), and inheritance issues are under the jurisdiction of the general courts.

However, there are a few types of cases which are of particular relevance to commercial activity that currently fall within the jurisdiction of the courts of general jurisdiction, rather than the arbitrage courts either because of the status of one of the parties or because they are not specified in the jurisdictional provisions governing the arbitrage courts.

The first of these is the appeal of normative acts. Normative acts are regulations or rules that have a general binding force — which the appealing party believes to be inconsistent with a law or with legal rules of greater strength. Such rules may include regulations on the application of customs rules, rules concerning the conduct of production or sales activities, and any other rules of general application in the commercial context

The second category of cases having commercial significance but falling into the jurisdiction of the general courts is those cases in which an individual who is not a

registered entrepreneur participates as a party in a court. Disputes among the founders of a legal entity, where one of those founders is an individual, would fall into this category. Disputes arising from the conduct of a company or its officers may also fall into this category if the complaint is brought by an individual who is not a registered entrepreneur (For example, an individual shareholder), although the same complaint would have to be filed in the arbitrage courts by a legal entity holding shares in the same company.

1.3.3 Arbitrage Courts

Commercial Courts in Russia are called "Arbitrage Courts." Nevertheless, they are not arbitration tribunals and do not conduct arbitration. "Arbitrage Courts" represent a general system of courts possessing jurisdiction over most commercial disputes.

Some bodies use the adjective "arbitrazhnyi" or even the term "arbitrage court" in their titles due to the dual use of the term "arbitrage." The adjective "arbitrazhnyi" and the term "arbitrage court" are used in Russian to refer to two different kinds of bodies: commercial courts and arbitration tribunals. The English translation of the word "arbitrazhnyi" often fails to distinguish between these two meanings.

Presently, the arbitrage courts in Russia examine more than one million cases a year. The caseload for the judges has grown as a consequence of the increasing volume of work in

arbitrage courts. According to the Supreme Arbitrage Court of the Russian Federation[2] it is equal now to 55 cases per month for a judge.

The failure to execute judicial decisions, resolutions and rulings handed down by arbitrage courts is regarded as contempt of court and entails liability envisaged by the law.

The general jurisdictional rules of the arbitrage courts do not distinguish between foreign and domestic parties, nature of legal entities, and citizenship status of individual entrepreneurs. Point 6 of Article 22 of the APC provides arbitrage court with jurisdiction over a) foreign legal entities, b) international organizations, c) legal entities with foreign capital, and d) non-Russian citizens carrying out entrepreneurial activities, unless otherwise provided in the international agreement signed by the Russian Federation.

Article 212 of the APC contains specific rules applicable to cases concerning foreign parties. If the contract took place in Russia, the arbitrage courts have jurisdiction provided the respondent has property in the Russian Federation. Courts also have jurisdiction over unjust enrichment cases, cases concerning damage to honor, dignity or reputation of the plaintiff provided that all take place in RF.

Three exceptions limiting these general rules are:

1) Cases concerning immovable property are to be heard at the place of property location.

[2] *Website of the Supreme Arbitrage Court of the Russian Federation*. Retrieved May 23,2006 from http://www.arbitr.ru/eng/sysac.htm

Cases concerning rights in immovable property outside the RF will not be heard; cases concerning immovable property in the RF will be considered at the property location.

2) Suits concerning transportation contracts are to be heard at the transportation agency's location.

3) The third exception encompasses international agreements. If an international agreement of the Russian Federation contains provisions altering the rules, the provisions of that international agreement will be applied.

1.3.4 Constitutional court

The Constitutional Court is not a forum for the general resolution of commercial disputes; however, it does challenge laws and other legal acts applicable to commercial matters considered unconstitutional by the petitioner. The decisions of the Constitutional Court are binding upon the arbitrage courts and courts of general jurisdiction, and on all other officials and bodies in the Russian Federation.

1.3.5 Arbitration Tribunals

In Russian, the term "treteiskii sud" or "third-party court" refers to classical arbitration. However, this usage is often misleading as the adjective "arbitrazhnyi" is used to refer to arbitration rather than to the arbitrage courts. The two oldest arbitration facilities in the Russian Federation — the Maritime Arbitration Commission and the International

Commercial Arbitration Court[3] — use the adjective "arbitrazhnyi" in their titles. Although both of these bodies conduct a traditional form of arbitration, the second body uses the term "arbitrage court."

In general, civil law disputes that would otherwise be within the jurisdiction of the arbitrage or general jurisdiction courts may be transferred to an arbitration tribunal. This general rule, however, has some exceptions. A dispute may not be submitted to an arbitration tribunal if it is assigned by law to the exclusive jurisdiction of a particular state body or court. The substantive legislation concerning the particular type of dispute may prohibit transfer to an arbitration tribunal, as is the case, for example, with the bankruptcy legislation. The transfer of labor and family law disputes to arbitration tribunals is prohibited by the Civil Procedure Code.

The jurisdiction of any arbitration tribunal depends on the parties' will and can only be established by a general agreement**.** The agreement between the parties to transfer the dispute can be an arbitration clause in a contract .Otherwise, a separate written agreement to transfer a specific dispute to an arbitration tribunal may be required.

The most commonly used arbitration tribunal for international commercial disputes is the International Commercial Arbitration Court under the Chamber of Commerce and Industry of the Russian Federation (the "ICAC"). The ICAC's statute and rules are based

[3] International Commercial Arbitration Court under the Chamber of Commerce and Industry of the Russian Federation (the "ICAC"). http://eng.tpprf.ru/ru/main/icac/

on the UNCITRAL model rules consistent with rules and practices of international commercial arbitration tribunals in other countries.

In general, arbitral awards are to be executed voluntarily by the parties within the time period specified in the award. If an award is not honored by the party required doing so, mandatory execution of the award may be sought through an order issued by a Russian court. This court order is then submitted to the court enforcer (the bailiff service) for enforcement of the award through the same procedures used for any court judgment.

1.3.6 Enforcement bodies

Various bodies may become involved in commercial disputes and activities in several ways. Bodies enforcing statutes based on complaints may serve as an alternative dispute resolution forum. An example of this type of body is the Committee for Antimonopoly Policy. It enforces the competition law (abuse of a dominant market position, restrictive agreements, etc.), the advertising law (false claims, commercial defamation), and some consumer protection laws. Upon receipt of a complaint, the Ministry decides whether there is a basis for a new case investigation. The Ministry might continue through a process of investigation setting up a hearing involving all parties. The decision is based on the investigation and hearing, which may include mandatory orders, specific requirements, and compensations. Thus, the Ministry may serve to resolve the dispute between the complaining and respondent entities.

Decisions of state bodies, whether imposed through a simplified or a quasi-judicial procedure, may be appealed on the grounds that the relevant body violated or misapplied the substantive or procedural legislation which is applicable to the action taken. Thus, all of the executive bodies empowered to act in relation to commercial conduct may become involved in disputes concerning appeals of their actions.

Another example is the Federal Commission on the Securities Market of the Russian Federation, which may address some complaints concerning shareholders rights or corporate governance. Other bodies will also take complaints from citizens or entities for investigation, where the complaint concerns their areas of responsibility.

1.3.7 Bankruptcy

In principle, all insolvency and bankruptcy systems may be subdivided into two mutually opposing categories: pro-debtor (USA, France) and pro-creditor (UK, Germany). The Russian bankruptcy system is pro-creditor. Very few debtors who went through bankruptcy procedures regained their ground. Most of them were sold.

The new (third) Law "On insolvency (bankruptcy)" No. 127_FZ, adopted on 26 October 2002 among other fundamentally new provisions introduced a new procedure of bankruptcy (financial rehabilitation). Financial rehabilitation was applied to the debtor in order to restore solvency, redeem debts and provide stronger protection of the owners

interests in bankruptcy procedures along with greater protection of the rights and legitimate interests of creditors.

However, on the whole, it can be stated that the institution of bankruptcy in Russia, as it has emerged so far, cannot be regarded as a stable and efficient corporate governance mechanism aimed at rehabilitating the management and finances of companies – an overwhelming majority of private creditors are not in a hurry to apply the legal schemes offered by the law on bankruptcy, preferring "private enforcement".

Bankruptcy commissioner (Arbitrage manager)

A bankruptcy commissioner is a RF citizen, appointed by an Arbitrage court to manage bankruptcy procedures, as well as to implement other powers established by the Law "On Bankruptcy" who is also a member of one of the Self-Regulating Organizations. Recently the functions of supervising the activity of bankruptcy commissioners recently were transferred from the state to the Non-profit Partnership "Self-regulating organization of arbitration managers" under the Chamber of Commerce and Industry of the Russian Federation. There are various types of bankruptcy commissioners with different powers engaged at different stages of the bankruptcy procedure.

1.4 Experts in Russia

1.4.1 When parties have to call for an independent valuation opinion

Several laws provide for mandatory valuation.

Article 8 of Federal Law N 135-FZ "On Valuation Activities" specifies two situations when valuation is mandatory:

1) if assets fully or partially belonging to the Russian Federation, subjects of the Russian Federation or municipalities are going to be privatized, transferred in trust, leased, used as a collateral, sold or disposed in any other way: and

2) If assets are subjects of a dispute regarding their value during nationalization, expropriation for public purpose by authorized government authority, issuance of mortgage bonds and during matrimonial disputes.

According to the Tax Code of the Russian Federation, valuation is mandatory if in the course of tax assessment conducted by the Revenue Agency a dispute arises regarding the value of assets that were used in calculating tax liability.

According to Article 75 of Federal Law № 208-FZ «On Joint Stock Ventures» independent valuators have to be called to provide value-related information to dissenting

and/or oppressed minority shareholders. The corporation has to purchase shareholders interest at fair value at the request of shareholders who withheld their votes or voted against following issues: reorganization of corporation, approval of a major contract, fundamental corporate changes that affects interests of minority shareholders or if majority of shareholders act in a manner that is prejudicial to the interests of the minority.

Federal Law № 14-FZ "On Limited Liability Companies" governs all issues regarding closely held corporations. According to Article 26 of № 14-FZ "On Limited Liability Companies" that participant has an unrestricted right to withdraw from a company without consent of other partners. If this is the case the company has to pay the leaving partner fair value of his/her share of net assets based on book value, or, at the consent of the leaving participant, to apportion his/her assets which have value equal to the partner's share. This area of law gives rise to numerous disputes regarding the actual value of the share and the value of assets to be apportioned where independent valuation has to be done.

According to The Federal Law "On Bankruptcy", the bankruptcy commissioner conducting inventory count, sale or valuation of assets of a debtor during bankruptcy procedures is required to obtain independent valuation to be done by a licensed valuator. If the government owns more than 25% of shares, the valuation report of an independent

valuator has to be evaluated and certified by an expert of The Federal Agency for Federal Property Management.[4]

The same Agency is responsible for control of valuations that were done in situations described in the Federal Law № 208-FZ «On Joint Stock Companies" if government owns more than 2% of voting shares.

1.4.2 When can an expert be called?

(a) Judge

According to Article 79 of the CPC forensic examination could be ordered by court if issues arise during hearings which require special knowledge in different areas of science, technology, arts or trade. The parties in the case have right to request an independent opinion of the expert but the judge makes the final decision as to whether an expert should be called. In most cases the judge would call a Government Forensic Expert, who is employee of one of the Forensic Bureaus or of the Forensic Laboratories.

(b) Parties to dispute

[4] Federal Agency for Federal Property Management is the regulator of business valuation activity and is empowered with the control function of entities with government participation as specified in The Federal Law "On "On Joint Stock Companies" и Federal Law N127-FZ "On Bankruptcy" .

Parties to the dispute have the right to present the opinion of private specialists or experts at their convenience to support their arguments. The expert report in this case is considered evidence presented by party to an action.

(c) Bailiff

According to Article 52 of the Federal Law "On Bailiffs" bailiffs, who are engaged to enforce decisions of both commercial courts and courts of general jurisdiction, have the right to evaluate the property of the debtor. The valuation has to be based on fair market value at the date of the court decision. If a bailiff decided that valuation requires special knowledge or qualifications, or if the debtor or party that was awarded by the court does not agree with the value determined by a bailiff, then an independent expert has to be called. Usually the expert called is a licensed valuator.

(d) Revenue Agency

According to Article 95 of the Tax Code, an expert, specialist or translator can be involved to participation in the tax assessment on the contractual basis. In most cases an independent expert would be engaged when the Revenue Agency is questioning fair market values determined by taxpayers.

1.5 The law regulating experts

1.5.1 Civil Procedure Code (CPC)

According to the CPC, an expert is a person who conducts examination. An examination could be ordered by court if during hearings issues arise which requires special knowledge in different areas of science, technology, arts or trade. An examination could be commissioned to a Government Forensic Examination Bureau, an individual expert or a group of experts. Although the CPC does not explicitly state that an examination has to be done only by experts who are employers of the government body assigned by their supervisors, it says that experts should be employees of a non-profit entity which implies government entity.

Rights and responsibilities of experts are described in Article 85 of CPC. If the court assigned the expert, the expert has no right of resigning except in one situation: if the subject of examination is outside an of an expert's scope of expertise, or materials are not sufficient or reliable enough to enable the expert to provide an opinion, he/she has to submit to the court that ordered the examination motivation for refusal to be an expert in the case.

1.5.2 Code of Administrative Offences of Russian Federation (CAO)

According to Code of Administrative Offences of Russian Federation N195-FZ of December 30, 2001, examination could be ordered during hearings or a specialist could

be called to provide an opinion. However, by law administrative bodies do not have judicial powers pertaining to some administrative offences. If this is the case, the body has to initiate the suit in either the arbitrage or the court of general jurisdiction, depending on who is the offender.

After submission of the Statement of Claim, the relevant procedural code would govern expert activity.

Article 17.9.of the CAO states that deliberately false evidence of a witness, explanation of specialist, expert conclusion or deliberately wrong translation during the administrative hearings shall entail an administrative penalty in an amount from ten to twenty minimal wages, just under $200 CDN.

1.5.3 Criminal Code (CC)

All criminal offences are held in the Courts of General Jurisdiction. The Criminal Code governs issues of forensic examination.

Articles 307, 308 and 309 of the Criminal Code of the Russian Federation apply to issues of responsibility of experts. According to Article 307 of the Criminal Code, deliberately false evidence, expert conclusions or wrong translation, deliberately wrong evidence of the witness, victim, as well as the conclusion or testimony of the expert, statement of the

specialist as well as obviously wrong interpretation in court or during the preliminary investigation shall be punished by penalty in an amount up to eighty thousand rubles. Punishment could also be levied in the amount of salary or other income of the accused for a period of six months, or by compulsory work for a period of 180 up to 240 hours, by corrective labour for the period up to two years, or by arrest for up to three months. The same acts, combined with accusation of committing a grave or especially grave crime, shall be punished by imprisonment for up to 5 years.

However a witness, victim, expert, specialist or interpreter shall be released from criminal liability in case they declare of their own freewill during the investigation before the court decision or sentence about the falsity of the given evidence, conclusion or wrong translation.

Article 308 concerns refusal of a witness or victim to provide evidence, and suggests penalties ranging from a fine of 50 to 100 times the minimum wage to arrest for a period of up to three months. Although the wording of Article 308 does not specify that it is to apply only to criminal cases, the reference to victims suggests that this may be the intent. Article 309 concerns the use of bribes or threat to induce a witness, interpreter or expert to give false testimony, conclusions or translations, with penalties ranging from a fine of $4,000 CDN to imprisonment of up to seven years depending on circumstances.

Falsification of evidence may result in criminal penalties. Article 303 of the Criminal Code of the Russian Federation provides that the falsification of evidence in a civil case

by a participant or his representative may result in punishment ranging from a fine of from $2,700 CDN to $4,400 CDN to arrest for 2 to 4 months. Interpretations of the Criminal Code suggest that the definition of the crime of falsification under Article 303 includes not only the falsification of documents or other similar evidence, but also giving false testimony.

1.5.4. Arbitrage Procedural Code (APC)

APC is applicable to all commercial disputes held by arbitrage courts.

(a) Witnesses, experts and interpreters

Witnesses, experts and interpreters are not considered persons participating in the case, but rather other "participants in the arbitrage process." Their rights and duties are defined separately in the articles of the APC devoted to each of these categories of participants. Witnesses are obligated to appear when called, to give true testimony, and to answer the questions asked by the judge(s) and persons participating in the case.

(b) Calling experts

Experts are called by the judge, by his/her own initiative or at the request of participants. The participants may propose questions that are to be asked of the expert, but it is the court's duty to determine what questions are to be included and the final wording of the questions on which the expert will give an opinion or conclusion. If the court rejects the

proposals of the participants in the case, it must set forth the reasons for doing so in its determination of the appointment of the expert.

According to Article 83 of APC, forensic examination shall be done by a forensic expert, an employee of Government Forensic Examination Bureau of the Republic of Russia, as determined by the Head of the Bureau, or by other experts among those who possess special knowledge.

APC does not provide any details regarding what criteria should be used in determining presence of special knowledge. In most cases a government expert would be called, the incidents of a private expert to be called by judge are very rare.

(c) Rights of expert

Experts appearing in the case are obligated to appear when called and to present their conclusions, but may refuse to give conclusions if they have not been provided with adequate information or the conclusion requested is beyond their expertise. An expert has the right to acquaint himself with the materials of the case, and to participate in the sessions of the court, ask questions and request additional materials if needed.

Similarly to CPC, Arbitrage Procedural Code (APC) distinguishes two types of examination: all-round and regular. (See 1.6.1 Forensic expert in this paper)

(d) Objectivity of experts

Both interpreters and experts are subject to recusal on the grounds of any relationship to participants or their representatives, direct or indirect interest in the case, or other grounds casting doubt on their objectivity. An expert may also be recused on the grounds of a current or prior subordinate relationship to a participant in the case or their representative, or the production by the expert of materials or opinions which served as the basis for the suit or which are being used in the consideration of the case. Unlike a judge, however, prior participation in the case is not grounds for recusal of an expert or interpreter. Experts and interpreters are expected to recuse themselves if grounds exist, but participants may also petition for their recusal. Witnesses are not subject to recusal, and there are no rules in the general procedural law applicable to the arbitrage courts which disqualify witnesses under certain circumstances (e.g. a legal representative asked to testify to facts that become known to them as a consequence of their work), although the rules of other legislation protecting certain knowledge may be applied to limit witness testimony or appearance in those cases.

(e) Responsibility of experts

Witnesses, experts and interpreters are subject to fines and, in some circumstances, criminal penalties for the knowingly presentation of false information, conclusions or translations. Each of these participants is warned about the possibility of criminal liability when appointed and/or before giving testimony. With respect to witnesses, there are no

provisions for the submission of written statements of witnesses who cannot be present in a court session.

1.6 Government experts

1.6.1 Forensic expert

In practice, forensic examinations are always conducted by experts of government's bodies. The Federal Law N73-FZ "State forensic expert activity in the Russian Federation" enacted on May 31, 2001 governs the functioning of government forensic examination body. According to Article 13 of this law the government expert has to be a citizen of the Russian Federation, and needs to have a degree and relevant experience in the field of her expertise. There are no specific requirement as to how many years of experience would suffice. In each case the Board of Experts would determine the level of expertise and whether individual is ready to be an expert. The process is called "attestation".

By law a forensic expert is very restricted in his/her rights. A forensic expert is forbidden to accept work from anyone except their direct supervisor, the Head of The Forensic Bureau or of The Forensic Laboratory. Similarly, a forensic expert is not allowed to have his/her own practice. The forensic expert can not contact participants in the case if it would give rise to doubts on the expert's objectivity. The forensic expert has no right to

conduct investigations, and should use materials that were produced by participants. Market research and comparative analysis are allowed. Also, the forensic expert can not disclose results of the examination except to his supervisor or the government body that ordered the examination.

It is worth to mentioning that during the hearing the forensic expert can make a statement to be recorded in the protocol, if she finds that participants interpreted or understood his conclusions wrongly.

Depending on the case an examination could be:

(a) All-round examination

An all-round examination ("kompleksnaya experteeza") is examination where experts in different fields, or experts from one field but using different approaches, provide their opinion. After the examination the experts as a group draw conclusion signed by all participating experts. Those experts who do not agree with the common conclusion sign only the part of the report they were working on.

(b) Regular examination

A regular examination ("kommissionnaya experteeza") is conducted by two or more experts in the same field. Experts work as a team, and if one of the experts does not agree with his peers in the whole or on some issues he/she has a right to provide a separate opinion.

1.6.2 Expert of the Federal Agency for Federal Property Management

According to Regulation № 134 of the Federal Agency for Federal Property Management "On examination of valuation reports and the powers of territorial units of the agency to control licensing of valuators", examination of the valuation report could be ordered at the request of the government entities being evaluated or by high level management of the Agency.

Examination should be conducted by an expert, who is an employee of the Agency or by an external expert chosen by tender. However, external experts are not allowed if compliance of licensing requirements is being audited.
The examination of valuation reports shall be performed within a period not longer than 30 business days from the date of the presentation of the valuation report. If six months have passed since the date of the report, the examination of the presented report shall not be held.

The expert should not take into account any additional information that appeared within the period between the date of the evaluation report conclusion and the date of the expertise on the evaluation report. In the expert opinion the expert shall reflect on the methodical mistakes, made by the valuator.

The following is the list of issues to be assessed by the expert:

- compliance of the evaluation report with the requirements of the Law "On the Valuation Activities" and other legal acts of the Government of the Russian Federation;
- sufficiency of description of the existing legal rights on the object of assessment (liens, servitudes, interests of third parties);
- presence of market research, as well as information about typical buyers;
- accounting for other crucial issues related to valuation such as the location of the object, how long the object have been on the market etc.;
- grounds for choosing valuation standards, used by the valuator;
- description of sources of legal, financial, technical and other information and its courses, as well explanation why expert relied on this information
- appropriateness of assumptions used;
- availability and completeness of explanation of special terms, grounds and conclusions of the valuator;
- availability and completeness of necessary documents and materials, presented in the supplements to the report;
- correctness and completeness of the evaluation of the best use scenario of the object of assessment including analysis of other possible scenarios to determine efficiency, legal and financial viability;
- correctness of approaches and methodologies used by valuator; and
- structure of the report and quality of its presentation.

After considering all issues listed above the expert has to write a conclusion and provide a rating for the report based on the criteria in the table below.

Table1. Criteria used by the Federal Agency for Federal Property Management to evaluate valuation report

Rating	Criteria
5	The report is prepared according to Standards and relevant law. The methods used are correct. The report contains additional materials that are useful for its apprehension.
4	The report is prepared according to Standards and relevant law
3	The report contains minor irregularities that if corrected will not affect the conclusion.
2	The report prepared not in accordance with Standards and relevant law. If deficiencies are corrected the conclusion will be affected.
1	The report could not be considered valuation report.

1.7 Private experts

1.7.1 Valuators

According to Federal Law № 135-FZ "On Valuation Activities" the "fair market value" of a property can be defined as the highest price available in an open and unrestricted market between informed and prudent parties acting at arm's length and under no compulsion to act, expressed in terms of money or money's worth.

According to Article 14 and 15 of the Law "On Valuation Activities" the valuator has right to:

- To request from the client a full disclosure of information related to valuation;
- To have full access to documentation related to the assignment;
- To inquire orally or in written form from the third parties about the information needed, with the exception of information that is considered a state or commercial secret. If the third party's refusal to give such information could affect the conclusion, the valuator shall state it in his/her report;
- To involve, as needed, other experts or specialists on a contractual basis;
- To refuse to perform valuation if the client did not provide the information requested; and
- To be reimbursed for expenses related to the valuation contract.

The valuator has a duty to:

- To provide custody of documents, received from the client or third parties during the engagement;
- Not to disclose the confidential information, obtained from the client;
- To keep copies of the report for three years; and
- To provide copies of the report to courts or other authorized state bodies acting in accordance with the Law of the Russian Federation.

The valuators should provide independent opinion and, therefore, can not accept contingency payments. All valuators have to be covered by civil liability insurance.

In addition to liability imposed on valuators in procedural codes and the Federal Law "On Valuation Activities", valuators owe subsidiary duty to creditors in event of bankruptcy of a corporation. According to Article 15 of Federal Law "On Limited Liability Companies" if valuator provided an opinion on value of non-monetary assets that were part of authorized capital stock he/she is liable for three years after the date of registration of the company in an amount of excess of real value of non-monetary assets.

1.7.2 Auditors

Auditing may be carried out by auditing firms including foreign auditing firms and joint ventures, and by certified auditors who hold a special license and are listed in the State Register of Auditors and Auditing Firms. Professional certification and licensing is carried out by special certification commissions, based on the following requirements: a degree in economics or law from a university or similar institute, plus three years' experience, obtained during the prior five years, in accounting, auditing or the teaching of accounting and finance.

Auditors are restricted to related activities such as accounting, auditing, financial analysis or consulting, and are required to report to the authorities any statutory violations

uncovered during an audit engagement. To provide valuation opinion an auditor has to have valuation license.

Roots of the old socialist style system are visible in the auditor's personal financial responsibility in the event of losses resulting from the violation of any required audit procedures; in such an event, the auditor would have to pay a penalty as well as cover the costs of a new audit and reimburse both the State and the auditee for any losses suffered. Insurance of civil liability is mandatory for auditors if the audit they are performing is mandatory.

Article 12 of the Federal Law as of 07.08.2001 № 119-FZ "On Auditing" establishes principles of independence of auditors. The Code of Ethics of Auditors of Russia, enacted by the Counsel on Auditing at the Ministry of Finance of the Russian Federation, describes precautionary measures the auditor should take and what could be considered a threat to the auditor's independence.

In accordance with the Federal Law as of 08.08.2001 № 128-FZ licensing of auditing activities shall cease from July 1, 2006. Since that date auditors have to be a member of Self-regulating Organizations. This change represents the general trend of shifting regulation of professionals from government to SROs.

Auditing firms and individual auditors have to devise and follow the internal standards designed to assure the quality of the audit. The Internal Standards have to be based on 23

Standards enacted by the Regulations of the Government of the RF as of 23.09.2002 № 696 "On Approving Federal Auditing Standards".

In addition to civil liability, Article 202 "Misuse of authority by private public notaries and auditors" of the Criminal Code imposes criminal liability on auditors who use information obtained during the engagement for their own benefit, or against other parties or public interests. The maximum punishment is imprisonment for up to 3 years.

According to Article 307 of the Criminal Code" Deliberately false evidence, expert conclusion or wrong translation", criminal liability for deliberately false opinion is applicable only to auditors if their report was done as part of litigation or preliminary investigation, more specifically when an auditor was appointed by court.

1.7.3 Other consultants (IFAs)

According to Article 188 of CPC the court can call a specialist, who is not an employee of a government forensic body, if the court needs consultation, explanation or help with some technical issues including valuations. The CPC distinguishes between expert and specialist. Although, similar to experts, specialists need to have to have the knowledge and expertise, specialists do not provide examination or conduct research. Specialists give their opinion, explanation or technical assistance based only on their knowledge of the issue. Specialists and forensic experts are equal in their procedural rights and

responsibilities. Another difference between specialists and experts is that forensic expert receives salary from his employment in the Bureau, but a specialist is on short term contract and his/her remuneration depends on complexity of issue. The court makes a decision whom to call, and, if a specialist is called, how much to pay.

Section 2 Role of IFA on different stages of an assignment

In contrast to the west legal practices where an IFA often is a member of litigation team, in Russia those private parties involved in litigation usually rely on counsel's knowledge of financial matters in creating their strategy. Auditors and valuators rarely consult on litigation and, subsequently, their knowledge of law principles as related to litigation is very limited. Their opinion on the value of a business is presented along with arguments of the counsel.

The role of litigation consultant played by the IFA in western countries is very different from what could be expected from valuator or auditor in Russia. IFA skills and knowledge usually are much greater than that of their colleagues in Russia. A counsel representing western business in a commercial dispute in Russia would be very interested in having IFA on the team.

By Russian Law an expert is not a witness unless called by the court. Procedural requirement of independence is related only to experts who are called. In spite of explicit independent requirements of valuators and auditors imposed by laws and codes of

professional ethics, judges consider them to be advocates on behalf of the party that hired them. Judges, who make final decision regarding amounts in dispute, would call an expert only if neither side would succeed in persuading them that their report presents fair valuation. And a judge will call a forensic expert in 90% of cases.

An auditor, valuator or the IFA could be called by the court only if both sides would agree on that. Most likely the IFA would be either involved as a provider of valuation opinion by one side of the dispute or as a consultant. A critique of other experts' reports, including those called by court, is the field where IFA participation will benefit the legal team.

This section further discloses some peculiarities that IFA should know while providing valuation opinion during litigation in Russian's commercial courts.

2.1 Investigation phase

(a) Access to public information

This paper does not give specific advice where to go and whom to ask during the investigative phase of the engagement. IFA has to expect difficulties in finding information, which is supposedly available to the public, basically for two reasons: low use of technology by the public sector and non-cooperative behavior of public employees when it comes to providing information. In spite of increased use of internet in Russian

society in general, government and judicial body websites are not as informative as could be expected from an industrialized country. Low pay of public sector workers in comparison to those of the same level working in private sector, partially explains their reluctance to perform their duties.

"Lubrication" payments which involve relatively small sums of money or gifts to low-ranking officials to facilitate or expedite the performance of normal duties are not considered illegal under the OECD Convention[5]. If made to induce public officials to perform "according-to-rule" non-discretionary routine functions, such payments would make a big difference in Russia. In spite of this payments are allowed, for ethical reasons the IFA should not be directly involved in contacting low level bureaucrats. However it is advisable to set up a small budget and have a local associate, who would be responsible for liaison with officials, if you do not want to waste time waiting for responses.

(b) Complaints

Another way to receive information which would be otherwise provided if not for subjective factors is to complain. Regulatory bodies may have investigative authority in their areas of its expertise that substantially exceeds those of a private party, which may be of assistance in proving a claim when necessary evidence is not in the control of the complaining entity. In some cases, the enforcement body has the authority to impose

[5] Carl Pacini, Hudson Rogers and Judy Swingen, "*Beware of Bribes of Foreign Officials",* Journal of Forensic Accounting Vol.III(2002), p 152, R.T. Edwards, Inc

fines and to issue mandatory orders concerning the behavior of a recipient (cease and desist orders, restoration of the status quo ante) or to suspend or withdraw licenses or permissions to carry out particular activities. The pursuit of the complaint before the executive body may be of assistance as an evidentiary matter.

It should be noted that some of the executive bodies concerned have the right to intervene as a third party in court cases which concern matters within their jurisdiction or sphere of expertise, even if the original case is between private parties and was not initiated by the state body. This may occur, for example, where the substantive laws which are enforced by the relevant body allow both state enforcement action against a violation and private court action by those injured by the violation to recover damages from the violator. While the enforcement authority may not have a direct interest in the recovery of the private plaintiff in such actions, it may have concerns about court recognition of particular behavior as a violation, about evidentiary matters, and so forth.

An example of this type of body is the Ministry for Antimonopoly Policy, which enforces the competition law (abuse of a dominant position, restrictive agreements, and so forth), the advertising law (false claims, commercial defamation), and some aspects of the consumer protection laws.

Different bodies have different procedures for submission of a complaint. Sometimes an investigation can be initiated on the basis of orally provided information. Because many of the bodies involved have a positive duty to enforce the law, rather than a function as a

"neutral" body for dispute resolution, they often must respond to indications that the relevant law is being violated. The pursuit of the complaint before the executive body may be of assistance not only as an evidentiary matter or to gain the support of the body (or its intervention as a third party, if it has the right) in the case.

2.2 Report as Evidence

(a) Scope of Review

Although laws regulating provision of valuation opinion require experts to write about what materials were used in formulating opinion, many judges in the courts of first instance do not pay much attention to this part of the expert report and consider it an unimportant formality. The IFA should keep in mind that vast Scope of Review section in the report, acknowledging that limited information was used in formulating opinion, and direct admission that new information would affect the opinion might be perceived by a Judge as a sign of lack competence.

An example of such misunderstanding can be seen, in hearing № A63-1370/2003-C2 held by Arbitrage Court of Stavropol District, Russia. In a dispute between shareholder I. Babenko and KHMK Inc. regarding the amount to be paid by KHMK Inc for Babenko's shares, two reports were presented. One report, prepared by the auditing firm "Stavropolaudit", stated that price should be 14.95 rubles per share, while the other expert, private valuator V.G. Makarova had an opinion that the price should be 68.53

rubles. Ironically, the report of V.G. Makarova played crucial role in the judge's ruling in favor of the other party.

In the report V.G. Makarova stated that some of requested materials were not produced and therefore she is responsible for the opinion presented only based on information she had. Also there was a phrase that for the same reasons the report could not be considered as a complete Valuation Report as provided under Valuation Standards. The report presented by "Stavropolaudit" was based on the same information as was the report of V.G.Makarova, however, it did not stress that it has deficiencies due to lack of information. The Judge said that since the expert herself is not considering her work as full and competent the court could not consider it as evidence either. The judged accepted opinion of "Stavropolaudit", stating that the court has no doubts in the value of stocks determined, and ruled in favor of the other side. This case was not appealed because parties settled a dispute.

Such behavior of the judge is not common practice, but an IFA should keep in mind that in Russian courts of first instance there should be caution in wording. An IFA should attempt to find balance between requirement to follow standards and risk that the judge's perception of these standards could be different from that of the IFA.

(b) Methodology

Business valuators are regulated by The Federal Law "On Valuation Activities in Russian Federation" and Standards of Valuation enacted by Regulation of the Government of the Russian Federation N519 on 6 July, 2001. According to the Standards of Business Valuation, paragraph 18, the valuator has to use three valuation approaches: Depreciated Replacement Cost Value, Comparative Analysis and the Earnings Based Approach.

The valuator is free to choose any methodology within each approach. The most challenging is the Comparative Analysis Approach. The requirement to use the Comparative Analysis is a consequence of the failure of Russian legislators to clearly distinguish differences between appraisal of equipment, where this approach would be of better use, and valuation of business. Because it is almost impossible to find businesses that could reasonably assume to be similar to that being valuated, this part of report is the easiest one to critique. In seminars conducted by the Federal Agency for Federal Property Management, the regulating authority for valuators, it was advised to use the Rule of Thumb Approach in the absence of information about sales of similar businesses or companies. If there are precedents of sale of a similar business, then the valuator is free to use assumptions and adjustments based on ratio analysis. In practice, when the Federal Agency for Federal Property Management reviews valuator report it rarely pays close attention to this section. However, if valuation opinion is disputed in the court, then valuator's failure to conduct Comparative Analysis could be a serious argument to dismiss the report on the grounds of not following the prescribed Valuation Standard.

In the case Yakubov, Bugayan, Solentsova vs. "Moda" Inc. heard by Federal Arbitrage Court of Stavropol District, one of the rebuttals to the other's side expert opinion was on

the basis of his use of the wrong depreciation rate .The court dismissed the appeal and stated that since the valuator has used all three methods there are no grounds for turning his opinion down. This case shows that it is easier to rebut the other's side opinion based on violation of standards than on grounds of poor quality.

(c) Presentation of opinion

Usually an expert, if not called by the court, could be present only as a representative of a party to the action. In most cases the executive summary of the report is read by an attorney and presented as an additional argument. If an expert wants to read the summary by herself, she must have power of attorney from the counsel. It is very unlikely that the judge would go into details, but it is advisable that IFA was present during the pleadings.

As it is was mentioned above, often the judge would think that an expert is not independent. It is advisable to make counsel stress that IFA is independent by professional standards and that opinion which is being read is not one of the counsel but that of an independent expert. What is obvious for an IFA may not be evident to the judge.

(d) Interpreters

Interpreters are required for the conduct of cases in arbitrage courts to assist those who do not have command of the Russian language. The interpreter is appointed by the court, and

may be chosen from among persons proposed by the participants. A participant in the case may not, however, serve as an interpreter. An interpreter is required to appear when called, and to completely, correctly, and timely interpret/translate. The interpreter may ask those present questions during the proceedings, if necessary for an accurate translation. If the rules concerning language and interpretation were violated, these are grounds for unconditional reversal of a court decision

2.3 Critique during proceedings

2.3.1 Critique of other party's expert opinion.

(a) Issue of independence and professionalism of an expert

Since widespread perception that opinion of experts hired by participants is very influenced by counsel, it is uncommon to hear experts critiquing each others reports on the grounds that the expert is not independent. Reluctance of the judge to evaluate both reports and readiness to call a forensic expert in case of even a minor disagreement between the experts does not foster the practice of questioning and criticizing the other side's expert. The other side would be reluctant to provide explanations and would point to the summary only.

If counsel with the help of IFA would persuade the judge that IFA is independent and experienced while the other expert is neither competent nor reliable then it is possible that judge would accept IFA opinion and not resort to forensic examination. Due to backlogs

in Government Laboratory of Forensic Examinations, and unpredictability of opinion of forensic examiner, avoidance of a lengthy forensic examination procedure is a strategic success.

Because most counsels in Russia rely heavily on their own expert weigh and reasoning, they would be surprised and unprepared to critique on the basis of non-independence and non-professionalism. Critique of other experts, which is very rare nowadays, could soon become a powerful weapon if applied by Russian counsels with the help of the IFA.

(b) Issue of availability of another expert report

Before 2002 counsel would present report and evidence, along with its arguments right during the hearings. The judge would give the other side just a few hours during the break to read the documents.

In 2002, APC enforced new procedural rules of producing documents. In the Article 65 in the paragraph «Burden of Proof», it is stated that participants of the case have to provide the other side with all evidence it is going to use to support it's claims before the beginning of the hearing. In practice, however, this norm is often neglected. Thick reports are still often submitted during hearings. Judges often act so as they used to, and, since practice of critiquing other expert's report is rarely used by counsels in Russia, very few lawyers submit protests. Also the other side might use the practice of late submission as a strategy for both protracting the case and making it harder for the other side to refute. If a

legal team has decided to use critique of the expert report as a strategy, then it is crucial to take an active position and to submit a petition requesting a delay of the hearing to enable the counsel to read the report with the reference to Article 65 of APC.

Since most reports produced only in paper form and only in one copy are submitted to the court it could be challenging to obtain a copy of the report. The first thing to do is to meet the judge who is considering the case or his associate and to request the report. The report would be given the same day, but one can not take it outside the court premises. Over the years, Russian courts have suffered from inadequate technical and budgetary resources; therefore it would be hard to find an available copier or scanner: a lack of paper could be an issue too. To save time it is recommended to bring it in with your own scanner and to scan the report.

2.3.2 Critique of Forensic Expert Opinion

Critiquing a forensic expert is a more challenging task since most judges give more weight to forensic expertise than to an expert who was called by participants. In most cases, opinion of a forensic expert will be accepted by a judge. Similarly, IFA could play an important role in providing critique of forensic expert opinion; however, since objectivity of forensic experts is presumed by judges to be absolute, focus should be made not on independence issues but on insufficient research done or methodological mistakes.

Procedural rules regarding forensic expertise are clearer and better implemented in courts in Russia. After deciding to call a forensic expert, a judge would give participants 2-3 days to formulate and submit questions or issues they want to be examined by the expert to the court. By law it is not determined how many questions could be submitted, and the judge decides on how many and what questions are to be included into the Assignment to Expert ("Opredelenie"). The judge also decides on who would pay for the examination. Normally, parties submit up to 5 questions, maximum 11, and a judge includes all of them. However, if too many questions are submitted, a judge might either request to be more specific or include only those of them that are relevant from his point of view. Since it is almost impossible to appeal his decision not to include some questions, it is very important for the IFA to balance its desire to have as many as possible questions asked and risk that some questions will not be included.

Participants would receive the Assignment to Expert where all questions will be listed. Another important issue is how much time the examination will take. The forensic bureau would not start before it received payment for the service. The bureau would determine the fixed price for their service based on their own estimate of time required. The price is not to be changed even if experts will have to spend more time then was planned. The party who has to pay would receive a letter stating how much it should pay. The letter usually would say that due to backlogs they would start the examination in four months after the payment is received, but if party opt to pay approximately 50% more of the stated price for the "rush order", then they would start in a month. At this moment the side that was requested to pay for the examination may chose to delay the payment if it

pursues the strategy of protracting the case. Since the forensic bureau is overloaded, it would not undertake any actions to receive the payment and would wait indefinitely. To avoid this situation the other side could volunteer to pay the bureau's fee, and be reimbursed by other side later. Because, at the end, the court would award this fee to the losing side, it makes sense to do so.

It is important for IFA to know that the report of the forensic expert is done not to determine whose expert was right or wrong. Its purpose is to provide an opinion, and, therefore, it would not contain any references or critique of others expert reports.

When the Forensic Bureau finishes its report it would produce it in the printed form to the court and the court will make it available to participants to read and copy. Because the reports are done with the use of computers it is easy to obtain an electronic copy from the bureau directly.

After the report is submitted the date of hearing is determined. If participants did not understand or object to the opinion of the forensic expert they have to present questions or arguments during the hearing. Depending on circumstances and participants arguments, there could be four possible scenarios of judge behavior: the judge would rule that the court has no doubts in the opinion, or would call the Forensic Expert to court to explain her report, or would order an additional examination to be done by the same expert that did the first report, or would order reexamination to be done by other expert but still from the Forensic Bureau or Laboratory. It is very unlikely that the forensic

expert would change his/her opinion if an additional examination is ordered. Asking her questions during the hearing would not make the judge believe that she was wrong either. Therefore it is recommended to apply for Reexamination.

It is advisable to ask for a Reexamination ("Povtornaya experteeza") during the hearings in the first instance court before the decision is made. To do so counsel would have to present its arguments as to why it consider the forensic expert's report to be wrong. Normally these arguments should be supported by a report of another expert that should be focused on mistakes in the forensic expert's report rather than on providing a new opinion. It is not an easy task to persuade the Judge who would be willing to close the case as soon as possible to order the Reexamination, however it is possible. If the counsel was not successful at first attempt, it can raise this issue in appeal. The fact that your arguments finding shortcomings in the forensic expert's report were not accepted by judge of the court of the first instance gives you the right to submit your objections in more details in attempt to persuade the court of the second instance to grant Reexamination. If you do not have time to prepare and submit full size critique report during first instance pleadings then it is advisable to submit a short version of the report. According to Article 268 of the APC, participants can not introduce new evidence when appealing the decision of the court, unless the party is able to prove that it did not have a chance to do so. However, it is the report that is considered evidence, not its contents. Because the purpose of the critique report is not to present a new value, different from the one presented by the forensic expert, but to show that the forensic expert erred; technically counsel is not providing new evidence. Counsel's opinion is the same as in

the hearings in the first instance; the Forensic Examiner erred. Due to this provision in procedural rules an IFA will have more time to prepare support for his/her opinion about the forensic expert's report before appealing the decision of the court of First Instance.

2.3.3 Grounds for reconsideration of the case

A decision of the arbitrage court of any level may be reconsidered on the basis of newly discovered circumstances. Newly discovered circumstances are not simply new evidence that was not presented at the original consideration of the case. In order to justify the reconsideration of a case, the party petitioning for such reconsideration must show:

- circumstances having significance for the resolution of the case that were not and could not have been known to the petitioner at the time of its consideration;
- the deliberately false character of evidence or information provided to the court which resulted in the adoption of an illegal or unsubstantiated decision. This may include false witness testimony or expert conclusions, incorrect interpretation or translation of evidence or testimony provided in a language other than Russian, and/or falsified documents or physical evidence. The deliberate falsity of the evidence or information must be established by a judgment of a court that has entered into legal force.

A petition to reconsider a case on the basis of newly discovered circumstances must be made by a person participating in the case within one month of the time that the

circumstances serving as grounds become known to that person. The petition must be forwarded to the other persons who participated in the case, along with appended documents that they do not have, and the evidence of this must be filed together with the petition and its attachments in the arbitrage court.

2.3.4 Other actions that could be undertaken to challenge another expert's opinion

(a) Complaint to Federal Agency for Federal Property Management

The other way to refute the other expert's opinion is to complain to the body regulating valuation or auditing activity. According to law Federal Agency for Federal Property Management regulates valuators. Those valuators who are auditors are also subject to control of Central Commission on Certification of Auditors of Ministry of Finance of Russian Federation.

In the hearing № A63-1370/2003-C2 held by Arbitrage Court of Stavropol District on dispute between shareholder G.I. Babenko and KHMK Inc. regarding the amount to be paid by KHMK Inc for Babenko's shares, reports were presented. One report, prepared by auditing firm "Stavropolaudit", stated that price should be 14.95 rubles per share, while the other expert, private valuator V.G. Makarova had an opinion that price should be 68.53 rubles. The judge accepted the opinion of "Stavropolaudit" and ruled that the price should be 14.95 rubles per share. G.I. Babenko, who did not agree with the court decision, filed a complaint to Federal Agency for Federal Property Management. He sent

numerous letters and it took him a year to persuade the agency to audit "Stavropolaudit" for compliance with valuation licensing requirements. The agency's auditors found that the firm violated the requirements several times by not including in the reports some of mandatory valuation approaches, ordered to redo the valuation report and warned that it is going to suspend the license if the offence would be repeated. The new report of "Stavropolaudit" presented the "corrected" value; 45 rubles per share. The new report could be considered a "newly discovered circumstance" and gave G.I. Babenko the right to appeal. The case was settled.

(b) Complaint to Non Commercial Self-regulating Organizations (SRO)

In spite of current trends to give more powers to Non Commercial Self-regulating Organizations (SRO), most of them are bodies with symbolic powers over their members, with the exception of one: "Self-regulated organization of arbitration managers".

The function of supervising the activity of bankruptcy commissioners recently were transferred from the state, to the Non-profit Partnership "Self-regulated organization of arbitration managers" under the Chamber of commerce and industry of the Russian Federation. The Law grants to the "Self-regulated organization of arbitration managers" the right to apply disciplinary sanctions to their members, the most serious being the expulsion from the membership in a SRO, as well as petitioning to the arbitrage court that their members be dismissed from participating in bankruptcy procedures as bankruptcy commissioners.

The SRO consolidates arbitration managers in Russia and acts on the basis of Civil Code of the Russian Federation, the Federal law "On non-profit organizations" and Federal Law "On insolvency (bankruptcy)". It defines its main goal as provision of state of the art services in the sphere of crisis management and financial rehabilitation of Russian enterprises as well as improvement in cooperation between arbitration managers and executive and judicial bodies of the Russian Federation across all levels. Also one of its functions is "counteraction to the physical and juridical persons that discredit the professional reputation of arbitration managers as well as the activity in the sphere of anti crisis management"[6]

The Control Commission of the "Self-regulated organization of arbitration managers" (SRO) has the right to request from its members the full disclosure of details of procedural actions undertaken as well as other documents relevant to the performance of its function of monitoring control.

The Law established mandatory insurance of the civil responsibility of bankruptcy commissioners by insurance organizations accredited by the SRO. The arbitration manager whose wrongful actions or failure to act resulted in losses to the company that is under bankruptcy procedures, its creditors or other parties, has civil liability under Article 14.13 of the Code of Administrative Offences of the Russian Federation and criminal liability under Article 195 of the Criminal Code of Russian Federation.

[6] Website of Self-regulated Organization of Arbitration Managers under the Chamber of Commerce and Industry of the Russian Federation , http://www.soautpprf.ru/site.xp/049049056049.htm , retrieved on April 24, 2006

(c) Appeal of a court enforcer's decision

Because a court enforcer is not obliged to accept the opinion of a valuation expert but just considers it as a recommendation, its decision should be appealed not on the basis of poor quality of the valuation report. If the counsel does not agree with the value determined by the court enforcer it should appeal to the arbitrage court and present own report. There is a specific "accelerated" procedure for appealing this type of decision. IFA should know that the law gives the party only 10 days to challenge the court enforcer's action and present its arguments.

Section 3 Local Specificities

3.1 Corruption

The international non-governmental organization, Transparency International, has for many years identified Russia as one of the most corrupt countries in which to do business. In the fall of 2004, Transparency International[7] ranked Russia tied for 86th out of 133 countries on its "2004 Corruption Perception Index".

Although the Russian Constitution now provides for a separation of powers and declares the judiciary to be independent of the legislative and executive branches of government, judges are still frequently influenced by "suggestions" from governmental authorities,

[7] Transparency International Corruption Perceptions Index 2004, Retrieved May 22, 2006 from http://ww1.transparency.org/pressreleases_archive/2004/2004.10.20.cpi.en.html

wealthy individuals, and enterprises seeking particular outcomes in cases. However, in common disputes not involving large sums of money, judicial corruption do not appear to be a major problem.

According to opinion of Ethan S Burger, the author of the report on corruption in Russian arbitrage courts[8], a judge might first examine a case, decide which party should prevail on the merits, and then seek payment for issuing the proper decision. Often a judge will simply favor the highest "bidder" for a favorable result. Also a judge might follow the dictates of state officials or members of organized crime.

This situation is made possible by the fact that the submission of an appeal of arbitrage trial court decisions is often fruitless, since higher courts are not only reluctant to overturn lower court decisions, but they are also hindered in their ability to conduct effective judicial review because, in most civil law systems, there is no official trial court transcript to examine. Consequently, appellate courts are limited to reviewing decisions for pure errors of law, and refrain from reviewing factual determinations or the misapplication of law to fact.

The Supreme Qualification Collegium of the Courts of the Russian Federation has principal responsibility for approving individuals to sit on all courts in the judicial system (including the arbitrage courts) and oversees disciplinary matters concerning judges. Ethan S Burger's report presents data published by the Supreme Qualification Collegium

[8] Ethan S. Burger, *Corruption in Russia's Arbitrazh Court: Will There Be Significant Progress in the Near Term*, The International Lawyer, (Spring 2004), American Bar Association

of the Courts of the Russian Federation that contains important information on the state of the Russian courts. In 2003, it published the following data:

Table 2. Materials, Declarations and Complaints Received by the Collegium

Year	1997	1998	1999	2000	2001	2002
Number	2740	3655	4740	5463	5850	6993

Though the number of complaints and other communications about improper judicial conduct sent to the Collegium shows a steady increase, the number of judges who were forced to step down from the bench for disciplinary reasons has declined since a high in 1998:

Table 3. The number of judges who were forced to step down.

Year	1997	1998	1999	2000	2001	2002
Number	75	115	92	75	45	36

The data indicate that the official number of instances where judges were actually removed constitute a very small share of the number of complaints about judges, perhaps since they volunteered to step down from the bench rather than being removed.

The reasons that the Collegium removed judges were described as violation of work discipline (13 percent); falsification of judicial documents (12 percent); other violations of the Judicial Code of Honor (8 percent); violation of substantive and procedural legislation of the Russian Federation (53 percent); and red tape (14 percent).

Not surprisingly, another survey of 500 Russian firms and their managerial staff in eight cities, which was conducted by VTsIOM[9], the All-Russian Center for the Study of Public Opinion, found that corruption played a role in many judicial proceedings in Russia. Of those respondents who had an opinion about whether pressure is put on the decisions of the arbitrage court in their region, 66 percent believed that pressure regularly was placed on the decisions of arbitrage court judges.

According to Report Nations in Transit 2005 Russia [10]Constitutional Court chairman Valerii Zorkin brought extensive publicity to the issue of judicial corruption problem when he told Izvestia, one of the largest Russian newspapers, that research had demonstrated judges were vulnerable to corruption by businesses and handed decisions to the highest bidder. Zorkin asserted that the practice was widespread. The Supreme Court challenged the validity of Zorkin's assertions, but he responded that it did not make sense to deny the obvious. No judges were convicted of taking bribes between 2001 and September 2004. Such figures suggest that either all judges are honest or they know how to protect themselves.

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[9] All-Russian Public Opinion Research Center, Press-release # 440,
Retrieved on May 16,2006 from http://www.wciom.ru/?pt=47&article=2574
[10] Robert W. Orttung, *Nations in transit 2005 Russia*, Freedom House, 19

The IFAs that are working in Russia have to evaluate risks that his opinion could be ruled out without objective reasons by a corrupted judge.

According to most observers, judicial corruption is greater at the trial court level than at the appellate court level. This is not surprising, since it should be easier to bribe a single trial court judge than a panel of appellate judges or members of the Supreme Arbitrage Court.

Nonetheless, the procurement of false documents by the other side in a dispute, the lack of a trial transcript to help demonstrate that the trial court's decision was motivated by something other than the legitimate application of law to the facts, and other factors may still discourage many parties from pursuing judicial appeals, particularly where one's opponent is politically well-connected.

3.2 Planned bankruptcy

According to the Federal Service for Financial Rehabilitation and Bankruptcy (FSFRB)[11] , every fifth bankruptcy had certain characteristics of premeditated criminal actions, in particular, bankruptcy as a way of writing off debts. It should be admitted that the State, in its turn, also sometimes resorts to the threat of bankruptcy as an instrument of exerting

[11] From March 2004, the FSFRB's functions have been distributed among several State bodies and "Self-regulated organization of Arbitration Managers" under the Chamber of commerce and industry of the Russian Federation

pressure upon an enterprise in order to make it pay its tax debts, or for other purposes, including non-economic ones.

Also the initiation of bankruptcy procedures has become a low cost alternative to a hostile takeover. Corporate law provides numerous instruments for protection against takeovers, whereas the law on insolvency creates ideal conditions for an "aggressor", which almost entirely excludes the possibility of a failure. The well established Russian magazine "Sliyanie i Pogloshenie"[12] ("Mergers and Acquisitions") presents numerous schemes of how bankruptcy laws could be abused by criminal entrepreneurs along with advertisement of law firms specializing in legal defense against hostile takeovers.

An IFA working on an assignment which involves valuation during the bankruptcy procedures should be aware about the real goals of the participants to avoid being involved in criminal action.

3.3 Use of fly-by-night firms by shady businesses

In the Russian economy, there have been accumulated numerous non-operating enterprises, which maintain only a formal existence. Some of them are fly-by-night firms, and some – "abandoned firms". These fly-by-night firms are widely used by Russian businesses for various purposes. The most common use is providing fabricated documents confirming fictitious provision of services or sale of goods that could later be

[12] Sliyanie i Pogloshenie, magazine,
Retrieved on May 2, 2006 from http://www.ma-journal.ru/

written off by the buyer. Payment for services or goods is returned in cash to the payee for a small commission. Other use of these firms is substituting invoices from suppliers for invoices of fly-by-night firms with inflated prices to reduce net income.

An IFA should be very skeptical when examining financial transactions if the supplier is located in other geographical areas. When a medium size business located in province uses services of firm which is located in Moscow it is advisable to pay closer attention to this contract.

3.4 Non-arms length transactions

Sales of stock of a closely held corporation should be carefully investigated to determine whether they represent transactions at arm's length. Forced or distress sales do not ordinarily reflect fair market value nor do isolated sales in small amounts. Also, often, to decrease taxable capital gains parties engaged in o a contract will chose to decrease the price of the contact and to receive part of payment in cash. When it comes to real estate transactions real estate agents or business brokers could provide better quality information than could be obtained from the Real Estate Registrar Office.

3.5 How experts are protected by the law

There are three articles in the Criminal Code that protect experts from unlawful actions of third parties. One is Article 295 of the Criminal Code of the Russian Federation "

Infringement of life of the person, administrating justice or carrying out preliminary investigation" which states that an infringement of life of the expert, specialist, officer of justice, officer of the court, as well as their family in connection with litigation or execution of preliminary investigation, performed in order to prevent lawful performance of the mentioned people or as the revenge for such activity, shall be punished by imprisonment for period from 12 to 20 years, life imprisonment, or capital punishment.

Article 296 "Threat or violent acts in connection with practice of justice or performing preliminary investigation" states that threat of murder, health injuries, destruction or bringing damage to the properties in respect to the public prosecutor, investigator, expert, specialist, as well as their relatives in connection with performing preliminary investigation shall be punished by penalty in the amount up to $10,000 Cdn or in the amount of salary or other income of the accused for the period up to 18 months, or arrest for the period from 3 to 6 months, or by imprisonment up to two years. Acts, foreseen by parts 1 and 2 of the given article, accompanied by violence, not dangerous for life or health, shall be punished by imprisonment for the period up to 5 years. If Acts, foreseen by parts 1 or 2 of the given article, accompanied by violence, or endanger life or health, shall be punished by imprisonment for the period from 5 to 10 years.

Article 302 is called "Pressure to give evidence". According to it, coercion of the suspect, accused, victim or witness to give evidence, as well as of an expert, specialist to give a conclusion or evidence by threatening, blackmail or other wrongful acts from the side of the case investigator or the person, holding an inquest, as well as any other person with

the consent or silent agreement of the investigator or the person, holding an inquest, shall be punished by imprisonment up to three years. The same act, combined with violence, harassment or torture shall be punished by imprisonment for the period from two to eight years

3.6 Social environment.

3.6.1 Many Russians do not believe in justice

According to the survey conducted by INDEM[13] , 72.2 percent of the respondents agreed with the statement, "Many people do not want to seek redress in the courts, because the unofficial expenditures are too onerous." Furthermore, 78.6 percent agreed with the statement, "Many people do not resort to the courts because they do not expect to find justice there."

Another survey conducted by WCIOM[14] showed that only 18% of respondents rely of government protection in case of perceived a danger.

[13] On-line publication of NGO Information Science for Democracy, *Corruption process in Russia: level, structure, trends,* Retrieved on May 22, 2006 from http://www.indem.ru/en/publicat/2005diag_engV.htm
[14] All-Russian Public Opinion Research Center, Press-release # 440,
Retrieved on May 16,2006 from http://www.wciom.ru/?pt=47&article=2574

Table 4. Answers on a question "On whom would you rely if you feel that your personal safety is in danger?" from Survey conducted by WCIOM

Answer to be chosen by respondents (unlimited number of answers)	% of respondents
On Myself and my close relatives	81
On God	26
On government bodies(police, special forces, judicial system and other)	18

With such a high level skepticism concerning the judicial system it could be expected that many Russians will be reluctant to provide information to IFA since they would consider the IFA be a part of corrupted system.

However, another survey conducted by Enterprise Support Centre Inc.[15] shows that Russians not only will rely on an IFA's opinion more than they would on that of a local specialist, but that they will be willing to answer some questions regarding their businesses. (For results of the survey see Appendix 2 in this paper).

3.6.2 Many Russians are unaware about their rights regarding Witness Protection

Another issue explaining why Russians might be reluctant to cooperate with IFA is unwillingness to be involved in criminal proceedings, that could resulted from civil suit

[15] The survey was conducted as a part of market study performed by "Enterprise Support Centre" Inc., firm specializing in market research, management consulting and training in May, 2006. The purpose of the research was to determine attitudes and perception of various parties involved in business valuations. The survey was conducted in Stavropol, capital of Russia's southern province and city with a population 500,000. (www.stavropol-consulting.ru)

in case fraud is discovered, as a witness, more specifically a fear that they could be located by associates of the accused. On August 20, V. Putin, Russian president, signed into law a bill providing state protection to crime victims, witnesses, and others involved in criminal cases. The Federal Law N119 on 20 August of 2004 "On Government Protection of Victims, Witnesses and other Participants of Criminal Court Procedures" provides for new homes, jobs, and identities along with other protection. Because this relatively new law did not have much of publicity, very few Russians are aware of its existence.

3.6.3 Privacy rights

Although personal rights and freedoms of citizens of Russia are protected by the Constitution and The Federal Law "On Investigating Activities" (Ob Operativno-Sysknoi Deyatelnosti") very few Russians are aware of these rights. According to WCIOM[16] most Russians are concerned with personal freedom and home security, 59% and 55% respectively. Those who are concerned with confidentiality of personal information represent only 12% of respondents. Only 10% consider privacy of correspondence and telephone communications to be an important issue. It is believed that the notion that not many Russians are concerned with privacy of personal information is the inheritance of former communist rule where government, specifically secret services, did not have any restrictions on gathering data about its citizens.

[16] All-Russian Public Opinion Research Center, Press-release # 378,
Retrieved on May 16,2006 from http://www.wciom.ru/?pt=47&article=2223

Recently, it was discussed in the press that the government bodies that keep big databases of sensitive information, such as Revenue Agency or various registers do not pay proper attention to safeguarding of personal information. There were incidents when some databases were stolen and were offered for sale by hackers or other fraudsters. Currently, the Law "On Personal Data" is being discussed by the Duma, the federal elective legislative assembly.

An IFA should be cautious in respect of sources of information he/she is provided by the counsel, because later in the process it might come to light that the information was obtained by illegal methods.

3.7 Disproportional economic development

Richard Weisskoff[17] in his article suggested that the purchasing power parity (PPP) rate may be a more reliable conversion factor for most third world countries than the official or black market exchange rate for equating the value of two currencies. One of his arguments was that the cost of many U.S. -style goods and services produced locally is negligible in most third world countries in comparison to that in the US or Canada.

The difference in earnings, prices and purchasing power in different provinces in Russia could be enormous. According to Analitical Center IRN[18], the Russian analitical centre

[17] Richard Weisskoff, **"***The Forensic Economist in the International Setting: Applying Purchasing Power Parities to Nicaraguan Damage Claims"* , Journal of Forensic Economics 7(1), 1993, pp. 111—117
[18] Analitical Center IRN, *Real Estate Indexes* ,
Retrieved on June 13, 2006 from http://irn.ru/news/12587.html

specializing in Real Estate the average prece of residential real estate in Moscow in June 2006 was $3391USD per sq.meter while in Stavropol, capital of Russia's southern province and city with a population 500,000, the average price was $792USD.

However it is not advisable to use the PPP method, mainly because of it novelity in Russia: it will be hard for a judge to understand it and an IFA's objectivity could easily be questioned by opposing counsel. This difference should be addressed by IFA by adjusting numbers according to local conditions.

Eearnings and consumption data from a wide range of expenditure surveys, as well as any industry data, is available from the Federal State Statistics Service[19] . The main objective of the Federal State Statistics Service is to meet the requirements of bodies of state authority and administration, media, general public, scientific community, commercial and international organizations for diverse, objective and exhaustive information. The system of state statistics covers district, regional and federal levels, as well as Moscow and St. Petersburg. It comprises 89 regional committees and 2,200 district departments. The Federal State Statistics Service employs about 30 thousand staff. As stated on the agency website, international expert examinations confirm that the data of the Federal State Statistics Service are reliable

[19] Federal State Statistics Service of the Russian federation , http://www.gks.ru/wps/portal/english

Conclusion

Traditionally western businesses tended to favor the use of arbitration tribunals in third countries for resolving business disputes with Russian parties. However, due to delays and inconveniences of using third country arbitration, the use of dispute resolution mechanisms within the Russian Federation has increased during the last few years.

This paper revealed that current legislation related to expert opinion in courts is interpreted by judges so that government forensic experts are called more often then private independent experts and their opinion has more weight than that of private experts. However, as seen from the results of surveys cited in the paper and opinion of the legal community the demand for skilled and ethical experts with knowledge of Canadian laws and standards exists in Russia. The demand is growing at the same pace as grows business relations between the two countries.

A Canadian IFA working on a dispute to be resolved in a Russian court would discover that many things in reality are very different from what would be expected. Corruption, a criminalized economy, business ethics and attitudes, social and cultural environment, may affect the effectiveness of an IFA assignment in Russia if these factors are ignored.

Currently, Russia is attempting to fill the gaps and eliminate contradictions in legislation. Fighting corruption, especially judicial corruption, is on country's agenda too. Skills and

integrity of the IFA, empowered with knowledge of the Russian legal system will benefit both client and the Russian legal community.

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Analitical Center IRN, *Real Estate Indexes* ,
Retrieved on June 13, 2006 from http://irn.ru/news/12587.html

APPENDIX A

Key Laws regulating experts in the Russian Federation

Type	#	Title in English	Title in Russian
Federal Law	3132-1	"On the Status of Judges in the Russian Federation"	" O Statuse Sudei v RF"
Federal Law	127-FZ	"On Insolvency (bankruptcy)"	"O Nesostoyatelnosti (bankrotstve)"
Federal Law	135-FZ	"On Valuation Activities"	Ob Otsenochnoi Deyatelnosti
Federal Law	208-FZ	"On Joint Stock Ventures"	"Ob Aktsionernyh obshestvah
Federal Law	14-FZ	"On Limited Liability Companies"	"Ob Obshestvah s Ogranichennoi Otvetstvennostiyu"
Federal Law		"On Bailiffs"	" O Sudebnih Pristavah"
Code		Tax Code of the Russian Federation	Nalogoviy Kodeks of RF
Code		Civil Procedure Code of the Russian Federation	Grazhdanskiy Processualniy Kodeks of RF
Code		Code of Administrative Offences of the Russian Federation	Kodeks ob Administrativnih Pravonarusheniyah of RF
Code		Criminal Code of the Russian Federation	Ugolovnyi Kodeks of RF
Code		The Arbitrage Code of the Russian Federation	Arbitrazhniy Protsessualniy Kodeks of RF
Federal Law	73-FZ	"State forensic expert activity in the Russian Federation"	"O Gosudarstvennoi Sudebno Ekspertnoi Deyatelnosti v RF"
Regulation		Regulation № 134 of the Federal Agency for Federal Property Management "On examination of valuation reports and the powers of territorial units of the agency to control licensing of valuators"	"Ob Utverzhdenii Poryadka Organizatsii ekspertizi Otchetov ob Otsenke I Opredelenii Polnomochii Territorialnih Organov Agenstva po Oformleniyu Zakluchenii Gosudarstvennogo Kontrolnogo Organa I Aktov Proverki Sobludeniya Litsenzionnih trebovanii I Uslovii"
Federal Law	119-FZ	"On Auditing"	"Ob Auditorskoi Deyatelnosti"
Regulation		Regulations of the Government of the Russian Federation № 696" On Approving Federal Auditing Standards".	"Ob Utverzdenii Federalnih Pravis(Standartov) ob Auditorskoi Deyatelnosti"
Federal Law		"On Non-profit Organizations"	" O Nekommercheskix Organizatsiyah"

Federal Law		"On Government Protection of Victims, Witnesses and other Participants of Criminal Court Procedures"	O Gosudarstvennoi Zashite Poterpevshih, Svidetelei I inih Uchstnikov Ugolovnogo Sudoproizvodstva"
Federal Law		"On Investigating Activities"	"Ob Operativno-Sysknoi Deyatelnosti"

APPENDIX B

Survey of senior officers of medium size businesses: Selected Questions

The survey was conducted as a part of market study performed by "Enterprise Support Centre" Inc., firm specializing in market research, management consulting and training in May, 2006. The purpose of the research was to determine attitudes and perception of various parties involved in business valuations. The survey was conducted in Stavropol, capital of Russia's southern province and city with a population 500,000. 25 senior officers of the most established local enterprises were surveyed. Although the distribution did not produce a random sample of businesspersons across the Russian Federation, the characteristics of those that were surveyed gives some level of confidence in the representativeness of the findings.

The following is a selection of questions that produced results that were used in this paper.

1. If it was necessary for you for business reasons to turn to a business valuation specialist, how much confidence do you have that the opinion of the specialist will be in line with your wishes?

    a) Fully in line 9.5%
    b) Would be very close 33.3%
    c) I do not know because the valuator has to provide independent opinion 57.1%

2. If you participated in a commercial dispute and required a truly independent and objective opinion with regards to the value of you business where would you turn to?

a) Local valuator or auditor 28.5%

b) A specialist in business valuations who works for a established foreign auditing firm and who is familiar with local specific 61.9%

c) A specialist in business valuations who works for a large Moscow-based auditing firm 9.5%

3. If a specialist in business valuations working on a case in a field of your business expertise, but the dispute having no direct relationship to your activities, turned to ask you about specifics of your business to help him form an opinion on an issue in the dispute, would you agree to provide some information?

a) Yes 9.5%

b) No 28.5%

c) Very likely I will 61.9%