ADVANT Beiten

DISPUTE RESOLUTION IN RUSSIA

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Introduction

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law."

– Universal Declaration of Human Rights, 1948 –

When doing business in Russia, as in other countries, disputes sometimes occur. A number of them can be settled through negotiations with the counterparties; however, some of them can grow into genuine conflicts that can be resolved through recourse to the courts.

As a law-based state, the Russian Federation guarantees that everyone can defend their violated rights, including in court. This concerns both foreign companies and investors. Owing to the reforms of recent years the guarantees enshrined in the Constitution of the Russian Federation are not merely decorative, but ensure a real and effective system for protecting violated civil rights.

Russia provides a broad range of opportunities to settle disputes. In addition to Russian state courts, professional mediators can be engaged, or the dispute may be referred to (international) arbitration. In addition, disputes may be referred to the state courts of foreign states for resolution.

In this brochure, we provide important information on how disputes are considered in Russian state courts. As the saying has it, forewarned is forearmed.

The international law firm **ADVANT Beiten** wishes you every success in Russia, and hopefully without any litigation!

1. State Courts

One of the most important guarantees enshrined in the Constitution of the Russian Federation is the right to judicial protection. Rights to judicial protection are exercised through the creation of an effective national justice system. The Russian court system consists of federal courts and courts of the constituent entities of the Russian Federation.

The Constitutional Court of the Russian Federation resolves cases on the compliance of federal laws and the regulatory acts adopted by the President, the Government and the Parliament of the Russian Federation with the Constitution of the Russian Federation, and also disputes on competence between the state authorities. In addition, it considers complaints against infringements of constitutional rights and freedoms.

The constitutional (statutory) courts of the constituent entities of the Russian Federation resolve cases on the compliance of local laws and regulatory legal acts with the constitutions of the constituent entities of the Russian Federation[1].

Magistrates and federal courts of general jurisdiction consider the majority of cases, including disputes arising from civil-law relations, family disputes, housing disputes, and also administrative and criminal cases.

Commercial courts[2] handle cases related to business activities. That is why as a general rule, disputes involving legal entities and entrepreneurs are resolved at commercial courts. Nonetheless, certain categories of disputes related to the business activity of companies may be considered by magistrates or courts of general jurisdiction.

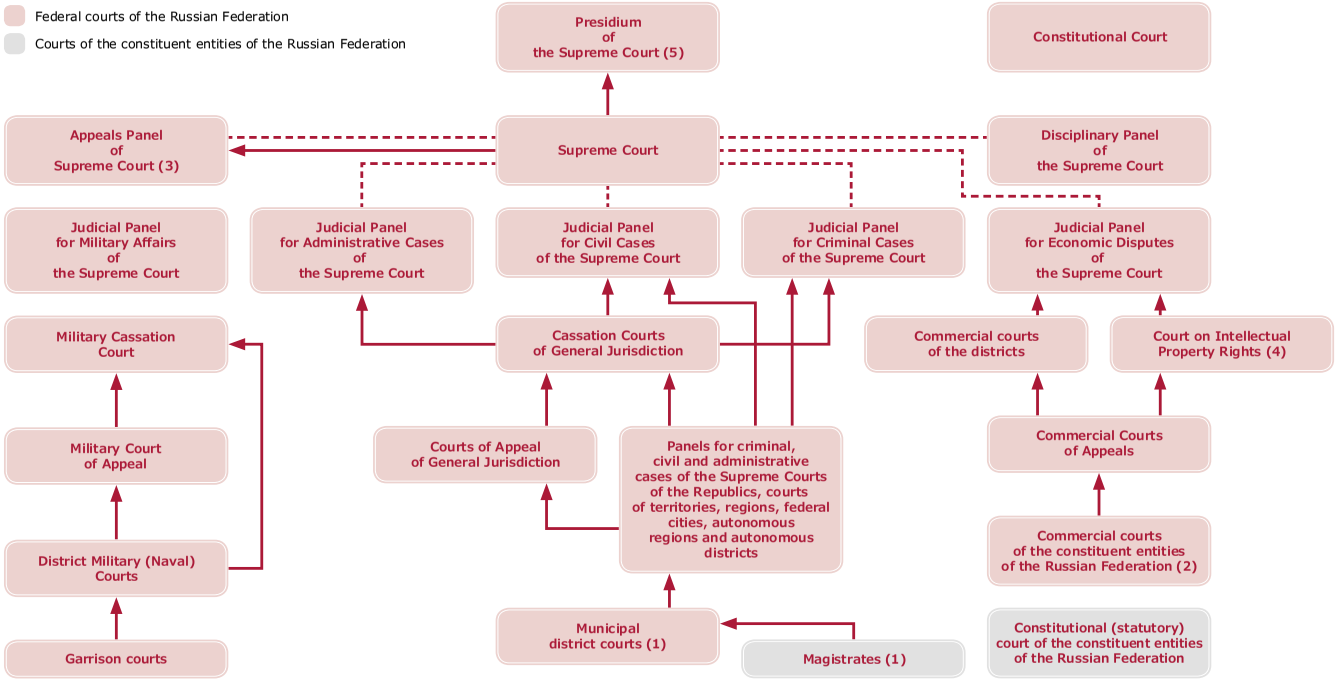
The Court on Intellectual Property Rights considers disputes related to the use of intellectual property.

In Russian courts of general jurisdiction, panels are created, consisting of judges specialising in corresponding areas. As a rule, there are panels regarding civil, criminal and administrative cases. In commercial courts, panels are also created for the resolution of cases on bankruptcy, civil and administrative disputes.

[1] At present, constitutional (statutory) courts operate in 14 constituent entities of the Russian Federation; all currently functioning constitutional courts will be abolished with effect from 1 January 2023 (Federal Constitutional Law No. 7-FKZ dated 8 December 2020 “On Amendments to Certain Federal Constitutional Laws”).

[2] The concept of a commercial court emerged over time. What is meant here is state courts responsible for considering economic issues. They are comparable to the German Chamber for Commercial Matters of a District Court, but not to an arbitration court!

RUSSIAN COURT SYSTEM



1. A dispute initiated in a court of general jurisdiction may be considered in five instances (*see section 2.6 of this brochure for more details*).
2. A dispute initiated in a commercial court may be considered in five instances (*see section 3.4 of this brochure for more details*).
3. The Supreme Court of the Russian Federation may consider, as the first instance, certain administrative cases, disputes between the federal state authorities and the authorities of the constituent entities of the Russian Federation, etc. For these categories of cases, the Appeals Panel of the Supreme Court of the Russian Federation will act as the appeals instance.
4. The Court on Intellectual Property Rights may consider cases as the first instance and as the cassation instance (*see section 4 of this brochure for more details*).
5. The Presidium of the Supreme Court of the Russian Federation acts as the supervisory authority (*see sections 2.6 and 3.4 of this brochure for details*).

2. Magistrates and Courts of General Jurisdiction

The courts of general jurisdiction and magistrates form the nucleus of the judicial system. They may also be of interest to investors.

2.1 MAGISTRATES

Magistrates consider cases as the court of first instance in various fields of law, primarily criminal, administrative, and family laws and also civil-law disputes.

The following types of cases are assigned to the competence of magistrates:

- criminal cases for which the maximum penalty does not exceed three years of imprisonment;
- certain family disputes (divorce cases, cases on the division of property where the claim is not more than RUB 50,000, and other family cases not related to the competence of courts of general jurisdiction);
- civil disputes, except for inheritance cases and cases relating to the creation and use of intellectual property, where the value of the claim does not exceed RUB 50,000;
- property disputes arising from the protection of consumer rights where the value of the claim does not exceed RUB 100,000;
- administrative legal disputes.

At present the Russian Federation has 7,773 working magistrates[3].

2.2 COURTS OF GENERAL JURISDICTION

Courts of general jurisdiction consider the majority of cases. All disputes not assigned to the competence of commercial courts, magistrates, or the specialised courts are assigned to their competence. These are criminal cases, civil-law and administrative disputes involving individuals, disputes with the state authorities, and certain other categories of cases.

However, courts of general jurisdiction also consider a significant number of cases involving legal entities, such as:

- labour disputes;

[3] Pursuant to Federal Law No. 218-FZ dated 29 December 1999 "On the Total Number of Magistrates and the Quantity of Judicial Districts in Constituent Entities of the Russian Federation" (as amended on 30 December 2021).

- cases on the protection of consumer rights.

2.3 WHAT COURT CAN A PLAINTIFF ADDRESS?

Civil procedural legislation establishes the following rules for jurisdiction – a plaintiff may file claims:

(1) At the place of residence (location) of the defendant (the general rule).

(2) At the place of residence (location) of the plaintiff in specially established cases, such as:

- claims against a defendant whose place of residence is unknown or who does not have a place of residence in the Russian Federation;
- claims for the recovery of alimony or establishment of paternity;
- divorce claims, if the plaintiff has minors under their care, or if for health reasons it is difficult for the plaintiff to travel to the place of residence of the defendant;
- claims for the reimbursement of damages caused by trauma, damage to health, or as a result of the death of a the breadwinner;
- claims for the reinstatement of employment, pension or housing rights, return property or the value thereof, claims related to the reimbursement of losses caused to an individual by an unlawful judgment, unlawful imposition of criminal liability, unlawful use of pre-trial detention or undertaking not to leave as a judicial restraint, or unlawful imposition of an administrative punishment in the form of the attachment of property;
- claims for the protection of consumer rights.

(3) At the place of the conclusion or execution of a contract:

- claims for the protection of consumer rights;
- claims arising from a contract that indicates the place of its execution.

The parties may also conclude a special prorogation agreement on the choice of a competent court, except for cases that are assigned for resolution to the exclusive competence of courts of general jurisdiction.

2.4 CONSIDERATION OF CASES INVOLVING FOREIGN PARTIES

Courts of general jurisdiction also consider cases involving foreign parties if the defendant organisation is located in the Russian Federation or the defendant individual is resident in the Russian Federation, and also in the following cases:

- the management body, branch, or representative office of the foreign entity is located in the Russian Federation;

- the defendant has assets in the Russian Federation and/or distributes advertising online targeting aimed at consumers located in the Russian Federation;

- in cases on the recovery of alimony and establishment of paternity, the plaintiff is resident in the Russian Federation;

- in cases on the reimbursement of damages caused by injury, other damage to health, or the death of the breadwinner, the damages were caused in the Russian Federation or the plaintiff is resident in the Russian Federation;

- in cases on the reimbursement of damages caused to property, if the action or other circumstance that served as the grounds for the filing of the claim for the reimbursement of damages took place in the Russian Federation;

- the claim results from a contract, which should be performed or was performed in full or in part in the Russian Federation;

- the claim results from unjust enrichment that took place in the Russian Federation;

- in divorce cases, if the plaintiff is resident in the Russian Federation or at least one of the spouses is a Russian citizen;

- in cases of defamation or protection of business reputation (goodwill), the plaintiff is resident in the Russian Federation;

- in cases on the protection of the rights of a personal data, subject, *inter alia*, for the reimbursement of losses and/or compensation for emotional distress, the plaintiff is resident in the Russian Federation;

- in cases on termination of the provision of links by a search engine operator that make it possible to access online information, the plaintiff is resident in the Russian Federation.

2.5 EXCLUSIVE JURISDICTION OF THE COURTS

The following cases involving foreign parties are considered exclusively by Russian courts of general jurisdiction:

- cases on rights to immovable property located in the Russian Federation[4];
- cases on issues arising from a contract of carriage if the carrier is located in the Russian Federation;
- cases on the divorce of Russian citizens with foreign citizens or stateless persons if both spouses are residents in the Russian Federation;
- cases on the establishment of legally significant facts if the claimant is resident in the Russian Federation or the fact that must be established took place or is taking place in the Russian Federation;
- cases on applications for adoption, on restricting the legal competence of a citizen or declaring them incompetent, on declaring a minor fully competent (emancipation) if the citizen in respect of whom the application is submitted is a Russian citizen or is resident in the Russian Federation;
- cases on applications to have a person declared missing or dead if the person in respect of whom the application is submitted is a Russian citizen or whose last known residence was in the Russian Federation, and at the same time the resolution of this issue is essential to the establishment of the rights and obligations of citizens resident in the Russian Federation or organisations located in the Russian Federation;
- cases on applications to have goods located in the Russian Federation declared ownerless or to declare the rights of municipal ownership to ownerless real estate located in the Russian Federation;
- cases on applications to declare invalid lost bearer securities or order securities issued by or to an individual resident in the Russian Federation, or by or to an organisation located in Russian Federation, and on the restoration of rights thereto;
- cases involving persons who have been subject to restrictive measures by a foreign state, a state association or union, or a government (intergovernmental) institution;
- cases involving a Russian or foreign legal entity, if the grounds for such a case are restrictive measures (sanctions).

[4] In this category of disputes, it is essential to take account of the position of the Constitutional Court of the Russian Federation as set out in Judgment No. 10-P dated 26 May 2011, which permitted the resolution of disputes on real estate rights through arbitration: "The arbitral awards are the basis for the commission by other subjects of specific legally significant acts. The state registration of rights to immovable property and transactions therewith, as an act of the state registration authority that took place after the commission of specific legally significant acts with real estate properties, is not a factor that changes the nature of the civil-law relationships regarding this property. The binding nature of the state registration of rights to immovable property and transactions therewith may not be considered a circumstance that rules out the possibility the referral of disputes regarding immovable property to arbitration."

2.6 COURT INSTANCES

The RF Civil Procedural Code stipulates that civil cases may be considered in five court instances:

- first instance (as a rule: magistrates, district and city courts of the constituent entities of the Russian Federation);
- appellate instance (district courts for the decisions of magistrates, courts of the constituent entities of the Russian Federation for district courts, courts of appeal of general jurisdiction for the courts of the constituent entities);
- first cassation instance (cassation courts of general jurisdiction);
- second cassation instance (Judicial Panel for Civil Disputes of the Supreme Court of the Russian Federation);
- supervisory instance (Presidium of the Supreme Court of the Russian Federation).

3. Commercial Courts

Commercial courts are governed by Federal Constitutional Law No. 1-FKZ dated 28 April 1995 "On Commercial Courts in the Russian Federation" and include district commercial courts (courts of cassation), commercial courts of appeals, and commercial courts of the first instance in constituent entities of the Russian Federation.

The main law governing the procedure for commercial courts to consider disputes is the RF Code of Commercial Procedure.

3.1 COMPETENCE OF COMMERCIAL COURTS

Economic disputes and other cases related to the business activities of legal entities and individual entrepreneurs are assigned to the competence of commercial courts. In particular, commercial courts consider economic disputes involving:

- duly registered legal entities and individual entrepreneurs;
- the Russian Federation, the constituent entities of the Russian Federation, municipalities, state authorities, and local government (municipal) authorities;
- Russian, foreign, and international organisations, Russian citizens, and also foreign nationals and stateless persons engaged in business activities;

- organisations with foreign investments, unless otherwise stipulated by the international treaties of the Russian Federation.

Except in rare circumstances few exceptions, commercial courts do not consider disputes involving individuals.

In addition, pursuant to the procedure for administrative court proceedings commercial courts consider:

- economic disputes arising from administrative relations and other public law relations, and other cases related to the business and other economic activities of legal entities and individual entrepreneurs (regarding challenges to regulatory legal acts or non-regulatory acts in various areas);

- cases on administrative offences if the law assigns their consideration to the competence of commercial courts;

- cases for the recovery of mandatory payments and monetary fines from organisations and individuals engaged in business or other economic activities;

- certain other cases arising from administrative or other public law relations.

Commercial courts consider cases of relevance for the emergence, change to, and termination of the rights of organisations and individuals in the area of business and other economic activities pursuant to special proceedings.

Commercial procedure legislation identifies a number of disputes that are assigned to the exclusive jurisdiction of commercial courts, such as:

- disputes on insolvency (bankruptcy);

- certain types of corporate disputes;

- disputes on the refusal of state registration, evasion of state registration of legal entities and individual entrepreneurs;

- disputes arising from the activity of depositaries, related to the registration of rights to securities and the exercise of other rights and obligations stipulated by law;

- disputes resulting from the activity of state corporations and related to their legal position, the procedure for managing them, their foundation, reorganisation, liquidation, and organisation, and to the powers of such bodies and the liability of the persons in these bodies;

- disputes on the protection of business reputation (goodwill) in the area of business or other economic activity.

Special attention should be given to the following cases which are also assigned to the competence of commercial courts:

- on challenging arbitral awards;
- on the issue of writs of execution for the enforcement of arbitral awards;
- on assistance to arbitration tribunals in disputes arising out of business and other economic activity; and
- cases on the recognition and enforcement of the awards of foreign court judgments and foreign arbitral awards.

As a general rule, claims or corresponding applications are submitted to the commercial court of the constituent entity of the Russian Federation at the location or place of residence of the defendant. If the court finds that the plaintiff has committed a fraudulent act aimed at artificially changing jurisdiction when filing a claim, the court will refer the case to the jurisdiction of a different court, the one that would have been competent if the fraudulent act had not been committed.[5] The law also stipulates a number of exceptions that grant the plaintiff the right to select the competent court:

- claims against a defendant whose location is unknown may be filed with the commercial court at the location of its property or at its most recent known location or place of residence in the Russian Federation;
- claims against several defendants located or residing in several different constituent entities of the Russian Federation are filed with a commercial court at the location or place of residence of one of the defendants;
- claims against a defendant located or residing in a foreign state may be filed with a commercial court at the location of the property of the defendant;
- claims arising from a contract that indicates the place of its performance may be filed at that place. However, the place of actual performance of an obligation or an indication of the place of performance of one of the obligations in the contract (e.g., the address of the seller's warehouse) do not automatically constitute sufficient grounds for filing a claim at the place of performance of the contract. If the place of

[5] Clause 17 of Resolution of the Plenum of the Supreme Court of the Russian Federation No. 46 dated 23 December 2021 "On the Application of the Code of Commercial Procedure of the Russian Federation when Examining Cases in the Court of First Instance".

performance is not explicitly specified in the contract or if there is no address of such a place, the jurisdiction of the case shall be determined based on the general rules[6];

- claims for compensation for damages caused by a collision of vessels and for recovery of remuneration for assistance and rescue at sea may be filed at the location of the defendant's vessel or this vessel's home port, the place of performance of the contract;

- claims against a legal entity arising from the activity of its branch or representative office located far from the location of the legal entity may be filed with a commercial court at the location of the legal entity or its branch or representative office.

The parties may agree to change the jurisdiction by concluding a special prorogation agreement (agreement on the choice of court to consider disputes, with the exception of cases pertaining to the exclusive jurisdiction of commercial courts).

3.2 CONSIDERATION OF CASES INVOLVING FOREIGN PARTIES

Russian commercial courts consider cases related to the performance of business and other economic activities involving foreign organisations, or individuals in the following cases:

- the defendant is located or resides in the Russian Federation or its assets are located there;

- the management body, branch, or representative office of the foreign entity is located in the Russian Federation[7];

- the dispute arose from a contract, which should be performed or was performed in the Russian Federation;

- an action or circumstance, which resulted in damages to property happened in Russia, or damages occurred in the Russian Federation;

- the dispute arose from unjust enrichment that took place in the Russian Federation;

- the plaintiff in a case on the protection of business reputation (goodwill) is registered in the Russian Federation;

[6] Clause 7 of Resolution of the Plenum of the Supreme Court of the Russian Federation No. 46 dated 23 December 2021 "On Application of the Code of Commercial Procedure of the Russian Federation when Examining Cases in the Court of First Instance".

[7] According to the position of the Supreme Court of the Russian Federation, the location of a representative office of a foreign entity in Russia may be deemed to be the permanent place of business of such an entity, regardless of whether or not it is formally registered or accredited as required by law (Clause 16 of Resolution of the Plenum of the Supreme Court of the Russian Federation No. 23 dated 27 June 2017 "On the Consideration by Commercial Courts of Cases on Economic Disputes Arising from Relations Complicated by a Foreign Element").

- the dispute arose from relations related to trading in securities that were issued in the Russian Federation;

- the applicant in a case on the establishment of a legally significant fact states that this fact happened in the Russian Federation;

- the dispute arose from relations related to the state registration of domain names in the Russian domain zone and other items and the provision of online services in the Russian Federation;

- in other instances if the disputed legal relations are closely linked with the Russian Federation.

In addition, the parties are entitled to conclude a prorogation agreement for the consideration of disputes by Russian commercial courts. However, the parties may not use the conclusion of such an agreement to amend the mandatory rules establishing the jurisdiction of cases.

The following cases involving foreign entities are assigned to the exclusive competence of Russian commercial courts:

- disputes in respect of state property of the Russian Federation, including disputes related to its privatisation or the expropriation of assets for state needs;

- disputes in respect of immovable property located in Russia[8];

- disputes related to the registration or issue of patents, the registration and issue of certificates for trademarks, industrial prototypes, utility models, or the registration of other intellectual property rights that require registration or the issue of a patent or certificate in the Russian Federation;

- disputes on the invalidation of entries in state registers made by the competent Russian state authorities;

- disputes related to the foundation, liquidation or registration in the Russian Federation of legal entities and individual entrepreneurs, and also challenges to the decisions of the bodies of these legal entities.

During the consideration of a case by a Russian state commercial court, foreign companies should pay close attention to such significant aspects as the choice of applicable law, the need to legalise foreign documents, the difference between standards of proof in Russia and in foreign jurisdictions, etc.

[8] See footnote 6.

The parties also need to take into account the sanctions laws. In June 2020, new provisions of the RF Code of Commercial Procedure (Articles 248.1 and 248.2) entered into force[9], which allow Russian legal entities affected by foreign sanctions to sue foreign counterparties in a Russian state court, notwithstanding a clause favourable to a foreign arbitration institution (or a foreign state court). Pursuant to Article 248.1 of the RF Code of Commercial Procedure Code, the exclusive competence of commercial courts in the Russian Federation includes the following cases:

1) in disputes involving persons subject to restrictive measures by a foreign state, state association and/or union and/or government (intergovernmental) institution of a foreign state or state association and/or union (hereinafter the "**Foreign Sanctions**");

2) in disputes between a Russian or foreign person and any other Russian or foreign person, provided that the grounds for such disputes are the Foreign Sanctions imposed against citizens of the Russian Federation and Russian legal entities.

The persons who are subject to the Foreign Sanctions include:

1) citizens of the Russian Federation, Russian legal entities which are subject to the Foreign Sanctions;

2) foreign legal entities that are subject to the Foreign Sanctions and the grounds for such measures are sanctions imposed by a foreign state, state association and/or union and/or government (intergovernmental) institution of a foreign state or state association and/or union against citizens of the Russian Federation and Russian legal entities.

The aforementioned persons are entitled to:

1) seek resolution of the dispute by a commercial court of constituent entity of the Russian Federation at its location or place of residence, provided that there is no dispute between the same persons, on the same subject matter and on the same grounds in a foreign court or international commercial court outside the territory of the Russian Federation;

2) file an application for an injunction prohibiting the initiation or continuation of the proceedings in a foreign court or international commercial court outside the territory of the Russian Federation.

If an arbitral award has already been issued, Article 248.1 of the RF Code of Commercial Procedure does not preclude the recognition and enforcement of a judgment of a

[9] Federal Law No. 173-FS of 8 June 2020.

foreign court or a foreign arbitral award issued in respect of a claim filed by a sanctioned Russian person. The same applies if the person has not objected to the dispute being heard by a foreign court or international commercial court located outside the Russian Federation, *inter alia*, if such person has not filed an application for an injunction prohibiting the initiation or continuation of the proceedings in a foreign court or international commercial court located outside the Russian Federation.

The Supreme Court of the Russian Federation has provided the following clarifications on the application of the aforementioned provisions:[10]

1) The goal of adopting the amendments to the RF Code of Commercial Procedure was to establish guarantees to protect the rights and legitimate interests of certain categories of Russian citizens and Russian legal entities subject to restrictions introduced by foreign states, as the restrictions de facto deprive them of the ability to protect their rights in the courts of foreign states, international organisations or arbitration tribunals located outside the Russian Federation.

2) The actual introduction per se of sanctions against a Russian party in a dispute in international commercial arbitration outside the Russian Federation serves as sufficient grounds for concluding that the Russian party's access to justice is limited.

3) A unilateral expression of will expressed in a procedural form is sufficient for the transfer of a dispute to the jurisdiction of Russian courts.

4) There is no mandatory need to prove the impact of sanctions on the enforceability of an arbitration clause. On the contrary, the wording of the law emphasises that proving this fact is optional.

5) The introduction by foreign states of restrictions (bans and personal sanctions) on Russian persons impairs their rights, at the very least from a reputational perspective, and thereby deliberately places them on an unequal status with other persons. In such circumstances, doubts that a dispute with a person located in a state that introduced restrictions will be considered on the territory of the foreign state that also introduced restrictions in compliance with the guarantees of a fair trial are entirely justified, *inter alia*, when it comes to the impartiality of the courts, which constitutes one of the components of access to justice.

6) Under this approach, there is no material infringement of the rights of the claimant (the foreign company) to legal protection, as the claimant can turn to a Russian state court for legal protection.

[10] Ruling No. 309-ES21-6955(1–3) of the Judicial Panel for Economic Disputes of the Supreme Court of the Russian Federation dated 9 December 2021 in case No. A60-36897/2020.

7) An anti-suit injunction is only a relevant and effective interim measure before judicial actions have been completed. Once they have been completed, injunctive relief is no longer enforceable, does not provide the applicant with legal protection, and as a result loses all meaning.

If such sanctions have been introduced against the respondent (Russian company), then the company should assess in advance the consequences related to the possible issue of an anti-suit injunction by a Russian state court further to the petition of the Russian company (the "**Petition**"). During the consideration of the Petition in a Russian court, the foreign company may participate in the court sessions and submit its objections. If the Petition is satisfied, the claim of the foreign company against the Russian respondent can be considered in a Russian state court, regardless of whether the respective contract contains an arbitration clause (or clause on contractual jurisdiction) in favour of a foreign forum.

3.3 TYPES OF STATEMENTS

Depending on the nature of the legal dispute, the plaintiff gains the right to file a claim in court in a specific procedural form:

- statement of claim – in economic disputes and other cases arising from civil-law relations;

- statement – in cases arising from administrative and other public legal relations, in cases of insolvency (bankruptcy), in cases of special proceedings (in cases on the establishment of legally significant facts), in cases related to the challenges of non-regulatory legal acts, the actions (inaction) of the state authorities, in cases of the review of court orders in the exercise of supervisory powers, and in other instances stipulated by the RF Code of Commercial Procedure;

- appeal – when filing with a commercial court of appeal and cassation, and also in other instances stipulated by the RF Code of Commercial Procedure and other laws.

3.4 COURT INSTANCES

The RF Code of Commercial Procedure also stipulates that cases may be considered in five instances:

- first instance – commercial courts of the constituent subjects;

- appellate instance – commercial courts of appeals;

- first cassation instance – district commercial courts;

- second cassation instance – the Judicial Panel for Economic Disputes of the Supreme

Court of the Russian Federation (the judge of the Supreme Court may decline to refer a case to this Panel);

- supervisory instance – the Presidium of the Supreme Court of the Russian Federation.

4. The Court on Intellectual Property Rights

The Court on Intellectual Property Rights began to operate in Russia on 3 July 2013.

The idea of creating a specialised court that would focus exclusively on intellectual property issues had been under discussion in the Russian legal community since the early 1990s, from the time when the law on patent attorneys was passed. One of the first draft laws in this area was developed back in 1994 (draft Federal Constitutional Law "On the Patent Court of the Russian Federation"). In 2010 the Russian State Duma of the Russian Federation introduced another draft law on a patent court; however, in the same period the Supreme Commercial Court of the Russian Federation submitted a draft law to the Duma on the Court on Intellectual Property Rights, which was subsequently passed.

The main argument in favour of the creation of a specialised court was the specificity of cases in disputes in the area of intellectual property: they are fairly complex as a whole, since an understanding of technology is required in addition to legal knowledge. It is difficult for commercial court judges, who as a rule handle disputes arising from contracts, corporate relations, etc., to switch to consideration of provisions on patentable inventions: innovation, the inventive step, and industrial applicability. Even the terminology of intellectual property law differs from the standard terminology of Russian civil law.

In connection with this fact, one of the main problems encountered by the judicial system during the creation of the Court on Intellectual Property Rights concerned the selection of qualified personnel – judges with both legal and technical education. As of today, only four of the eighteen judges on the Court on Intellectual Property Rights, have an additional technical education.

The Court on Intellectual Property Rights is part of the system of commercial courts as a "specialised" commercial court.

The Court on Intellectual Property Rights was created to consider a special category of disputes – disputes in the area of intellectual property. At the same time, it would be a mistake to assume that since the creation of the Court on Intellectual Property Rights all disputes involving intellectual property have been considered by this court.

The competence of the Court on Intellectual Property Rights includes the consideration of appeals against the decisions of Rospatent (the Russian patent agency) and the Chamber for Patent Disputes; in other words the Court on Intellectual Property Rights considers cases arising from administrative legal relations. Civil-law disputes related to the infringement of intellectual property rights continue to be considered by commercial courts[11]. At the same time, the cassation instance for such disputes is not the district commercial court, but instead the Court on Intellectual Property Rights. As a court of first instance, the Court on Intellectual Property Rights considers cases on challenges of the regulatory and non-regulatory acts of Rospatent and the breeding agency Gossortkomissiya (as regards selective breeding), and in certain cases the legal acts of the antitrust authority. For example, a petition may be filed with the Court on Intellectual Property Rights for the invalidation of an Administrative Regulation of Rospatent on the registration of inventions, or a petition for the invalidation of a specific decision of Rospatent which denied the petitioner registration of a particular technical solution as an invention.

The Court on Intellectual Property Rights also considers cases of disputes on reimbursement of damages caused by a regulatory legal act in the area of intellectual property or a non-regulatory legal act, the decision, and actions (inaction) of certain federal authorities and/or officials.

The decisions of the Court on Intellectual Property Rights are not subject to appeal.[12] Thus the decisions issued by the Court on Intellectual Property Rights in the first instance enter into force immediately from the time when they are handed down and may only be appealed through the cassation procedure with the Presidium of the Court on Intellectual Property Rights[13].

As a court of cassation, the Court on Intellectual Property Rights reviews cases that it considered in the first instance, and also cases on the protection of intellectual property rights considered by commercial courts of first instance and commercial courts of appeals. Among others, the latter include:

- cases regarding disputes on infringements of intellectual rights;
- cases on the right of prior use and posterior use;

[11] And also by courts of general jurisdiction if the dispute arose between individuals and is not related to business activities.

[12] This is one of the rare exceptions in the Russian judicial system where the decision of a court of first instance issued within the framework of claims proceedings is not subject to appeal.

[13] A similar procedure is stipulated for the rulings of the Court on Intellectual Property Rights, which may be appealed separately from the court order that completes the consideration of the case on its merits.

- cases regarding disputes arising from agreements on the alienation of exclusive rights and licensing agreements;

- cases on the imposition of administrative liability for the commission of certain administrative offences (Article 14.10, Parts 1–2 of Article 14.33 of the RF Code on Administrative Offences);

- cases on challenging the resolutions of administrative authorities on the imposition of liability for administrative offences under Parts 1–2 of Article 14.33 of the RF Code on Administrative Offences;

- cases appealing the decisions and/or directives of the antitrust authority on cases of violations stipulated by Clause 4 of Part 1 of Article 14 of the Federal Law "On the Protection of Competition".

The Court on Intellectual Property Rights performs a cassation review of cases considered by commercial courts using a panel of three judges. Cases considered by the Court on Intellectual Property Rights in the first instance are reviewed through the cassation procedure by the Presidium of the court.

5. Procedure for Considering Cases in Commercial Courts

There are three main forms of judicial proceedings in the commercial court process:

1. Claims proceedings;

2. Simplified proceedings;

3. Summary proceedings.

Claims proceedings are the general and most common form. Most commercial court cases are considered according to the rules of claims proceedings.

Simplified proceedings and summary proceedings are special, accelerated and simplified forms compared to the general claims form.

The main differences between the given forms of judicial proceedings are shown in the comparative table below[14].

[14] The table contains general information, without taking account of exceptions or special cases established by law into account.

	Claims proceedings	Simplified proceedings	Summary proceedings
Parties	Plaintiff and defendant. In cases arising from public law – applicant and interested party.	Plaintiff and defendant. In cases arising from public law – applicant and interested party.	Judgment creditor and debtor.
Categories of cases	Disputes related to the performance of business by legal entities and individual entrepreneurs (and, in the instances stipulated by the law, by other organisations and individuals).	1. Cases on claims for the collection of funds of not more than RUB 800,000 for defendants that are legal entities and not more than RUB 400,000 for defendants that are individual entrepreneurs (including principal debt, interest, penalties and other penalties). 2. Cases on claims, regardless of the value of the claim, which are based on documents establishing the monetary obligations that the defendant has acknowledged, but is not discharging, and/or on documents confirming debt under a contract (for example: direct acknowledgement of claims, acts of reconciliation signed by the parties, etc.). 3. Cases on claims, which are based on a notary's protest of a promissory note that has not been paid, not accepted and not dated for acceptance. 4. Cases on claims for the collection of mandatory payments in a total amount of up to RUB 200,000. 5. Certain cases arising from administrative and other public law relations, in which the amount disputed by the plaintiff does not exceed RUB 100,000. 6. Cases on challenging non-normative legal acts, decisions of the authorities exercising public powers, officials, if the issued act or decision provides for the recovery of funds, if the challenged amount does not exceed RUB 100,000.	1. Cases on claims for an amount of not more than RUB 500,000, which follow from the violation of a contract and are based on documents submitted by the creditor establishing monetary obligations that the debtor acknowledges, but is not discharging. 2. Cases on claims for an amount of not more than RUB 500,000, which are based on a notary's protest of a promissory note that has not been paid, not accepted and not dated for acceptance. 3. Cases on claims for the collection of mandatory payments and penalties in a total amount of not more than RUB 100,000.

Type of appeal	Statement of claim. In cases arising from public law – a statement.	Statement of claim. In cases arising from public law – a statement.	Motion for the issue of a court order.
Procedure for considering the case	Consideration of a case in claims proceedings consists of two stages: 1. Preparation of the case for court proceedings (preliminary court hearing); 2. Court proceedings in the case.	In simplified proceedings, the case is considered without summoning the parties and without conducting court proceedings only on the basis of the written statements of the parties.	The motion for the issue of a court order is considered only on the basis of the documents submitted by the creditor without summoning the parties and without conducting court proceedings.
Timeframe for considering the case	Six months.	Two months.	Ten days.
Court order	Judgment. A reasoned judgment is prepared by the court in any case.	Judgment. The court only issues the operative part of the judgment. A reasoned judgment is prepared by the court further to the petition of a party or in the event of the filing of an appeal.	Court order. The court order contains only a brief legal substantiation (indication of the applicable regulatory legal acts), without a detailed explanation of the reasoning.
Entry into legal force	As a general rule, the judgment enters into force on the expiry of one month from the date of preparation of the reasoned judgment, unless an appeal is filed. If an appeal is filed, the judgment, if it has not been overturned, enters into force from the date the appellate judgment is issued.	The judgment is immediately enforceable. The parties have the right to file an appeal against the judgment within 15 days from the date of its adoption, and if a reasoned judgment has been prepared, then from the date of preparation of the reasoned judgment. If an appeal is filed, the judgment, if it has not been overturned, enters into force from the date the appellate judgment is issued.	If the debtor does not submit an objection within ten days, the court order enters into force.
Writ of execution	A writ of execution is issued further to a petition of the parties.	A writ of execution is issued further to a petition of the parties.	The court order is an enforcement document. No separate writ of execution is issued.

Amendments to the RF Code of Commercial Procedure, the RF Civil Procedural Code, and Administrative Judicial Procedure Code came into force on 1 January 2022; these changes are aimed at governing remote participation in the judicial process.[15] At present, statements of claim, petitions, appeals, disclosures, and other documents may be filed with the court in electronic form via:

- the federal *Gosuslugi* [State Services] system, or
- another unified information system, as established by the Supreme Court of Russia, or
- the electronic document exchange systems of participants in the arbitration process, using the unified interagency electronic communications system.

Documents sent via the *Gosuslugi* system may be signed with a simple electronic signature. Exceptions are applications for granting interim measures and motions in arrest of judgment: these should be signed by an enhanced encrypted and certified digital signature.

1. Claimants that are legal entities must also indicate their taxpayer identification number (INN), while individuals must indicate one of several identifiers (individual insurance account number ("SNILS"), INN, or the series and number of their passport, driver's license, or vehicle registration certificate).

2. The claimant has the right to send other parties to the case a copy of the statement of claim with attachments through the *Gosuslugi* system instead of sending it by mail. The respondent has a similar right when sending his/her response to the claim.

3. Notices of process and acts of the court in electronic form are sent to participants of commercial arbitration proceedings using the *Gosuslugi* system. In order to receive notices via *Gosuslugi*, participants in the proceedings should give their consent using the same system.

4. If the commercial court has evidence of the receipt by parties to a case of rulings on the acceptance of a statement of claim for proceedings, the initiation of case proceedings and information on the time and place of the first court session, then court rulings that set the time and place of subsequent court sessions are sent to parties by posting these court rulings to the information system determined by the Supreme Court of Russia, in limited-access mode.

[15] Federal Law No. 440-FZ dated 30 December 2021 "On Amending Certain Legislative Acts of the Russian Federation".

The commercial courts also have the right to notify the given parties of subsequent sessions by sending information by email or using other means of communications.

5. A list of cases in which a notice is considered to have been received has been added to the RF Civil Procedural Code: (1) if it has been hand-delivered to the authorised official of a branch and representative office; (2) if it has been hand-delivered to the **representative** of a party to a case; (3) if there is proof of the delivery of the electronic court notice.

6. The procedural codes now foresee holding court sessions and receiving submissions in web conference format. A petition must be filed to participate in a web conference. The court issues a ruling on the party's participation in the session via web conference; this ruling indicates the time of the session. Information necessary to participate in the session is sent to the participants in advance.

7. The identity of the parties participating in a court session via web conference is to be established using a unified biometric system.

8. Web conference participants may file statements, motions, and other documents in electronic form.

9. The commercial court obtains signatures from witnesses, experts, and translators participating in the court session via web conference to attest that their rights and obligations have been explained to them and that they have been warned of their liability for violating them; these signatures are to be provided to the commercial court in the form of an electronic document signed with an enhanced encrypted and certified digital signature.

10. When a web conference system is used, minutes are taken and the court session is recorded on video. A physical copy of the video recording is to be attached to the minutes of the court session.

For the practical implementation of the new provisions, the Russian Supreme Court must establish requirements on the hardware and software to be used when organising web conferences. All amendments will apply contingent on whether the specific court has the necessary technical facilities.

6. Corporate Disputes

When making a decision concerning investments in Russia, foreign investors are interested first and foremost in protecting their investments; this is particularly true in corporate disputes. For a long time, Russian procedural legislation did not specifically address the resolution of corporate disputes, until the relevant amendments were introduced to the RF Code of Commercial Procedure in 2009. Reforms to the consideration of corporate disputes continue to this date; legislators are introducing certain amendments to factor in current dispute resolution practice.

Russian legislation classifies the following as corporate disputes:

- disputes related to the establishment, reorganisation, and liquidation of a legal entity;
- disputes related to the ownership of shares, participation interests in the charter capital, the establishment of encumbrances and the exercise of rights arising therefrom, including disputes resulting from sale and purchase agreements for shares and participation interests in the charter capital;
- disputes regarding the claims of the participants of a legal entity for the reimbursement of losses caused to the legal entity, and invalidation of the transactions concluded by the legal entity;
- disputes related to the appointment / election, termination or suspension of the authorities and liability of the management bodies of a legal entity, disputes arising from civil-law relations between the indicated persons and the legal entity in connection with the exercise, termination, or suspension of their authorities, and also disputes arising from the agreements of the participants of the legal entity regarding the management of this legal entity, including disputes arising from corporate contracts;
- disputes arising to the issue of securities;
- disputes resulting from the activity of holders of the register of owners of securities;
- disputes on the convocation of a general meeting of participants of a legal entity;
- disputes on appeals against the decisions of the management bodies of a legal entity;
- disputes arising from the activity of notaries on certifying transactions with participation interests in the charter capital of limited liability companies.

During the consideration of a corporate dispute the parties may demand the application of special interim relief, including:

- the attachment of shares or participation interests in the charter capital;
- ban on the conclusion by the defendant and other parties of transactions and the performance of other actions in respect of the shares or participation interests in the charter capital;
- ban on the adoption by the bodies of the legal entity of decisions or the participation of other actions in respect of the subject of the dispute;
- ban on the implementation of the decisions adopted by the bodies or participants of the legal entity, by the legal entity, and also other persons;
- ban on the holder of the register of securities owners and/or the depositary from making entries regarding the registration or transfer of rights to shares and other securities, and also from the performance of other actions in connection with the placement of and/or trading in securities.

The competent court for the consideration of corporate disputes is the commercial court at the location of the legal entity that is the subject of the dispute. The corporate disputes listed in Clauses 1–5 of Article 225.1 of the RF Code of Commercial Procedure are arbitrable, and they may be transferred to arbitration, however, there is no widespread practice in Russia of considering corporate disputes in arbitral tribunals.

7. Disputes arising from Public Law

7.1 GENERAL DISPUTE RESOLUTION PROCEDURE

During their business activities, companies by necessity end up interacting with the state authorities, for example during inspections. The actions of the state authorities are not always lawful. The Constitution of the Russian Federation enshrines the right to judicial protection, *inter alia* during interaction with the authorities.

In 2015 the Russian Federation passed the Code of Administrative Procedure was adopted in the Russian Federation. The code establishes a new procedure for considering cases arising from public legal relations in respect of the following categories of disputes:

- challenges of regulatory legal acts;
- challenges of regulatory legal acts;
- on challenging acts containing the clarifications of legislation and possessing regulatory properties;

- on challenges of the decisions and actions (inaction) of the state authorities;
- on challenges of the decisions, actions (inaction) of non-profit organisations vested with separate state or other public functions, including self-regulating organisations;
- on challenges of the decisions and actions (inaction) of judicial qualification boards;
- on the protection of electoral rights and the right to participate in a referendum of Russian citizens;
- on the award of compensation for the violation of the right to a trial within a reasonable period in cases to be considered by courts of general jurisdiction, or the right to the enforcement of a court order of a court of general jurisdiction within a reasonable period.

These cases are to be considered by magistrates (in cases on demands for the issuance of court orders and recovery of mandatory payments) and courts of general jurisdiction.

As a general rule, an administrative claim is filed with the court at the location of the state authority. In a certain category of cases, the administrative plaintiff has the right to file a claim in court at the location or place of residence of the plaintiff.

The Code of Administrative Procedure contains special rules for determining the periods during which an administrative plaintiff has the right to file a claim (from three months to several years), therefore in each specific instance the applicant should check carefully the specific deadline established for an appeal in the case.

7.2 DISPUTES ARISING FROM PUBLIC LAW RELATIONS IN BUSINESS

If the actions of the state authorities violate the rights of applicants in business, then such actions may be appealed with a commercial court and the case will be considered on the basis of the special provisions of the RF Code of Commercial Procedure.

The main differences in judicial proceedings in such cases are:

- a reduced three-month period for appeals against the actions of the state authorities;
- the applicant must prove that the decision of the state authority violated its rights in business;
- the burden of proof lies with the state authority to show the legality of its decisions;
- in certain categories of cases a reduced period for considering the case is established.

8. Representation in State Courts

Individuals and legal entities have the right to conduct their cases in Russian courts either in person or through representatives. Conducting a case in person does not deprive the party of the right to bring in representatives as well. Representation may be based directly on the express reference of the law (legal representation) or on the basis of a power of attorney.

Since 1 October 2019, only lawyers and other individuals with a higher legal education or a postgraduate law degree can be representatives in commercial courts and courts of general jurisdiction[16]. In district courts of general jurisdiction and magistrates any individuals with duly registered authority to conduct a case may be representatives in magistrates and courts of general jurisdiction.

As a general rule, the following may not be representatives in Russian courts: judges, commercial court assessors, investigators, prosecutors, the assistants of a judge and employees of the court administration, notaries and other individuals subject to similar restrictions by virtue of their position, with the exception of instances when they are representing interests as lawful representatives or the representatives of the corresponding authorities.

Russian legislation establishes a number of restrictions on foreign lawyers. Specifically they should be registered in the Register of Lawyers of Foreign States operating as lawyers in the Russian Federation.

8.1 REPRESENTATIVES ON THE BASIS OF LAW

Russian legislation stipulates the following instances of lawful representation in courts:

- incompetent or partially competent individuals may be represented by their parents, adopters, guardians or trustees;

- organisations may be represented in courts by their officials authorised to represent them in accordance with the law or the foundation documents of the organisation (for example, the general director or other chief executive officer of a joint stock company);

- an organisation in the process of liquidation is represented in court by the authorised representative of the liquidation commission;

[16] This requirement does not apply to prosecutors, patent attorneys, court-appointed administrators and persons acting as representatives in the bankruptcy proceedings (Clause 21 of Resolution No. 46 of the Plenum of the Supreme Court of the Russian Federation dated 23 December 2021 “On Application of the Code of Commercial Procedure of the Russian Federation when Considering Cases in Courts of First Instance”).

- an individual duly declared as missing, whereabouts unknown, may be represented in court by the trustee of the missing person's estate.

8.2 REPRESENTATIVES ON THE BASIS OF A POWER OF ATTORNEY

The powers of representatives to conduct cases in courts that are not based on an express reference of law should be registered in the form of a procedural power of attorney.

Russian legislation establishes a number of requirements on the drafting of powers of attorney to represent the interests of clients in court.

A power of attorney in the name of an organisation must be signed by its director or other individual authorised by the foundation documents, and affixed with the seal of the organisation (if available). In addition, the courts also demand the submission of the relevant evidence supporting the powers of the signatory of the power of attorney (charter, excerpt from the Unified State Register of Legal Entities, decision on the appointment of the director, an excerpt from the trade register in respect of a foreign organisation, affixed with an apostille, obtained as a rule not more than thirty days before the plaintiff applies to the commercial court).

A power of attorney issued by a foreign organisation does not require mandatory certification in the form of a consular legalisation or the insertion of an apostille, if it does not contain the notes of the authorities of a foreign state.

A power of attorney drafted in whole or in part in a foreign language should be accompanied by a notarised translation into Russian.

A power of attorney on behalf of an individual entrepreneur may be signed by the individual entrepreneur and affixed with their seal, or notarised.

A power of attorney on behalf of an individual may be notarised or certified by other means established by law.

The powers of the lawyer to conduct a case in court are certified by an order of assignment or a power of attorney.

The right to exercise the following special powers should be explicitly granted in the power of attorney:

- to sign the statement of claim and the response to a statement of claim, and application for interim relief;

- to transfer the case to arbitration;

- for waive in full or in part statements of claim and acknowledge a claim;
- to change the grounds or subject of a claim;
- to conclude an amicable agreement or agreement based on the actual facts;
- to transfer their authorities as representative to another person (assignment);
- to sign an application for the review of a court order owing to new or newly disclosed circumstances;
- to appeal against the court order of a commercial court;
- to receive monetary awards or awards of other property.

Otherwise, the representative will not be considered authorised to perform the indicated actions.

9. Evidence in State Courts

Each party is required to prove the facts that it cites as substantiation of its claims or objections. This is the general rule for distributing the burden of proof in Russian courts. The following exceptions are possible to this general rule:

- in disputes arising from public-law relations, the burden of proof of the lawfulness of acts, decisions, and actions lies with the state authorities;
- in tort disputes a tortfeasor must prove the absence of guilt, etc.

In certain cases the parties in the proceedings may also be relieved of the burden of proof:

- in the absence of a dispute between the parties regarding specific circumstances;
- if there is a prejudicial court order that previously established specific circumstances;
- when providing proof of circumstances confirmed by the notary when carrying out a notarial act;
- if there are generally known circumstances.

Types of Evidence

The parties may cite the following types of evidence in the case:

- written evidence;
- material evidence;
- witness testimony;
- expert opinion;
- oral statements by specialists;
- clarifications by the parties;
- other evidence.

Written evidence plays a key role in the resolution of commercial disputes. Such evidence is submitted in the original or as a duly certified copy. If only part of a document relates to the case under consideration, then a certified excerpt from it is submitted. If a copy is submitted, the courts usually ask to see the corresponding originals, to be studied in the court hearing.

Written evidence that is partially or entirely in a foreign language should be accompanied by a duly certified translation into Russian. Foreign official documents are recognised in commercial courts as written evidence if they are duly legalised, or without legalisation in the instances stipulated by international treaties. One such international treaty is the Hague Convention of 5 October 1961, which abolished the need to legalise foreign official documents. Instead of the complex process of legalisation, an apostille in simplified form is affixed to a document issued in a signatory country.

10. Mandatory Pre-Trial Dispute Settlement in Commercial Cases

In certain civil-law disputes (claims on payments arising from contracts, other transactions or as a result of unjust enrichment), the claims may only be referred to courts for consideration after the parties have taken measures for pre-court settlement (by default, on the expiry of 30 calendar days from the date when the letter with the demand for payment is sent). The law or a contract may stipulate other deadlines and/or procedure for such settlement.

If measures have not been taken for pre-court settlement of a dispute on the recovery of funds, the statement of claim may be set aside, returned, or dismissed without prejudice (however, this will not prevent the repeat filing of the claim after the given measures have been taken).

The law may stipulate for mandatory pre-court mediation to resolve economic disputes arising from administrative and other public legal relations (for example, in the event of a challenge of the non-regulatory acts of the tax authorities, or the actions or inaction of their officials).

The following categories of disputes do not require compliance with the pre-court settlement procedure:

- insolvency (bankruptcy) cases;
- corporate disputes;
- establishment of legally significant facts;
- any cases related to cooperation and monitoring in respect of arbitration tribunals on the part of commercial courts;
- awards of compensation for violation of the right to a trial (right to enforcement of a court order) within a reasonable period;
- cases on the protection of the rights and lawful interests of a group of persons;
- cases of summary proceedings;
- cases on the recognition and enforcement of foreign court judgments and foreign arbitral awards;
- cases filed in a commercial court by the public prosecutor, the state authorities, local government authorities, or other authorities in defence of the public interest and the rights and lawful interests of organisations and citizens in the field of business and other economic activity (the law may provide otherwise).

Letters of claim are sent pursuant to the procedure stipulated by the contract (or the law), to the address of the recipient indicated in the Unified State Register of Legal Entities and in the contract.

11. Security of Claims

The consideration of a commercial dispute may take a considerable amount of time, especially if the court has to study and assess a large quantity of evidence in the case. It is not uncommon for unethical defendants to use this time to siphon off disputed assets. After the entry into force of the court order, its enforcement becomes complicated for the plaintiff, and sometimes impossible. In order to protect the interests of the creditors, Russian procedural legislation stipulates the possibility of security for statements of claim.

The following may be considered as interim measures:

- attachment of the funds and assets of the debtor;
- ban on carrying out certain acts;
- ban on the disposal of the subject of the dispute;
- transfer of the subject of the dispute to a third party for safekeeping;
- injunction against certain actions (for example, the sale of assets).

Interim measures are applied by the court further to the petition of the applicant if the following preconditions are met:

- if the failure to adopt interim measures might render enforcement of the court order difficult or impossible;
- if the failure to adopt interim measures will cause significant harm to the petitioner.

The petition for interim measures may be submitted at any stage of the judicial process, including before the submission of the claim itself (preliminary interim measures).

When considering the petition, the court may propose that the petitioner provide counter-security for the possible losses of the other party. The counter-security should amount to at least half of the possible damages sought by the plaintiff, and may be provided by depositing funds with the court, issuing a bank guarantee, or other financial security.

12. Court Costs

12.1 WHAT DO COURT COSTS INCLUDE?

The following expenses of the parties on the case are classified as court costs:

- state duty;
- expenses on translating and legalising foreign official documents;
- expenses on securing evidence;
- expenses on arranging a power of attorney if one is issued to participate in a specific case;
- expenses on complying with the mandatory pre-court dispute settlement procedure;
- transport costs;
- expenses on paying for court expert reviews;
- expenses on paying for legal services to represent the party's interests in court.

This list is not exhaustive, and therefore other costs incurred by the party related to the consideration of the case may be declared as court costs.

Expenses on settling the dispute out of court (appeal to a superior authority, mediation) are not classified as court costs; however, expenses incurred to comply with the mandatory pre-court procedure stipulated by law or contract are considered to be court costs and are to be reimbursed by the party against which the final award is made in the case.

12.2 STATE DUTY

When filing with a commercial court or court of general jurisdiction, the applicant must pay a state (court) duty. The procedure for the calculation and the procedure for and specifics of the payment of state duty are established by the Tax Code of the Russian Federation.

The amount of state duty is calculated depending on the nature of the stated claim.

When a claim is submitted related to property, the amount of state duty depends on the value of the claim, whereby the amount of state duty on the single claim may not exceed RUB 200,000.00 when the case is considered in a commercial court, or RUB 60,000.00 when the case is considered in a court of general jurisdiction.

If the claim is not property-related, the amount of state duty is determined by the RF Tax Code depending on the category of the dispute. Specifically, if a legal entity files a non-property claim with a commercial court or a court of general jurisdiction, the state duty will be RUB 6,000.00.

The RF Tax Code establishes a special fixed amount of duty for certain categories of cases.

On-line services can be used to perform a preliminary calculation of the amount of state duty: the My Arbitr service offers a calculator[17], as does the Garant.ru legal information portal[18] and there is also a service on the website of the Supreme Court of the Russian Federation[19].

At the request of the applicant, the commercial court may grant a deferral or allow payment of state duty in instalments pending the completion of consideration of the case, but not more than one year.

12.3 REIMBURSEMENT OF COURT COSTS

Russian legislation guarantees that the expenses of parties in judicial proceedings will be reimbursed in the event of victory (in practice, however, court costs are not reimbursed in full). This makes it possible to compensate the party for the costs incurred while using judicial protection for its interests, and prevents bad-faith plaintiffs from abusing the right to litigate.

12.4 AMOUNT OF THE REIMBURSEMENT

As a rule, court costs are to be reimbursed in full, except for expenses on paying for the services of a representative (attorney).

Nonetheless, the court has the right to reduce the amount of court costs if the amount requested is clearly unreasonable. An example of unreasonable expenses might be the receipt of services classified as luxuries, for example: flying company managers business-class to take part in a court hearing, accommodation in an expensive hotel, etc. Expenses on paying the services of a representative are to be reimbursed within reasonable bounds. In each specific instance the court makes independently determines the reasonability of expenses, using the following criteria: scope of the stated demands, the value of the claim, complexity of the case, the scope of services rendered, duration of the consideration of the case, etc.

[17] https://my.arbitr.ru/#commission

[18] http://www.garant.ru/tools/calculator/gosposhlina/

[19] https://vsrf.ru/lk/calculator/list

12.5 REIMBURSEMENT PROCEDURE

Court costs are recovered from the party that was the losing party in the court proceedings, and also from non-party interveners if they exercised their right to appeal against the court order after this appeal has been dismissed. In so doing, court costs may be recovered not only in favour of a party to the case, but also in favour of a third party participating on the side of the winning party.

A party may submit an application to the commercial court of first instance and court of general jurisdiction for the recovery of court costs within six months from the date of the entry into lawful force of the court order that resolved the dispute on its merits.

Court costs are reimbursable only on the resolution of material law disputes. For this reason costs arising during the consideration of cases on invalidating lost documents, cases on the establishment of legally significant facts, on adoption, on the declaration of missing persons, and so on are not reimbursable.

13. Arbitration Proceedings

An economic dispute can be resolved not only through the state courts. Frequently, proceedings in an arbitration tribunal (arbitration) are an alternative.

Arbitration institutions are private and are established at non-commercial organizations (for example, at chambers of commerce and industry). In Russia the best known and most popular are the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at the RF CCI), the Russian Arbitration Centre, and also foreign institutions: the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC).

Proceedings in arbitration tribunals in Russia are governed by:

- the Law "On International Commercial Arbitration"[20];
- the Law "On Arbitration (Arbitration Proceedings) in the Russian Federation"[21] and also other acts.

First and foremost, these laws determine the grounds, terms and conditions for creating institutional arbitration institutions, their organisational structure, and competence.

[20] Federal Law No. 5338-1 dated 7 July 1993 "On International Commercial Arbitration".

[21] Federal Law No. 382 dated 1 September 2016 "On Arbitration (Arbitration Proceedings) in the Russian Federation".

Unlike the RF Civil Procedural Code and the RF Code of Commercial Procedure, these laws do not establish strict, and mandatory rules for proceedings. On the contrary, such rules may be established by the parties and arbitration tribunals independently. Such rules are frequently more flexible and geared towards a rapid and effective consideration of the case.

13.1 REFORM OF LEGISLATION ON ARBITRATION TRIBUNALS

In 2015 – 2017 arbitration reforms aimed at ruling out the use of arbitration for bad faith purposes, reducing the number of arbitration institutions (there were more than 2,500) and bringing their practice into line with the most recent achievements of leading international arbitration centres. As a result of the reforms, the following institutions were granted the status of permanent arbitration institutions and the ability to administer proceedings:

- the ICAC at the RF CCI, and the Maritime Arbitration Commission (MAC) at the RF CCI;
- the Arbitration Center under the "Russian Public Organization Russian Union of Industrialists and Entrepreneurs";
- the National Centre for Sports Arbitration at the Autonomous Non-Profit Organisation "Chamber of Sports Arbitration";
- the Russian Arbitration Center at the autonomous non-profit organisation "Russian Institute of Modern Arbitration";
- the Arbitration Centre at the Autonomous Non-Profit Organisation "National Institute for the Development of Arbitration in the Fuel and Energy Sector";
- the Arbitration Institution at the Russian National Industrial Association of Employers "Union of Machine Builders of Russia";
- the Hong Kong International Arbitration Center (HKIAC);
- the International Court of Arbitration of the International Chamber of Commerce (the ICC International Court);
- the Singapore International Arbitration Centre (SIAC);
- the Vienna International Arbitration Center (VIAC).

13.2 ICAC AT THE RF CCI AS AN EXAMPLE OF A RUSSIAN ARBITRATION INSTITUTION

The oldest Russian Arbitration Institution is the ICAC at the RF CCI, which is also of interest to German investors. In 2021 860 cases were heard at the ICAC at the RF CCI, of which 189 were international cases. In 83 instances European companies were parties in the case.

In addition to international commercial disputes, international economic disputes and also corporate disputes may be considered at the International Commercial Arbitration Court[22].

13.3 PROCEDURE FOR CONSIDERING CASES IN ARBITRATION TRIBUNALS

There are considerable differences between dispute resolution in state courts and arbitration tribunal. The parties have far more influence on the process in arbitration tribunals. In particular, they can independently select the arbitrators. Proceedings in arbitration tribunals are confidential, in other words, the proceedings are closed and the awards are not published without the consent of the parties. Finally, usually arbitration tribunal proceedings are quick and effective, as the general rule is that the case is considered in only one instance. The arbitration award is final and binding for the parties.

13.4 ARBITRATION CLAUSE

The selection of the competent arbitration tribunal for the consideration of the dispute is based on a special agreement, which may be concluded by the parties in the form of a separate agreement or as an arbitration clause in the agreement.

14. Enforcement Proceedings

For a plaintiff, it is important not only to win in court, but also to enforce the court's decision once it enters into force. In Russia, enforcement of court orders is the responsibility of the Federal Court Bailiffs Service, while the procedure for enforcement proceedings is governed by the Law on Enforcement Proceedings. Information on the current status of enforcement proceedings is published on the official website of the Federal Court Bailiffs Service.[23]

The court order may also be enforced by contacting the bank of the debtor directly.

[22] http://mkas.tpprf.ru/de/

[23] http://fssprus.ru

14.1 ENFORCEMENT DOCUMENTS

Enforcement proceedings are instituted on the basis of a special enforcement document. Enforcement documents include:

- writs of execution;
- court orders;
- notary's enforcement notice;
- notarised agreement on the payment of alimony;
- certificate issued by a commission on labour disputes;
- other acts of the state authorities issued within their competence.

14.2 INITIATION OF ENFORCEMENT PROCEEDINGS

Enforcement proceedings are initiated by the court bailiff on the basis of a request from the judgement creditor and the original of the enforcement document. The application may indicate information on the debtor, its property status and other information that may assist with the enforcement. At the same time as the application to institute enforcement proceedings, the creditor may submit a petition for the application of interim measures of enforcement.

14.3 DEADLINES IN ENFORCEMENT PROCEEDINGS

As a general rule, the enforcement document may be submitted for enforcement within three years from the date of entry into force of the court order.

Shorter periods are established for certain types of enforcement documents. For example, a labour commission certificate may only be submitted for enforcement within three months from the date of issue of the certificate. Acts on cases of administrative offences must be executed within two years from the date of entry into force thereof.

A deadline for submitting a writ of execution or court order for execution that is missed for a valid reason may be restored by the court.

14.4 ENFORCEMENT ACTIONS

Within the framework of enforcement proceedings, court bailiffs have broad powers allowing them to ensure the execution of the court order, *inter alia*:

- to request the necessary information and documents, to examine residential and non-residential premises;

- to conduct asset searches; attach assets, to confiscate and transfer assets for storage;

- to establish temporary restrictions on the debtor from leaving the Russian Federation;

- to carry out levy of execution on the assets and property rights of the debtor;

- to demand that the debtor perform non-property claims.

14.5 COMPLETION OF ENFORCEMENT PROCEEDINGS

As a general rule, enforcement proceedings should be completed when the claims under the enforcement document have been executed in full.

The Law on Enforcement Proceedings also stipulates other instances when the enforcement proceedings should be terminated:

- the return of the enforcement document to the judgement creditor (for example: further to the petition of the creditor; when the location of the debtor cannot be established; if the debtor has no assets; if the actions of the creditor prevent enforcement, etc.);

- the return of the enforcement document by order of the court, other authority, or official issuing the enforcement document;

- liquidation of the debtor organisation;

- opening of receivership in respect of the debtor's assets;

- the sending of copies of the enforcement document to the organisation to withhold regular payments established by the enforcement document;

- expiry of the period of limitations for the execution of the court order, act of another authority or official in a case on an administrative offence.

14.6 ENFORCEMENT OF FOREIGN COURT JUDGMENTS

Foreign court judgments must be recognised by a Russian court before they can be enforced in Russia. In foreign judgments on economic disputes, recognition and enforcement is carried out by the commercial court further to the application of the party. Recognition and enforcement is performed provided that there is a respective international treaty or in certain instances subject to the application of the principles of international comity and reciprocity.

Unfortunately, the enforcement of the judgments of the state courts (for example, judgments of German courts) is fairly difficult. Due to the absence of an international treaty, judgments are recognised based on national procedural law. In Germany, Clause 1 § 328 of the Code of Civil Procedure requires, *inter alia*, the safeguarding of reciprocity, the existence of which is primarily refuted by the courts, which rules out the enforcement of the decisions of Russian courts in Germany. Due to this fact, the enforcement of German court judgments in Russia on a number of categories of disputes is also ruled out.

Russian courts may recognise and enforce foreign judgments based on the principle of reciprocity. To do so, the applicant must not only provide the court with references to Russian and foreign procedural law, but also refer to the positive judicial practice in that foreign state that demonstrates that the judgments of Russian courts are recognized in that foreign state. The principle of reciprocity in recognizing court judgments is provided for in Russian law, namely in the bankruptcy laws (Clause 6 of Article 1 of the RF Law on Bankruptcy); in other branches of the law it can also be found in law enforcement practice.[24]

Some areas of law (e.g., transport law) are an exception, where special rules apply.

In the absence of an international treaty between states, in a number of cases the enforcement of a foreign judgment is complicated significantly. One solution is to agree on the jurisdiction of an arbitration tribunal.

14.7 ENFORCEMENT OF INTERNATIONAL ARBITRAL AWARDS

Enforcement of international arbitral awards in Russia is contingent on the initial completion of the recognition procedure. Commercial courts usually also have jurisdiction over the recognition of arbitral awards.

However, foreign arbitral awards are recognised and enforced based on different rules than those used for the recognition of the decisions of state courts. The 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards forbids substantive control (review of cases on their merits). Recognition can only be denied in strictly limited cases[25].

[24] There is both positive judicial practice in Russian law on the application of the reciprocity principle when recognizing and enforcing judgments of foreign courts (e.g., Ruling of the Ninth Commercial Court of Appeals dated 24 September 2020 in case No. A40-308642/2018; Ruling of the Commercial Court of the North-Western District dated 4 December 2018 and 10 December 2018 in case No. A56-71378/2015; Ruling of the Commercial Court of the North-Western District dated 6 May 2019; Ruling of the Commercial Court of the Moscow District dated 19 June 2019 in case No. A40-68312/2018) and negative judicial practice (e.g., Ruling of the Commercial Court of the Moscow District dated 1 April 2019 in case No. A40-188140/2018; Ruling of the First Cassation Court dated 21 January 2021 in case No. 8G-27788/2020; Ruling of the Fifth General Court of Appeals dated 14 April 2021 in case No. 66-343/2021).

[25] For example, see: Ruling of the Commercial Court of the North-Western District dated 29 April 2021 in case No. A56-131886/2019; Ruling of the Commercial Court of the East Siberian District dated 14 April 2021 in case No. A33-34534/2019; Ruling of the Judicial Panel for Civil Cases of the Supreme Court of the Russian Federation dated 3 September 2019 No. 44-KG19-11.

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