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DISPUTE RESOLUTION

Litigation and enforcement in Russian Federation: overview

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MAIN DISPUTE RESOLUTION METHODS

1. What are the main dispute resolution methods used in your jurisdiction to resolve large commercial disputes?

The vast majority of large commercial disputes in Russia are resolved through litigation in the state commercial (*arbitrazh*) courts, which are headed by the Supreme Court of the Russian Federation. The system is adversarial, that is, each party must provide evidence to prove its case, subject to a few exceptions. The procedure in the state commercial courts is governed by the Commercial (*Arbitrazh*) Procedure Code of the Russian Federation (CPC). Parties cannot vary the procedure, which is controlled by the court.

There is no common standard of proof for a claim to succeed. The notion of standard of proof itself is not widely used within the Russian legal system. The court's decision is made based on the evaluation of evidence and on the judge's belief (*CPC*).

Arbitration and mediation are less popular, mostly due to the fact that state courts are cheaper, faster and provide means to enforce their decisions. See *Questions 30* to *34* for details on alternative dispute resolution methods, including arbitration and mediation.

COURT LITIGATION

Limitation periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

General limitation period

The general limitation period, which applies to most contractual, tort, corporate, land and other disputes, is three years (*Civil Code of the Russian Federation*). Usually, the period runs from the day a person becomes aware, or should have become aware, of a violation of his rights. The Supreme Court of the Russian Federation recently added that the term does not start until the person becomes aware, or should have become aware, of the identity of the defendant (because it is impossible to file a claim against an unidentified defendant).

Claims are also subject to an absolute limitation period of ten years from the date of the violation.

Additionally, certain actions are not subject to limitation periods, such as negatory actions (that is, actions available to owners to prohibit violations of their right to use and dispose of property in their possession).

Special limitation periods

Special limitation periods apply in certain cases, including:

- **Null and void transactions.** The limitation period for a claim to enforce the consequences of the invalidity of a transaction deemed null and void (and for declaring the transaction null and void) is three years. The period starts either:
  - when the performance of the transaction commenced; or
  - if the claimant is not a party to the transaction, from the day when he becomes aware, or should have become aware, of the commencement of the performance.
- **Voidable transactions.** The limitation period for a claim to have a voidable transaction declared invalid, and the consequences of the invalidity applied, is one year. The period runs from the day:
  - of termination of the violence or duress under the influence of which the transaction was concluded; or
  - when the claimant becomes aware, or should have become aware, of other circumstances that are a ground for declaring the transaction invalid.
- **Decisions of shareholders' meetings.** The limitation period for challenging a decision of a shareholders' meeting is:
  - two months, for limited liability companies; and
  - three months, for joint stock companies.

For a detailed table of limitation periods, see *Limitation periods in the Russian Federation*.

The court enforces limitation periods on a special request of the defendant.

Court structure

3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

General overview of the judicial system

The judiciary is composed of the three following branches:

- Constitutional courts.
- Courts of general jurisdiction.
- State commercial (*arbitrazh*) courts.

Commercial law issues can become a constitutional matter when a statute relating to the rights of entrepreneurs contradicts the Constitution of Russia or the constitutions/charters of its constituent entities (regions). There are constitutional courts at the regional level, and the Constitutional Court of the Russian Federation at the federal level.

Generally, courts of general jurisdiction resolve disputes involving commercial companies when the other party to the dispute is a natural person (for example, a consumer under the Consumer Protection Act). However, under recent amendments, these courts also consider certain categories of disputes involving state authorities (for example, challenges to the cadastral value of land, which is a basis for calculating land tax). This branch is headed by the Supreme Court of the Russian Federation (SCRF).

Most commercial disputes are resolved by the state commercial (*arbitrazh*) courts, which are specifically designed to deal with all commercial disputes. Since the dissolution of the Supreme Commercial Court of the Russian Federation in 2014, state commercial courts are now also headed by the SCRF. A special panel of judges of the SCRF deals with cassation appeals against decisions of lower courts in commercial disputes.

State commercial (*arbitrazh*) courts

Most disputes resolved in the state commercial courts must comply with the following strict hierarchy of instances:

- **Courts of first instance.** There are more than 80 state commercial courts of first instance at the regional level. A court of first instance fully examines the case and its merits and issues its decision, which generally enters into force one month after the date of issue, provided that no appeal is brought.
- **Courts of appeal.** There are 21 state commercial courts of appeal. Courts of appeal usually assess whether courts of first instance correctly applied the law, but can assess the merits of certain specific cases. A decision on appeal enters into force after it is issued.
- **Cassation courts.** There are ten state cassation courts. They do not deal with the merits of a case, but only assess whether the law (substantial and procedural) was correctly applied by the lower courts.
- **Economic Disputes Panel of the SCRF (second cassation).** Three judges of the Economic Disputes Panel of the SCRF can consider a commercial case on authorisation of a judge of the SCRF. Only serious legal mistakes are usually reviewed on second cassation.
- **The Presidium of the SCRF.** In theory, the Presidium's role is to consider cases of major importance and to harmonise the practice of courts of lower instances. Matters are submitted to the Presidium in exceptional cases. However, in practice, the Presidium does not play a significant role in economic disputes.

An appeal can only be submitted to a higher court after having been considered by the lower court.

A special state commercial court, the Court for Intellectual Property Rights, resolves IP disputes.

The state commercial courts may have internal subdivisions based on the specialisation of judges. For example, courts have panels for contractual disputes, bankruptcy cases, administrative (public) cases and so on. The applicant does not choose the panel or the judge, but cases are usually allocated to the judge from the relevant panel.

The answers to the following questions relate to procedures that apply in the state commercial (*arbitrazh*) courts.

Rights of audience

4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

Rights of audience/requirements

As of June 2016, any person can represent his own interests or the interests of a company (such as its chief executive officer or any other person under a power of attorney) in court proceedings, including court hearings. No legal education is required. However, the legislator is currently considering a bill introducing an "advocates' monopoly" for representation in state commercial courts.

Foreign lawyers

There are no restrictions on the participation of foreign lawyers in proceedings/hearings in the state commercial courts. For example, many citizens of the former Soviet Union with knowledge of the Russian language represent the interests of companies in commercial proceedings. However, lawyers without a good knowledge of Russian do not usually participate in the hearings.

FEES AND FUNDING

5. What legal fee structures can be used? Are fees fixed by law?

Legal fees are generally not fixed by law. All types of legal fees are used in practice, including:

- Hourly rates.
- Fixed fees.
- Lump sum fees.
- Conditional fees.
- Contingency fees.

However, contingency fees are not always recognised by courts, and judicial practice on this matter remains unclear.

Legal fees can usually be recovered from the losing party. However, the courts have broad powers to reduce the amount of recoverable fees, especially in the case of contingency fees.

6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

Funding

To submit a statement of claim, the claimant must pay the applicable state fee (up to about EUR2,500). There are special rules for other types of expenses, although the party that is interested in a procedural action must generally pay for it (for example, preparation of experts' evaluation/report).

Reasonable and documented expenses can usually be recovered from the losing party (*see Question 22*).

Insurance

Insurance for litigation costs is not customary in Russia, although there is no prohibition on concluding an insurance contract of this type.

COURT PROCEEDINGS

Confidentiality

7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

Generally, court proceedings in state commercial courts are public. The rulings of the courts are published in a special electronic system (*www.kad.arbitr.ru*) shortly after their issuance.

Confidential proceedings take place when:

- State secrets are likely to be disclosed.
- One of the parties requests confidential proceedings in order to preserve information that is protected by the law (such as commercial secrets, state secrets and so on), provided that the court accepts this request.

Pre-action conduct

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

From June 2016, the law requires claimants in most commercial disputes to first send an official letter of complaint/reclamation to the other party, and wait for an answer for a specified period of time. The answer must be given within 30 days, unless otherwise specified in a contract between the parties.

A contract can also provide for other types of pre-trial measures (such as mediation).

A court will not consider a statement of claim if the applicable pre-trial measures were not complied with.

Main stages

9. What are the main stages of typical court proceedings?

Starting proceedings

A statement of claim can be submitted either in paper form (by post or by bringing it to the chancellery of the court) or in electronic form (via the official system: *www.my.arbitr.ru*). The applicable state fee must be paid, and confirmation of payment must be enclosed with the set of documents. Documented evidence (copies) must also be attached to the statement of claim. Other formal requirements must also be met (for example, receipt of posting a copy of the claim to the opponent).

If the statement of claim has formal procedural defects (for example, there is no confirmation of payment of the state fee), the court will:

- Issue a ruling on the shelving of the statement of claim.
- Give the party an additional period of time to rectify the defects (usually up to one month).

If all formal requirements are met, the court will issue a ruling accepting the claim and start the preparation for the main hearings. Preparation for the main hearings includes preliminary court hearings. The court will issue and publish a ruling setting the date, time and place of these hearings, and send a copy of this ruling to the parties.

Although there are statutory time limits for each of the stages mentioned above (for example, the court must examine the statement of claim and accept it, if complete, within five working days), the courts are not bound by them. In practice, the courts do not comply with these time limits due to an extremely high workload. However, the appointment of the first session of hearings usually occurs within two to three weeks from the date of submission of the statement of claim.

Notice to the defendant and defence

The claimant must notify the defendant of the claim by sending him a copy of the statement of claim and its attachments. The official documents confirming posting to the defendant must be attached to the set of documents submitted to the court with the claim.

The court will not progress the case unless it receives due confirmation of receipt by the defendant.

The statement of defence must be provided to the claimant and to the court before the preliminary hearings. The duty to send the statement of defence, and the time limit to provide it, are specified in the ruling of the court accepting the statement of claim and setting the date of the hearings.

In practice, there is no liability for failure to submit a statement of defence, although the law states that judicial costs may then be allocated to the defendant regardless of the results of the proceedings. Failure to file a statement of defence does not generally affect the court's capacity to proceed with the case if the defendant was duly notified of the claim.

Subsequent stages

Preliminary hearings can be followed by the main hearing on the same day if the following conditions are met:

- The parties are duly informed of the claim.
- Neither party objected to the consideration of the case in their absence (if any of the parties is absent).
- The court decides to proceed with the main hearing.

If the conditions above are not met, the case preparation is deemed complete after the preliminary hearings, and the court sets the date of the main hearings.

There is no clear distinction between the disclosure stage and the trial. Although parties are expected to disclose evidence during the preliminary hearings, it is common in practice to provide additional evidence during the main court hearings. There is no cross-examination of witnesses during pre-trial proceedings.

INTERIM REMEDIES

10. What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?

Generally, summary judgments are not issued by state commercial courts under the Commercial (*Arbitrazh*) Procedure Code. In most cases, a party cannot apply for the claim to be struck out. For example, even if the defendant invokes the expiration of a limitation period, the court will consider the case (but finally reject the claim).

However, there are a number of circumstances in which a case must be terminated/struck out, for example when:

- The case cannot be considered by a state commercial court (for example, the parties agreed that the case must be considered by an arbitration tribunal and the defendant invoked the relevant agreement).

- A ruling of a commercial court, a court of general jurisdiction, a competent foreign court or an arbitration tribunal was delivered in a dispute between the same persons, on the same subject matter and based on the same grounds. This does not apply where the state commercial court refuses to recognise and enforce the judgment of a foreign court, or to issue a writ of execution for the enforcement of an arbitral award.
- An organisation that is party to the case was liquidated.

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

Generally, the defendant cannot apply for an order for the claimant to provide security for its judicial expenses.

12. What are the rules concerning interim injunctions granted before a full trial?

Availability and grounds

There are no interim judicial decisions in Russia. The court delivers its opinion in its final decision only.

Interim injunctions (mandatory and prohibitory) and interim attachment orders (*see Question 13*) correspond to the category of "provisional measures" under the Commercial Procedure Code (CPC). When deciding on the issue of a provisional measure, the court cannot analyse the subject matter of the dispute or, for example, whether any of the parties has any rights to the disputable property, but can only aim at preserving the *status quo*.

The answer to this Question provides information on provisional measures, unless expressly indicated otherwise.

Provisional measures can be ordered in the following circumstances (*Article 90(2), CPC*):

- If failure to take such measures may impede or make the enforcement of a judicial act impossible (including where the enforcement of a judicial act is to take place outside the territory of the Russian Federation).
- For preventing substantial harm to the claimant.

The grounds for ordering provisional measures are therefore vague and broad. The adoption of these measures depends on the type of dispute and the specific circumstances of the case.

The following provisional measures can be ordered (*Article 91(1), CPC*):

- Arrest (freezing) of money and/or other property of the defendant (similar to an interim attachment order).
- Prohibition on the defendant or other persons to perform certain actions relating to the subject matter of the dispute (similar to a prohibitory interim injunction).
- Order for the defendant to perform certain actions to prevent damage to, or deterioration of, the disputed property (similar to a mandatory interim order).
- Transfer of disputed property to the claimant or another person for safe keeping.
- Suspension of debt recovery on the basis of an execution writ that is disputed by the applicant.
- Suspension of the sale of property, if a claim for the release of that property is filed.

Under the CPC, state commercial courts can order other provisional measures and/or order several provisional measures simultaneously. In practice, the most widely used measures are arrests of property/bank account and prohibitions to dispose of property.

Provisional measures can be ordered at any stage of the proceedings in the state commercial courts (that is, before the claim is submitted (preliminary measures), during the proceedings, and after the decision is issued to secure the execution of a judicial act).

Provisional measures can be used to support arbitral proceedings (*Article 90(4), CPC*). The Russian Supreme Commercial Court confirmed in 2013 that this applies to both domestic and international arbitral proceedings. It also endorsed the practice of using provisional measures to support foreign state court proceedings if the Russian state commercial court has "effective jurisdiction" (that is, where the applicant is in Russia, the money/property is in Russia, or if the violation of the applicant's rights occurred in Russia). Whether this approach will remain valid is not clear following the merging of the Supreme Commercial Court with the Supreme Court of the Russian Federation.

Prior notice/same-day

An application for provisional measures must be considered by the state commercial court without notice to the other parties, and not later than the next day after receipt of the application. There are no exceptions to this rule.

If the court requests security, the application will be considered after either the:

- Security is provided.
- Expiry of the term specified by the court to provide security.

Mandatory injunctions

Measures similar to both mandatory interim injunctions (to compel a party to do something) and prohibitory interim injunctions (to stop a party from doing something) are allowed under the CPC. However, mandatory interim injunctions are not used in practice, unlike prohibitory interim injunctions (which are quite common). For example, the courts commonly order the prohibition of registration actions involving real estate, in which case the provisional measure is notified to the federal authorities responsible for the relevant registration.

Right to vary or discharge order and appeals

The respondent can both

- Appeal against a ruling on provisional measures.
- Apply to vary or discharge (cancel) the measure.

An appeal can generally be brought to a court of higher instance within one month after the ruling was issued.

The respondent can apply to vary (replace) the provisional measures at any time. The court considering the case must issue a ruling on the application no later than the next day after receipt of the application, and can replace the provisional measure with another one. For example, a defendant can be ordered to provide a sum of money as a security for the claim instead of equipment that is necessary for its business.

The respondent can also apply to the same court that issued the provisional measure to discharge that measure if the grounds for taking it ceased to exist.

13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

Availability and grounds

Interim attachment orders (that is, arrests or transfer of property to the claimant or a third party for safe keeping) are available. They can be categorised as provisional measures under the Commercial Procedure Code (CPC). See *Question 12, Availability and grounds* for further detail.

Prior notice/same-day

Rulings for provisional measures (including arrests or transfers of property to the claimant or a third party for safe keeping) are granted ex parte (that is, without notice to the other parties) not later than the next day after the receipt of a special application from the claimant.

Main proceedings

Generally, orders similar to interim attachment orders can be granted in support of foreign proceedings. See *Question 12, Availability and grounds* for details.

Preferential right or lien

Attachment does not create any preferential rights or liens.

Damages as a result

The claimant is liable for damages suffered as a result of provisional measures if the claim is subsequently denied.

Alternatively, the defendant can claim for special statutory compensation (*Article 98(2), CPC*). The amount of compensation depends on the circumstances of the case and must be fair and reasonable. However, the following statutory thresholds apply:

- Corporate disputes: from RUB10,000 to RUB1 million.
- Other disputes: from RUB1,000 to RUB1 million.

Security

Generally, the claimant does not have to provide security.

If the claimant provides security, the court cannot refuse to secure the claim.

The court can also request security from the claimant at its own discretion or on request of the other party. In these cases, the court will not consider the application for provisional measures until security is provided, or until the term for providing security expires. If security is requested by the court, but not provided by the claimant, the court will usually reject the claim.

14. Are any other interim remedies commonly available and obtained?

There are six interim remedies (provisional measures) available under the Commercial Procedure Code (CPC) (*see Question 12, Availability and grounds*). However, the courts can order provisional measures that are not listed in the CPC.

FINAL REMEDIES

15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

Available remedies

Unlike Anglo-Saxon law, Russian law does not recognise the concept of compensation for damages as a universal, main remedy. The Russian Civil Code provides a non-exhaustive list of available remedies (referred to as methods of defence of civil law rights), which include (*Article 12*):

- Recognition of a right (declaratory judgment).
- Restoration of the position that existed before the violation of a right, and restraint on actions violating the right (or threatening violation).
- Declaration that a voidable transaction is invalid, and application of the consequences of this invalidity.
- Application of the consequences of invalidity of a void transaction.
- Specific performance.
- Compensation for damages.
- Forfeit/contractual penalty (similar to liquidated damages) (*neustoika*) (*see below, Punitive damages*).

Proving damages

For many years, compensation for damages was difficult to obtain, as courts tended to reject claims for compensation on the basis that the exact amount of damages was not proven. Although the courts satisfied certain claims for recovery of damages (for example, based on substitute transactions entered into by the claimant), the general trend was not favourable to claimants. This was widely recognised by scholars and practitioners as a defect of Russian case law, and this approach was recently overruled by the Supreme Court of the Russian Federation (SCRF).

To obtain compensation for damages, the claimant must prove the following elements:

- Existence of damages.
- Violation of an obligation.
- Causal link between the actions of the defendant and the damage suffered.

In commercial disputes, the defendant must prove that he did not commit a fault. Generally, in commercial relations, the absence of fault does not preclude liability.

The amount of damages suffered must be determined to a reasonable extent. The claim cannot be denied on the sole basis that the exact amount of damages cannot be calculated. In such a case, the court must determine the amount with regard to the circumstances of the case, and based on the principles of fairness and adequacy to the violation.

Punitive damages

Punitive damages are not generally recognised in Russia. Damages can be recovered for direct losses and lost profit (although lost profit cannot be recovered in some cases).

The function of punitive damages can be performed by a forfeit (penalty) (*neustoika*) (*Article 330, Russian Civil Code*). A forfeit is a sum of money specified by law or by contract that the debtor must pay to the creditor in the case of non-performance or improper performance of an obligation. In most cases, forfeit is the equivalent of liquidated damages in common law systems.

However, a forfeit can exceed the amount of losses suffered, and therefore become a punishment. The courts can reduce the amount of the forfeit under certain circumstances.

EVIDENCE

Disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

Parties must disclose evidence that they intend to use for the substantiation of their claims and objections either (*Commercial Procedure Code*):

- Before the court session.
- Within the term specified by the court.

Generally, this means that a party does not need to disclose evidence that is helpful to its opponent.

However, on a motion of a party, the court can order a person in possession of a piece of evidence (including the opponent) to present it to the court within a specified term, even if disclosure will harm that person's legal position. Failure to provide such evidence without good reasons can have the following consequences:

- The court can impose one or repeated fines of up to RUB100,000 (statistics show that, in 2015, only 372 fines were imposed out of 1.6 million cases arising every year).
- The court can deem the fact as proven despite the absence of evidence, although this only occurs in exceptional cases (for example, see *case No. A56-1486/2010*).
- The judicial costs (expenses) can be borne by the person that failed to provide the relevant evidence.

Privileged documents

17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

Privileged documents

There is no category of privileged documents under the Commercial Procedure Code. Certain documents are protected by law due to their secrecy (for example, commercial secrets, state secrets and so on). However, a party can request the court to order the other party to disclose secret documents (in these cases, the proceedings can be held in private (*in camera*)). In practice, the court will examine a party's request for disclosure of secret documents and decide whether:

- The documents are relevant to the case.
- There is a real need to disclose secret information.

It is not usual to present, or compel the other party to present, documents written by in-house lawyers. It is generally impossible to compel a party to present all documents in its possession without being aware of the existence of these documents.

The without prejudice principle is not directly recognised by the law. The parties often refer to evidence proving that the opponent admitted some facts (usually a debt) during pre-trial negotiations. If one of the parties was not cautious and made oral or written statements without the necessary disclaimers, these can be used as evidence against its interests or influence the judge's personal belief.

Other non-disclosure situations

Russian law recognises the notion of secret information, which includes:

- Trade secrets.
- State secrets.
- Attorney-client privilege (advocates' secrets).
- Bank secrecy.
- Tax secrecy.

However, in practice, this does not prevent the court from issuing an order for the disclosure of evidence containing secret information. Whether the court will order the disclosure of "secret" information will depend on a number of circumstances.

Examination of witnesses

18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

Oral evidence

A witness must give oral evidence, but the court can request a witness who gave oral evidence to put it in writing. In practice, witnesses are rarely used in the state commercial courts. Written witness evidence is even rarer.

Right to cross-examine

There is no clear distinction between the disclosure stage and the trial. Although parties are expected to disclose evidence during the preliminary hearings, it is common in practice to provide additional evidence during the main court hearings.

There is no cross-examination of witnesses during pre-trial proceedings. A witness is summoned by the court to the hearings, and both parties and the judge can put questions to him.

Third party experts

19. What are the rules in relation to third party experts?

Appointment procedure

Under the Commercial Procedure Code (CPC), the persons that can provide an opinion on specific complicated issues are:

- Experts.
- Specialists.

Experts can only be involved in the proceedings through the appointment of a formal expert examination by the court. For example, an expert examination can be ordered on the issue of whether the contractual price is a fair market price. The court will appoint the expert from a list suggested by the parties. In practice, the courts usually only appoint professional experts, that is, experts who are employed by experts' organisations (state or private). Expert opinion is always provided in a written form. After the expert's opinion is provided, the parties can ask the court to summon the expert in order to have an opportunity to ask him questions during a court session.

Specialists only provide oral opinions on a particular subject during the court session, and can also give a legal opinion on a particular subject. Specialists are appointed by the court.

Role of experts

Experts must provide an independent opinion on a particular subject to the court. Experts cannot generally provide opinions on legal matters, which are often regarded as the exceptional competence of the court.

However, specialists (who were recently introduced under the CPC) can advise on legal matters.

Right of reply

Experts appointed under a formal expert examination procedure can be cross-examined by the parties during court hearings.

Fees

If the formal expert examination was initiated by a party or endorsed by it, that party must pay the expert's fees to the court, which transfers the money to the expert after the completion of the expert examination. If that party wins the case, it can usually recover the expert's fees from the losing party.

If the formal expert examination is initiated by the court (and not endorsed by the parties), experts' fees will be paid from the state budget.

APPEALS

20. What are the rules concerning appeals of first instance judgments in large commercial disputes?

Which courts

Appeals of first instance judgments are made to the state commercial courts of appeal (*see Question 3*). Appeals against decisions of the courts of appeal are made to cassation courts, then to the Supreme Court of the Russian Federation (SCRF) (second cassation), and finally to its Presidium (procedure of supervision).

Grounds for appeal

The grounds for appeal vary at each stage. The Russian judicial system is currently based on the following principles:

- Lower instance courts (first instance courts and courts of appeal) deal with both facts (evidence) and law.
- Courts of appeal verify that first instance courts applied the law and considered evidence correctly.
- Higher instances courts deal with legal issues only (procedural and substantive).
- The SCRF only considers cases that may have a significant impact in practice.

Time limit

In most cases, the time limits for bringing appeals are as follows:

- Decisions of first instance courts: one month from the issue of the decision.
- Decisions of cassation courts (including second cassation): two months from the issue of the decision.
- Appeal to the Presidium of the SCRF: three months from the issue of the decision.

CLASS ACTIONS

21. Are there any mechanisms available for collective redress or class actions?

Although the Commercial Procedure Code (CPC) provides for a mechanism similar to class actions (*Chapter (28.2)*), these provisions are not used in practice. This problem is recognised by legal scholars and the legislator, and the provisions of the CPC may be amended in the future to address this issue.

COSTS

22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

Judicial costs cover both (*Commercial Procedure Code*):

- Statutory court fees.
- Other judicial expenses, including legal fees, fees relating to experts, interpreters and specialists, witness expenses and other expenses (for example, postal expenses, travel expenses and so on).

Judicial costs can be recovered by the successful party in proportion to the amount of the satisfied claim, unless the parties agreed otherwise.

Reasonable attorneys' fees can be recovered.

Judicial practice on the recovery of judicial expenses remains unsettled. Although the Supreme Commercial Court of the Russian Federation used to urge the state commercial courts to allow the recovery of judicial expenses more liberally, the main trend was for the courts to reduce the amounts claimed, either on request of the opposite party or at their own discretion. While the courts ordered the recovery of significant sums in many cases (up to US$1 million), they still tend to reduce significantly the amounts of judicial expenses claimed.

The most sensitive issue is usually the recovery of legal fees, which often represent a significant proportion of judicial expenses claimed. When deciding on whether to reduce legal fees, the court can take into account various factors, such as the:

- Complexity of the case.
- Amount of work done.
- Reasonable amount of work necessary for the case.
- Qualification of the lawyer.
- Reasonable fee.

The court can also take into account the following factors for deciding not to reduce the amount of expenses claimed:

- The malicious conduct of the opponent.
- The fact that the opponent ignored pre-trial offers/measures.

During the procedure itself, the court can only manage and control (to some extent) expenses related to experts, witnesses, specialists and interpreters. The court cannot control other expenses engaged by the parties, including lawyers' fees.

23. Is interest awarded on costs? If yes, how is it calculated?

This issue is not covered by the law. In practice, interest on costs is not commonly claimed.

However, a party can request for interest to be awarded on any sum recovered under a court decision, from the day when the decision enters into legal force until the day of its execution/payment. Therefore, it is generally possible to recover interest on costs between these two dates.

ENFORCEMENT OF A LOCAL JUDGMENT

24. What are the procedures to enforce a local judgment in the local courts?

Enforcement procedures in Russia are regulated by the Law on Enforcement Procedure and the Commercial Procedure Code.

After a judgment enters into force, the claimant will receive a writ of execution from the court that issued the judgment. Based on the writ of execution, the judgment can be enforced through either the:

- Federal bailiffs' service.
- Losing party's bank.

The federal bailiffs' service is a state authority responsible for the enforcement of judgments on all types of claims (both monetary and non-monetary).

Alternatively, judgments relating to pecuniary claims can be enforced by the bank where the debtor has an account. The bank must debit the amount claimed directly from the account of the judgment debtor within five days from the claimant's request. If the claimant does not have information on the accounts of the debtor, it can submit an inquiry to the Federal Tax Service, which will provide this information after the debt is confirmed by the court. Enforcing a judgment through a bank is not a universal way of enforcement and will not help if the debtor has no money on the account, but it is way faster than enforcing a judgment through bailiffs.

CROSS-BORDER LITIGATION

25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

Local courts generally respect the choice of governing law in a contract.

However, there are certain mandatory rules of law that cannot be varied by the parties, for example where:

- A contract or contractual rights must be registered under Russian laws.
- A contract relates to plots of land, subsoil or other real estate within the territory of the Russian Federation.
- An acquired Russian company (in a mergers and acquisitions transaction) is a "strategic" organisation under Russian laws.

26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

Local courts generally respect the choice of jurisdiction in a contract. A choice of forum clause is autonomous from the main contract, which means that it is generally valid even if the contract is invalid/void. A local court will only be able to claim jurisdiction (if applicable) if it decides to annul the jurisdiction clause.

However, if a claimant submits a claim to a Russian court against the provisions of the contract, the court will continue considering the dispute until the opponent objects to its jurisdiction. This objection cannot be made later than the defendant's first statement on the case.

27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction a party to any international agreements affecting this process?

Russia is a party to the HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention). The state authority responsible for dealing with service requests is the Ministry of Justice of the Russian Federation, and the requests are executed by the Russian courts. According to the official statement of the Russian Federation, Article 10 of the Hague Service Convention does not apply in Russia. Process agents, whether private or court-appointed, are not used in Russia.

Russia is also a party to the HCCH Convention on Civil Procedure 1954, which is applicable in certain cases (for example in relations between Russia and Austria, Belgium, Germany and France).

In 2015, the Russian state commercial courts executed a total of 1,280 foreign judicial requests.

28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

Russia is a party to the HCCH Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970 (Hague Evidence Convention). However, Russia did not appoint a Central Authority for the receipt of letters of request under Article 2 of the Convention. In practice, evidence is taken through the methods referred to in Chapter II of the Hague Evidence Convention (mostly via consular agents), provided that the witness is not reluctant to give evidence. Alternatively, some lawyers use hearsay evidence after having conversations with witnesses (when these avoid giving formal evidence).

Enforcement of a foreign judgment

29. What are the procedures to enforce a foreign judgment in the local courts?

Russian courts can enforce foreign judgments on the basis of either:

- An international treaty/convention (*Article 241, Commercial Procedure Code*).
- The principles of international comity and reciprocity (*Ruling of the Supreme Court of the Russian Federation No. 5-ГО2-64 dated 7 June 2002; European Court of Human Rights, Petr Korolev v Russia (Application no. 38112/04)*).

Russia has concluded treaties that enable applicants to enforce judgments from the following countries (among others):

- Argentina.
- China.
- Greece.
- Vietnam.
- Spain.

- India.
- Members of the Commonwealth of Independent States (that is, Belarus, Ukraine, Uzbekistan, Kyrgyzstan, Kazakhstan, Armenia, Tajikistan, Turkmenistan and Azerbaijan).

The case law on the principles of international comity and reciprocity continue to develop. Despite certain difficult political situations, Russian courts often recognise and enforce foreign judgments under these principles. One example is the recognition and enforcement of the judgment of the High Court of England and Wales in *JSC BTA BANK v Solodchenko [2011] EWCA Civ 1241*, which was recognised by the state commercial courts based on the principles of comity and reciprocity (*case No. A40-34719/14*) (to date, this decision can still be appealed to the Supreme Court of the Russian Federation). The court practice relating to the enforcement of US decisions is not stable, as there are both positive and negative examples.

In 2015, there were 212 cases dealing with the recognition and enforcement of foreign judgments and arbitral awards, 140 of which were successful for the foreign applicants (about 66%).

To have a judgment recognised and enforced, the applicant must submit a special application to the state commercial court where the debtor is registered (or, if unknown, where the assets of the debtor are located). The application can also be submitted via the official internet system of the state commercial courts (*www.my.arbitr.ru*). The court must consider and issue a ruling on the application within three months of receipt.

The recognition and enforcement of a foreign judgment will be denied in the following cases:

- The judgment did not enter into force in the country of origin.
- The debtor was not duly notified of the proceedings, or could not defend itself for other reasons.
- Consideration of the case was the exclusive competence of a Russian court.
- A Russian court issued a decision in a dispute between the same parties, on the same subject matter and on the same grounds, or such case is being considered by a Russian court.
- The term for the enforcement has expired, and was not restored by the state commercial court.
- Enforcement of the foreign judgment would contradict the public policy of the Russian Federation.

ALTERNATIVE DISPUTE RESOLUTION

30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

The two main ADR methods in Russia are:

- Non-state commercial arbitration.
- Mediation.

There are no official statistics on the number of disputes settled through ADR methods, but they are rarely used compared to negotiations and litigation.

Commercial arbitration can be either institutional or ad hoc arbitration. The arbitral procedure is governed by the selected rules of arbitration and/or the parties' agreement. Commercial arbitration is currently being reformed, due to the fact that:

- Commercial arbitrations often results in unjust rulings (for example, due to the relation between the arbitrators and one of the parties).
- State courts often refuse to enforce arbitral awards.

Mediation was introduced by the law in 2010. However, unlike in some countries, mediation does not play a significant role as an alternative to court proceedings, probably due to the fact that proceedings in the state commercial courts are usually cheaper for the parties.

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

Generally, there are no mandatory ADR methods and the courts cannot compel the use of ADR, subject to certain exceptions.

In mid-2016, mandatory pre-trial measures have been introduced for most contractual commercial disputes, through the obligation to send an official letter of complaint before filing a claim with the courts. Even if the parties' contract does not provide for this measure, sending a letter of complaint is necessary to file a claim. The defendant has one month to reply to the letter (unless the contract provides for another term), after which the claimant is allowed to submit the claim. Before these amendments, official letters of complaint were already mandatory for certain types of contract (for example, transportation contracts).

32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

Commercial arbitration

Under Russian law, commercial arbitration is generally confidential. The production of evidence is usually governed by the rules applicable to the specific arbitration proceedings.

Mediation

All information related to the mediation procedure is confidential, unless otherwise provided by the law or the agreement between the parties. A party cannot later use as evidence the other party's offer to use mediation, readiness to accept an offer of the mediator/other party during mediation, or refer to admissions, opinions and offers of the other party. However, there is no direct and express prohibition on the use in judicial proceedings of evidence that was disclosed during mediation.

33. How are costs dealt with in ADR?

Commercial arbitration

The statutory default rule is that the parties bear the costs of the arbitration in proportion to the amount of the satisfied claim.

Mediation

The statutory default rule is that the parties bear the costs of the mediation procedure equally.

34. What are the main bodies that offer ADR services in your jurisdiction?

Commercial arbitration

The most authoritative arbitration institution in Russia is the International Commercial Arbitration Court (ICAC) at the Russian Federation Chamber of Commerce and Industry, which is based in Moscow (*http://mkas.tpprf.ru/en*). The arbitrators of the ICAC comprise a great number of Russian and foreign legal practitioners and scholars. The ICAC procedure is governed by its Rules, most of which are of a discretionary nature.

Mediation

Mediation is still in its infancy in Russia. The Center for Mediation and Law provides mediation services in Russia (*www.mediacia.com/en/index.htm*).

PROPOSALS FOR REFORM

35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?

A new Unified Civil Procedure Code is currently under discussion. There are currently two systems of state courts in Russia:

- State commercial courts (for commercial disputes).
- Courts of general jurisdiction (for other cases).

The court procedure is governed by either the:

- Commercial Procedure Code (state commercial courts).
- Civil Procedure Code (courts of general jurisdiction).

If the Unified Civil Procedure Code is adopted, the commercial procedure is likely to be amended significantly.

It is also discussed whether Russia should introduce an "advocates' monopoly" for representation in the courts and for the provision of any other legal services.

ONLINE RESOURCES

Legal information

W http://pravo.gov.ru

Description. This is the official website for the publication and database of laws in Russia (in Russian and up to date). This website is rarely used by practitioners due to its impracticality.

W http://ivo.garant.ru

www.consultant.ru/online/ (in Russian).

Description. These websites provide free access to the most important laws (such as codices).

Commercial Procedure Code (English translation)

W http://arbitr.ru/_upimg/F022050CA6DB92FCB1D4C651E47147B7_Commercial_Procedure_Code_of_the_RF.pdf

Description. The official website of the state commercial courts provides access to an unofficial, but reputable translation of the Commercial Procedure Code.

Database of judicial decisions

W http://kad.arbitr.ru or http://ras.arbitr.ru

Description. This is the official website site for the publication and database of judicial decisions of state commercial courts (in Russian). The database can be searched by participants, key words and so on.

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- *"The Development of the Antimonopoly Law in Russia", in The Development and Consolidation of Market Enabling Legislation in the Context of Russian Judicial Reform, 2004 Analytical Report, Institute for Law and Public Policy, Moscow, 2005.*
- *Länderteil "Russland" in der Sammlung Ferid/Firsching "Internationales Erbrecht", Loseblattsammlung, München. C.H.Beck. 2009 (in German).*

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Publications

- *Court order and mandatory reclamation procedure / The Bulletin of Fuel and Energy Complex. Legal issues. No. 4 (237)). 2016 (in Russian).*
- *Unpredictable judicial review of the amount of liquidated damages - triggering higher contract prices / Journal "Arbitration practice". No. 8, 2015 (in Russian).*
- *Die russische Gerichtsreform 2013-2014. Ursachen, Verlauf, erste Ergebnisse und Kritik. Ost/Mag Wissenschaftliche Beiträge des Ostinstituts Wismar. 2014 (co-authored with Oleg Mosgo) (in German).*