

## **15. THE RUSSIAN JUDICIAL SYSTEM**

### **15.1 Introduction**

The Russian judicial system consists of federal courts (the Constitutional Court of the Russian Federation, courts of general jurisdiction, and state “arbitrazh” (commercial) courts) and the courts of the Russian Federation constituent entities (Constitutional Courts and magistrates). The Constitutional Court generally resolves issues relating to the compliance of federal and regional laws and regulations with the Russian Constitution. Courts of general jurisdiction and magistrates hear criminal cases, civil disputes between individuals, and disputes arising from administrative relationships between individuals and state bodies. Disputes regarding business activities are heard before the state arbitrazh courts.

### **15.2 State Arbitrazh Courts**

The title “arbitrazh court” is not related to arbitration tribunals but originates from an old Soviet tradition whereby disputes between state enterprises were heard before so-called “State Arbitrazh.” In the USSR, it was assumed that under a planned economy no disputes could arise between socialist enterprises (since all enterprises ultimately had the same owner), and any differences which did arise could be settled by an intermediary - the State Arbitrazh - which was a quasi-judicial government institution.

The procedural rules applicable to the Russian arbitrazh courts are based on the general principles of procedural law adopted in continental Europe, i.e., the procedure is more inquisitorial than adversarial like in common law jurisdictions.

However, the new Arbitrazh Procedural Code (the Code), adopted in July 2002, made this procedure more adversarial by limiting the abilities of the courts to collect evidence independently from the parties. The Code supersedes the previous procedural statute, issued in 1995, by setting out in more detail the day-to-day functioning and procedures of arbitrazh courts. These issues were previously dealt with by judges at their own discretion. With the adoption of the Code, some changes regarding the competence of arbitrazh courts were made. For example, some types of disputes involving individuals are now resolved by arbitrazh courts rather than courts of general jurisdiction as was previously the case.

Traditionally, Russian arbitrazh courts favor written, documentary evidence rather than examination of witnesses, hearing experts, or use of audio or video records.

Arbitrazh courts have four levels:

- (a) Trial courts;
- (b) Appellate courts;
- (c) Cassation appeal courts; and
- (d) The Supreme Arbitrazh Court of the Russian Federation.

Russian arbitrazh courts have an important advantage: the trial period in these courts is relatively short. Proceedings start with a statement of claim. Under current regulations, a court must consider cases within three months of its receipt of a statement of claim. The judgment is announced immediately after the final hearing. The maximum state fee is limited to approximately 2,195 euro (as of March 2009).

A judgment of the first instance may be appealed within one month of being rendered, otherwise it comes into force at the end of the month. The ground of an appeal could be mistakes in establishing the factual circumstances of the case or in application of the law. In fact, an appeal is a limited retrial.

In most cases it takes around one month between filing an appeal with an appeals court and an oral hearing of the appeal. Before the hearing, all parties to a case are allowed to provide the court with written responses to the appeal.

A judgment of the first instance, and also a resolution on an appeal, may also be appealed in the cassation appeal court (third level court) after such judgment comes into force (i.e., for a first level court judgment - one month after it is rendered, if it is not appealed; for the appellate court resolution - immediately after its operative part is announced). The cassation court does not retry the case or re-evaluate the evidence but deals only with points of law. As a result of the cassation hearing the judgment may be upheld, reversed, or amended, or the case may be sent back to the court which issued the judgment for a rehearing.

The role of cassation appeal courts is performed by federal commercial courts. A cassation appeal must be filed within two months of the date of the relevant judgment and is heard within one month of the date of filing. Generally, the submission of a cassation appeal does not suspend the enforcement of the appealed judgment, though the cassation court may order a stay of execution.

A party may also challenge a judgment of any court by filing a supervision appeal with the Supreme Arbitrazh Court. The appeal may be filed within three months of the last judgment in the case.

In contrast to the procedures in the lower courts, the supervisory review is a two-tier process. Before the appeal is actually heard on the merits, a panel of judges of the Supreme Arbitrazh Court reviews the party's appeal and decides whether there are grounds for carrying out a supervisory review of the judgment that is appealed against. If the panel decides to refer the case for supervisory review, it is the Presidium of the Russian Supreme Arbitrazh Court that would then proceed to hear the appeal.

In practice, less than two percent of applications are accepted for hearing an appeal in the Supreme Arbitrazh Court.

A legal entity involved in an arbitrazh court case in Russia may represent itself in court using the services of an in-house lawyer or retain one of the foreign or local law firms.

Certain formalities must be followed in order for a person to appear as a legal representative in court. The Code of Arbitrazh Procedure provides that a legal entity may be represented by its general director or by another person acting pursuant to a power of attorney. The power of attorney must be signed by the general director of the company and sealed by the corporate seal. Where a power of attorney is issued outside the Russian Federation, it must be notarized and apostilled (i.e., a special stamp should be affixed to the certified document according to the Convention of October 5, 1961 Abolishing the Requirement of Legalization for Foreign Public Documents).

Moreover, a representative acting under a power of attorney may perform certain procedural actions only if such actions are expressly stated in his/her power of attorney. These actions include the right to sign a statement of claim, statement of defense, appeals, applications to amend the cause of an action and subject matter of the action, applications for provisional remedies, acceptance of withdrawal of claims, etc.

## **15.3 Personal Jurisdiction Over Foreign Defendants**

Russian courts have jurisdiction over foreign defendants if:

- (a) the defendant is located or resides in the Russian Federation or the defendant's assets are located in the Russian Federation;

- (b) the management body or a branch or representative office of the foreign party is located in the Russian Federation;
- (c) the dispute arose out of a contract, performance under which should have taken place, or actually took place, in the Russian Federation;
- (d) the claim arose out of damage caused to assets by an act or other event that occurred in the Russian Federation, or upon the onset of harm in the Russian Federation;
- (e) the dispute arose out of unjust enrichment that took place in the Russian Federation;
- (f) the claimant filing an action for the protection of its business reputation is located in the Russian Federation;
- (g) the dispute arose out of a relationship connected with circulation of securities that were issued in the Russian Federation;
- (h) the applicant in a case to establish a fact of legal relevance claims that such fact occurred in the Russian Federation;
- (i) the dispute arose out of a relationship connected with state registration of names and other assets and the provision of services via the Internet in the Russian Federation; or
- (j) in other cases where the disputed legal relationship is closely linked with the Russian Federation.

In addition, Russian courts also have jurisdiction over disputes involving foreign parties if such disputes fall within the exclusive jurisdiction of the Russian courts, i.e.:

- (i) disputes relating to state property, including privatization disputes and takeovers of private property for public needs;
- (ii) disputes relating to title and other registered rights to real property located in the Russian Federation ;
- (iii) disputes connected with the registration in the Russian Federation of patents, trademarks, designs or utility models, or registration of other rights in the results of intellectual pursuits;
- (iv) disputes involving the establishment, liquidation or registration of legal entities and self-employed entrepreneurs in the Russian Federation; or

- (v) disputes arising over administrative and other public law relationships with Russia or Russian state agencies.

Russian courts also have jurisdiction over a foreign defendant where the parties have agreed in writing to submit their disputes to Russian courts, provided that the agreement does not violate the exclusive jurisdiction of a foreign court.

It is comparatively rare for a dispute to arise over jurisdiction of Russian courts because the criteria for establishing the jurisdiction of the Russian courts are generally perceived as straightforward to apply.

### **15.3 International Arbitration**

As an alternative to the state arbitrazh courts, foreign investors may refer disputes to a private arbitration tribunal, including ad hoc and institutional arbitration tribunals located either in the Russian Federation or abroad. The arbitration proceedings may cover a wide range of issues, but not disputes arising from administrative relations (*e.g.*, tax and customs) and disputes that fall within the exclusive jurisdiction of the Russian arbitrazh courts (*e.g.*, disputes arising from bankruptcy proceedings, or other disputes specifically enumerated in the Code and other Russian laws).

The principal rules of international arbitration are governed by the Federal Law On International Commercial Arbitration, enacted on July 7, 1993; these rules are identical to the provisions of the Model UNCITRAL Law.

In addition, the international commercial arbitration provisions of various international treaties to which the Russian Federation is a party and, in particular, the European Convention on International Commercial Arbitration of 1961 and the New York (United Nations) Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention), also apply in Russia.

### **15.5 Enforcement of Judgments and Arbitral Awards**

Judgments of Russian courts of general jurisdiction and of Russian arbitrazh courts are enforced through the state bailiff service.

A foreign court judgment may be enforced in Russia only if such judgment has been recognized by a Russian court. Such recognition is available if supported by a relevant international treaty and federal law that applies. Despite the lack of direct regulation, Russian courts recognize and enforce foreign court judgments relying on the principle of reciprocity on a case by case basis.

Russia is a party to the Kiev Convention on the Procedure for Resolving Disputes Relating to Business Activities (the Kiev Convention). According to the Kiev Convention, judgments rendered by state courts of certain CIS nations are enforceable in the Russian Federation. The Russian Federation is also a party to a number of bilateral agreements concerning the recognition and enforcement of court judgments.

Arbitral awards rendered by arbitration tribunals located in the Russian Federation or abroad are also executed by the bailiff service after such awards are recognized and ordered to be enforced by Russian courts. As a rule, Russian courts may not review any foreign arbitral award on its merits. The grounds for the refusal to recognize and enforce foreign arbitral awards are generally the same as those set forth in the New York Convention.

## **15.6 Alternative Dispute Resolution**

Although mediation and other forms of alternative dispute resolution (ADR) are fairly widely discussed in the legal community, there is no established practice for invoking such procedures in the Russian Federation. Nor is there any legislative regulation available for ADR (apart from commercial arbitration). There is no statutory provision, for example, that states that documents received by the parties in the course of mediation may not later be used as evidence in the court, or that the ADR mediator may not subsequently be called as a witness in legal proceedings between the parties.

# **16. NATURAL RESOURCES (OIL AND GAS/MINING)**

Today Russia is one of the largest mineral producers in the world. Russian deposits contain approximately 15- 17 per cent of the world's global mineral deposits and Russian mineral resources are an important component of its wealth.

## **16.1 Introduction**

Russia differs from other countries where the private ownership of minerals in the ground exists and where land owners have title to all mineral resources located below their land plots. All Russian subsoil resources in the ground, including oil, gas, gold and other minerals, unless extracted, are owned by the Russian state, irrespective of who holds the title to the relevant land plot or holds the relevant subsoil license. Rights to extract subsoil resources can be granted under subsoil licenses which, as a rule,