Dispute Resolution Around the World

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Table of Contents

1. Legal System ................................................................................ 1
2. Legal Profession........................................................................... 1
3. The Court System - General......................................................... 2
4. State Arbitrazh (Commercial) Courts - Overview.........................3
5. Procedure for Claims in Arbitrazh Courts ....................................4
6. Interim Remedies.......................................................................... 8
7. Recovery of Litigation Costs........................................................ 9
8. Compensation for Delay ............................................................... 9
9. Appeal ........................................................................................ 10
10. Cassation Appeal ........................................................................ 10
11. Supervision Appeal ................................................................... 11
12. Summary Proceedings ................................................................ 12
13. Enforcement of Judgments .......................................................... 13
15. Alternative Dispute Resolution and Mediation .......................... 14

Key Contacts ...................................................................................... 15
1. Legal System

Russia is a federal state. The legislative, executive and judicial organs of the state are separate. The legal system is based on the following principles:

- The Russian Constitution is the supreme legal authority of the Russian Federation.

- The principal legislative instruments are federal laws. Federal laws are enacted by the State Duma and the Council of the Federation and are signed by the President. They come into force after signing by the President.

- Members of the Russian Federation are entitled (to the extent of their authority established by the Russian constitution) to enact laws which are consistent with federal laws.

- Generally accepted principles and rules of international law and international treaties of the Russian Federation form an integral part of the legal system. If an international treaty establishes rules other than those provided by Russian domestic law, the international treaty obligations take precedence.

Many important federal laws are codified, particularly the Civil Code, the Tax Code, the Customs Code, the Land Code and the Labor Code.

2. Legal Profession

Legal practice in Russia is not subject to any special legal regulation, with the exception of advocacy. Anyone graduating from a higher institution as a lawyer may work as a lawyer and provide legal services (with the exception of some services which can be rendered only by advocates). Companies may be represented in court by their own lawyers, outside counsel, or by advocates. However, this may change as a special state program was announced by the Russian government, envisaging a gradual transition to establishing the
“monopoly” of advocates in court representation. The program is to be published at the site of the Ministry of Justice and to be implemented during 2013-2020.

Russian legislation requires strict confirmation of the authority of a company’s representatives in court proceedings. The authority should be confirmed by a written power of attorney. The power of attorney should clearly indicate the right to perform various procedural actions (e.g., to file a claim, to waive a claim or to enter into an amicable settlement agreement). Without these items, the court may not recognize the company’s representatives as having any legal power to act.

In most cases, a power of attorney issued outside the Russian Federation must be apostilled or legalized in order to be recognized in Russia.

3. The Court System - General

The court system consists of the Constitutional Court, the courts of general jurisdiction and the state arbitrazh (commercial) courts.

The Constitutional Court generally determines whether federal and regional laws and regulations comply with the Russian Constitution.

The courts of general jurisdiction hear civil disputes where one of the parties is an individual, disputes arising from the administrative relationships of individuals and state authorities (e.g., tax disputes) and criminal cases.

The overwhelming majority of commercial disputes, including almost all disputes involving companies, are heard before the state arbitrazh (commercial) courts.

Below we provide more detailed information about state arbitrazh (commercial) courts.
4. State Arbitrazh (Commercial) Courts - Overview

The name “arbitrazh court” has nothing to do with arbitration tribunals. It originates from an old Soviet tradition, whereby disputes between state enterprises were heard before the so-called “state arbitrazh.”

The procedural principles of the arbitrazh courts are based on those of continental European civil law jurisdictions. The procedure is regulated by the Code of Arbitrazh Procedure approved in 2002.

Legal proceedings begun in a state arbitrazh court may be appealed three times: the decision of a court of first instance may be contested in an appellate court, and then in the cassation (third-level) court. The Supreme Arbitrazh Court hears a few cases under its supervising jurisdiction.

Intellectual property disputes are now to be resolved by the Court of Intellectual Property Rights, forming part of the system of Russia’s arbitrazh courts. The Court of Intellectual Property Rights will consider at first instance cases involving disputes over the establishment and validity of IP rights and challenges to regulatory and non-regulatory acts in the intellectual property field. The decisions issued thereby in such cases will become effective immediately, and can be appealed to the Presidium of the Court of Intellectual Property Rights for cassation review.

IP infringement cases will be reviewed by the Court of Intellectual Property Rights as the court of cassation instance by a panel of judges, and not by the Court’s Presidium. The Court of Intellectual Property Rights will commence its work in the very near future.
5. Procedure for Claims in Arbitrazh Courts

Commencement of Proceedings

The Arbitrazh Procedural Code regulates proceedings conducted by state arbitrazh courts.

A court of first instance may start proceedings when a claim is filed. A claimant should deliver a copy of the statement of claim and all supporting documents to each party by registered mail. A statement of claim must set out the grounds for the claim and all the evidence and relevant documents supporting the claimant’s case.

All these documents can be filed electronically via https://my.arbitr.ru/, an online service of the Supreme Arbitrazh Court of the Russian Federation for filing documents to arbitrazh (commercial) courts.

Defense

The respondent files its statement of defense setting out grounds for its full or partial rejection of the claims, as well as any evidence supporting its case. The period during which a defense is to be submitted is not specified. The law requires that a statement of defense should be filed early enough to enable the claimant to review it before the hearing.

Before the final judgment is rendered, the respondent is entitled to make a counterclaim, in the same way as the initial claim.

Failure by the respondent to defend proceedings will not result in an automatic finding in favor of the claimant. The court will instead continue the proceedings based on the available documents and evidence.

Preparations for Hearing

The 2002 Code of Arbitrazh Procedure (hereinafter “the RF CAP”) sets out the steps to be taken by a judge in preparing for a hearing.
These include, for example, prior interviews with the parties, offering the parties to present evidence in support of their respective claims and objections, explaining their right to refer at any stage of the proceedings to an intermediary or mediator and settle the dispute; decisions on whether to appoint an expert or to order provisional remedies, etc. The preparations also include a preliminary hearing to consider the parties’ motions and to decide whether the evidence produced is sufficient.

If all parties to the case are present during the preliminary hearing, or they are not present but have been duly notified thereof and have filed no objections to considering the case in their absence, then the court may hear the case on the merits. This is not allowed when the case is to be resolved by a panel of judges.

**Trial Period**

Russian state arbitrazh courts tend to deal with cases very quickly. A court of first instance is generally required to resolve the case within three months from the date of filing a claim (inclusive of the period for the judge to prepare the case). The judge may request an extension of up to six months due to the complexity of the case or a considerable number of parties. In practice the period may be longer, but regular cases are reviewed within these deadlines. Periods when the case has been stayed or postponed are not included in the above term.

**Documentary Evidence**

Documents comprise the key evidence used by arbitrazh courts. Documentary evidence may include original documents, documents received by fax, e-mail or other means of communication, and documents signed by digital electronic signatures subject to appropriate formalities. A document in a foreign language must be accompanied by a certified translation into Russian. An official document obtained in a foreign jurisdiction is only admitted if duly legalized. Any documentary evidence must be produced in original or certified copy.
Neither Russian legislation nor Russian court practice contain any procedure similar to “discovery.” However, a party may petition the court to retrieve particular documents that are essential for its case from other parties to the dispute or third parties. In practice, courts uphold such petitions only when a very small number of documents are requested and only if it is evident that the court will be unable to conduct the proceedings if the documents concerned are not available.

Witnesses

The Code of Arbitrazh Procedure also permits witness testimony. Hearing witnesses is the exception rather than the rule, since arbitrazh courts traditionally prefer to rely on documents as the principal proof.

A witness gives his evidence orally and will make written statements only if ordered to do so by the court.

Experts and Specialists

The court, on the motion of a party, appoints experts in limited situations when expert knowledge is needed. The court puts questions to the expert. The parties may only petition the court to ask any additional questions. The expert’s opinion is submitted to the court in writing. Experts are not subject to cross-examination. The party that disagrees with an expert opinion may apply to the court for the appointment of another expert.

The court may appoint specialists who have special knowledge in specific areas to provide independent assistance to the court when the court finds it necessary to obtain clarifications, advice and ascertain the professional opinion of persons with theoretical and practical knowledge regarding the subject-matter of the case. The specialist’s advice is given verbally, without conducting any additional research. Parties as well as the court may put questions to the specialist to clarify the advice provided.
The Trial

Trials are held in open court, and the public may attend. Once a trial has begun, the court will hear the full case and deliver judgment immediately upon its conclusion. In exceptional cases, the court may adjourn the hearing for no more than five days.

The court may suspend the proceedings on ordering an expert examination or, for example, where a foreign court is hearing another case the outcome of which may affect the Russian proceedings.

If the respondent was duly notified of the time and the place of the court hearing and fails to attend the court, the dispute may be decided in his absence.

Generally, a single judge conducts court hearings. A panel of three judges hears some cases (e.g., appeals against decisions of state authorities). A judge or a panel determines the procedure that will apply, hears the parties to the dispute, examines evidence, and interrogates the parties and the witnesses. A judge also examines motions filed by the parties and renders judgment on them.

All parties to the arbitrazh litigation are entitled to know each other’s arguments prior to the commencement of the proceedings. Furthermore, each litigant is required to disclose all of the evidence underlying its case before the hearing.

In certain cases the court may postpone the hearing on merits when it considers that the case cannot be resolved during this hearing, for example due to the absence of a party, or upon a party’s motion to enable it to submit additional evidence etc. As a rule, the court cannot postpone the case for over one month.

The judge is obliged to help the parties to settle a dispute amicably and the hearing may be postponed for that reason upon motion of the parties to the dispute. The court may also postpone the hearing for two months when the parties agreed on mediation procedure.
The court’s decision is given at the end of the hearing. The text of the full judgment with the reasoning is delivered to the parties within five days from the date of the court hearing.

The judgment comes into force one month later. If an appeal is lodged against the judgment, the judgment comes into force when upheld by the appellate court.

6. **Interim Remedies**

**Interim Injunctions**

The court may order provisional remedies at any phase in the proceedings if requested to do so by a party. The state arbitrazh court is required to consider a motion for an interim injunction not later than the day following the date of receipt of the application.

**Types of Interim Injunctions**

Interim measures may include, amongst others:

- Attachment of funds or other assets of the respondent and held by the respondent or another party

- A prohibition on the respondent or another party committing certain acts relating to the subject matter of the action

- An order that the respondent must commit certain acts to prevent the spoilage or other deterioration of an asset in dispute

- An order for the transfer of assets in dispute to the claimant or other party for storage

- A stay of execution under a writ of execution or other document challenged by the claimant that enables uncontested recovery
The suspension of the sale of assets in an action to have an attachment of assets lifted

The court may instruct the claimant to provide security for damages that may be incurred by the respondent (usually by bank deposit, bank guarantee or other security).

7. Recovery of Litigation Costs

Litigation costs are to be recovered from the losing party. However, the court may order a party abusing its procedural rights to cover the costs of the proceedings irrespective of the outcome.

Litigation costs include state duty and other costs associated with the proceedings, including witness and expert expenses, the costs of execution of the court judgment and legal fees. The court awards legal fees to the winning party within “reasonable limits”, which in practice means minimal amounts.

An application for compensation of legal costs may be filed within six months as of entry into force of the last court act issued on the merits of the case.

8. Compensation for Delay

A party is entitled to claim compensation for violation of its right to the resolution of a dispute within a reasonable time. The relevant application may be filed within six months of the entry into force of the last court act issued in the case. The party may also file the application before the end of the court proceedings if the case has been pending for over three years and the applicant has applied with a request to accelerate the pace of the court proceedings.

In addition, a party may claim compensation for violation of its right to a timely enforcement of a court act. The relevant application may be filed either before or after the termination of the enforcement proceedings in the case. In the first case, the party’s application cannot be filed earlier than six months after the expiration of the term for
enforcement of the court act established by the federal law. In the second case, it cannot be filed later than six months after the termination of the enforcement proceedings.

9. Appeal

A losing party may appeal a decision within one month. The appellate court is required to review the appeal within two months. This time period may be extended by the appellate court’s president at a substantiated request of the judge up to six months due to the complexity of the case or a considerable number of the parties.

The appellate court will only consider the same issues as those before the lower court. It will accept additional evidence only if the party who submits it was unable to submit it to the court of first instance for reasons beyond its control.

The appeal is a limited re-trial of the case. The appellate court may either uphold the judgment of the court of first instance, or cancel the judgment in full or in part and render a new judgment, or amend the judgment, or cancel the judgment and terminate the proceedings or leave the claim without consideration in full or in part.

The appellate court’s decision takes force immediately. Once the trial court’s judgment is upheld by the appellate court, it could be enforced against the losing party.

10. Cassation Appeal

Judgments of the court of first instance (normally, after passing the appellate court’s review) and appellate court decisions may be contested in a so-called cassation appeal courts.

A cassation appeal must be filed within two months from the date that the relevant court judgment or appellate court decision has become effective, and must be heard within two months. This time period may be extended by the cassation appeal court president at a substantiated
request of the judge up to six months due to the complexity of the case or a considerable number of the parties.

Generally, the submission of a cassation appeal does not suspend the enforcement of the contested judgment and/or decision, though the cassation appeal court may order a stay of enforcement in respect of the contested judgment.

The cassation appeal court reviews potential substantial and procedural law errors. The cassation appeal court is not empowered to establish facts and re-evaluate evidence.

The cassation court may either uphold the acts of the lower court or courts, or cancel the act or acts in full or in part and render a new judgment, or amend the judgment, or cancel the act or acts in full or in part and remand the case for a fresh consideration by a lower court within the same or different court circuit, or cancel the act or acts and terminate the proceedings or leave the claim without consideration in full or in part.

The cassation appeal court’s decision takes force immediately.

11. Supervision Appeal

The parties to proceedings and the public prosecutor in some cases may seek to challenge a judicial act before the Supreme Arbitrazh Court.

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 three 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 would be the Presidium of the Russian Supreme Arbitrazh Court that proceeds to hear the appeal.
In practice, less than two percent of applications for hearing an appeal are accepted by the Supreme Arbitrazh Court.

12. Summary Proceedings

Summary proceedings is an expedited procedure for resolving disputes on the basis of written evidence, which aims at reducing litigation costs and mitigating the caseload for judges. A list of disputes subject to summary proceedings is provided for in the law. Among those are various types of disputes with either unsubstantial or undisputed amount of claim. Corporate disputes, class actions and bankruptcy disputes cannot be resolved in summary proceedings.

The peculiar features of summary proceedings include:

- There is no preliminary or main hearing; the case is resolved based on written submissions and evidence only.

- The examination of the case file as well as all filings in the case are made electronically, with an individual access code sent to the parties together with a ruling on the initiation of summary proceedings.

- There is a fixed term for filing submissions and evidence established by the court, and the court returns unconsidered all filings made after this date, unless a party can prove it was unable to comply with the term for reasons beyond its control.

- There are no minutes kept.

- There is no adjournment of proceedings.

The judgment in summary proceedings is subject to immediate enforcement. It becomes effective within 10 days of its issuance unless an appeal has been lodged, in which case it becomes effective upon the resolution of a court of appeal. Cassation review of summary judgments is possible only if it has passed appellate review or the term for filing an appeal has been refused.
13. **Enforcement of Judgments**

Court judgments are enforced by the bailiff service. A foreign court judgment may be enforced in Russia as long as it has been recognized by a Russian court. The court may recognize it if it is supported by a relevant international treaty or by federal law. Despite a lack of direct regulation, Russian courts may recognize and enforce foreign court judgments on the basis of international comity and reciprocity.

14. **Arbitration Law**

As an alternative to the state arbitrazh courts, parties to foreign trade contracts are entitled to refer a dispute to a private arbitration tribunal, including *ad hoc* and institutional arbitration tribunals located either within or outside the Russian Federation.

The subject of the arbitration proceedings may cover a wide range of issues, with the exception of disputes that are not arbitrable (tax, customs, e.g. disputes arising from bankruptcy proceedings).


Under its provisions, arbitration tribunals have the power to resolve disputes between individuals or legal entities both on private and commercial matters.

Arbitral awards rendered by arbitration tribunals located within or outside Russia are enforced by the bailiff service after the awards are
recognized and enforced by the state courts. The courts may not review a decision of an arbitration tribunal on the merits of the case. The grounds for the refusal by the courts to recognize and enforce foreign arbitral awards are generally the same as those contained in the New York Convention.

15. **Alternative Dispute Resolution and Mediation**

Federal Law on Alternative Procedure of Dispute Resolution with Participation of the Intermediary of 27 July 2010 (Law on Mediation) provides for a dispute resolution procedure involving the assistance of a mediator on the basis of the voluntary consent of the parties.

The mediation procedure may be applied to civil (including disputes out of economic relations), labor (except for collective employment disputes) and family law disputes. However, no mediation is possible in the above-named disputes if they affect public interests or rights and legitimate interests of third parties that are not participating in the mediation procedure.

The mediation agreement concluded by the parties as a result of a mediation procedure cannot be enforced and is subject to voluntary performance by the parties.

When the parties have reached a mediation agreement as a result of mediation procedure after the dispute has been referred to either a state court or arbitration, the court or arbitration tribunal may approve the mediation agreement as an amicable settlement.

Mediators, as well as other intermediaries assisting the parties in settling the dispute, may not be questioned as witnesses in state courts on matters that came to their knowledge in the course of their duties.
Key Contacts

**Moscow**
Edward Bekeschenko  
Vladimir Khvalei  
Tel: +7 495 787 2700

**St. Petersburg**
Maxim V. Kalinin  
Tel: +7 812 325 8308