2. The Russian Judicial System

2.1 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’s constituent entities (constitutional courts and magistrates).

The Constitutional Court of the Russian Federation generally resolves issues relating to compliance with the Constitution of federal and some regional laws and regulations if they are related to issues within the competence of federal authorities.

Constitutional courts of constituent entities resolve issues of compliance of the constituent entity’s laws, regulations of its state and municipal authorities with the constitution of the constituent entity.

Disputes regarding business activities, disputes involving legal entities and self-employed entrepreneurs, as well as bankruptcy cases, are heard before state arbitrazh (commercial) courts. Other disputes fall under the purview of courts of general jurisdiction and magistrates.

2.2 Courts of General Jurisdiction

The dispute resolution procedure in the courts of general jurisdiction is governed by the Code of Civil Procedure of the Russian Federation. Most claims subject to courts of general jurisdiction are heard at first instance by either a magistrate or a district court, the Code of Civil Procedure expressly provides for specific types of claims to be heard at first instance by federal general jurisdiction courts of constituent entities and the Supreme Court of the Russian Federation.

Courts of general jurisdiction have four levels:

- Trial court;
• Court of appeal;
• Court of cassation appeal (two-tier); and
• Court of supervisory appeal.

The particular court entitled to resolve disputes at each level depends on the category of the case, with the levels for review available to a party and their sequence being uniform. Each subsequent review is possible once the preceding lower level of review has been passed.

Judgments of trial courts can be appealed within one month of their issuance. A court of appeal reviews a judgment on the grounds stated in the appeal. New evidence is accepted only when the party succeeds in proving it was unable to present such evidence to the trial court for reasons beyond its control and the court finds these reasons to be valid. The rulings of a court of appeal become effective immediately upon issuance.

Decisions of a court of appeal (and a trial court’s decisions) may be further appealed at a court of cassation appeal within six months of becoming effective. As a rule, review by a court of cassation appeal is possible only after review by a court of appeal. The decisions of a trial court that were not subject to appellate proceedings may be appealed in a court of cassation appeal only when the appeal was left unheard for failure to comply with the submission deadline and the deadline was not restored.

Cassation review is a two-tier process. Upon filing, a cassation appeal is reviewed by the relevant judge of a court of cassation appeal who is entitled to establish whether there are grounds for carrying out the cassation review. If such grounds are established, the cassation appeal is transferred for review at a session of the court of cassation appeal. Otherwise the judge issues a ruling refusing to transfer the cassation appeal for review.
A court of cassation appeal may set aside or modify court resolutions only when it finds material violations of substantive or procedural law rules that have affected the outcome of the case.

Decisions of a court of cassation appeal become effective immediately upon issuance and may be appealed with the court of cassation appeal one more time (at a higher division of the court of cassation appeal). Thus strictly speaking there are two levels of cassation review within the general jurisdiction court system.

Lastly, certain court acts may be appealed (within three months of becoming effective) at the court of supervisory appeal: the Presidium of the Supreme Court of the Russian Federation.

The court of supervisory appeal may set aside or modify a decision of lower courts when it finds that it violates:

- the rights and freedoms guaranteed by the Constitution of the Russian Federation, international law principles and international agreements of the Russian Federation; or
- the rights and lawful interests of an indefinite number of persons or other public interests; or
- the uniformity of the courts’ interpretation and application of law.

### 2.3 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 the 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 that did arise could be settled by an intermediary – the State Arbitrazh – which was a quasi-judicial government institution.
Since then arbitrazh courts have evolved into an independent branch of the court system, mainly dealing with commercial disputes.

The procedural rules applicable to Russian arbitrazh courts are based on the general principles of procedural law adopted in continental Europe.

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

There is also a specialized court dealing with intellectual property disputes, which is part of the system of Russia’s arbitrazh courts. The Court of Intellectual Property Rights is a court of first instance in 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 by it in such cases are effective immediately, and can be appealed at the Presidium of the Court of Intellectual Property Rights for cassation review.

IP infringement cases are 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.

Arbitrazh courts have four levels:

- Trial court;
- Court of appeal;
- Court of cassation appeal; and
- Court of supervisory appeal.
Since 6 August 2014 the Supreme Court is the court of supervisory appeal within the system of arbitrazh courts.¹ The Supreme Court has powers to unify and direct the practice of lower arbitrazh courts.²

At present there is a draft law pending whereby the arbitrazh court system is to become part of the courts of general jurisdiction, governed by a unified code of civil proceedings.

2.3.1 Trial court

The maximum state fee for filing a claim is limited to RUB 200,000 (as of December 2015). The trial period in Russian arbitrazh courts is relatively short. Proceedings start with a statement of claim. Under current regulations a court must consider cases within three months of receipt of a statement of claim. The judge may request an extension of up to six months due to the complexity of the case or considerable number of parties. In practice the period may be longer but regular cases are reviewed within these deadlines. A judgment is announced immediately after the final hearing.

A judgment of a trial court may be appealed within one month of being rendered; otherwise it comes into force at the end of the month. The basis for an appeal can be mistakes either in establishing the factual circumstances of a case or in application of the law. In fact an appeal is a limited retrial.

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¹ On 6 August 2014 the Supreme Court of the Russian Federation became the highest judicial authority adjudicating civil, criminal, administrative and other types of cases as well as economic disputes and thus replaced the Supreme Arbitrazh Court as the highest judiciary body within the arbitrazh court system.

² The Plenum of the Supreme Court can provide arbitrazh courts with clarifications/instructions on issues of court practice in order to ensure uniform application of Russian legislation. The explanatory parts of arbitrazh courts’ rulings may contain references to resolutions of the Supreme Court as well as those resolutions of the Supreme Arbitrazh Court that continue to be in force. It has been established that clarifications of the Supreme Arbitrazh Court concerning the application of laws and other regulations are to stay in force until the relevant resolutions are adopted by the Supreme Court.
2.3.2 Court of appeal

In most cases an oral hearing takes place one to two months after filing an appeal with a court of appeal. Before the hearing all parties to a case are allowed to provide the court with written responses to the appeal. The resolution of a court of appeal comes into force immediately after its operative part is pronounced.

2.3.3 Court of cassation appeal

A judgment of the first instance, after undergoing the review of a court of appeal, may also be appealed in a court of cassation appeal (a third level court) within two months after such judgment or resolution comes into force. A court of cassation appeal does not retry the case or re-evaluate the evidence, but deals only with issues of law. As a result of the cassation hearing the decision may be upheld, reversed or amended, or the case may be sent back to the court that has issued the decision for a re-trial.

A cassation appeal must be filed within two months, and is heard within two months of the date of filing. Generally, the submission of a cassation appeal does not suspend the enforcement of the appealed decision, though a court of cassation appeal may order a stay of execution.

A losing party may appeal decisions of the court of cassation appeal and relevant lower courts with the panel of the RF Supreme Court within two months.

Cassation review at the Supreme Court is a two-tier process. A judge of the RF Supreme Court first resolves within 2–3 months whether there are grounds for the review of the cassation appeal at a court session of the Supreme Court’s panel. If transferred to the panel, the cassation appeal is to be considered within two months of the ruling on such transfer. The refusal to transfer the case for such review may be challenged via the Supreme Court’s chairman or deputy chairman. If the challenge is successful, the cassation appeal is transferred for review in a court session of the Supreme Court’s panel.
The rulings of the RF Supreme Court’s panel may be appealed with the court of supervisory review within three months of becoming effective.

2.3.4 Supreme Court

Supervisory review is also a two-tier process. Before the appeal is actually heard on its merits, a judge of the Supreme Court resolves within 2–3 months whether there are grounds for review of the cassation appeal at a court session of the Supreme Court’s Presidium. If transferred to the Presidium, the supervisory appeal is to be considered within two months of the ruling on such transfer. The refusal to transfer the case for such review may be challenged via the Supreme Court’s chairman or deputy chairman. If the challenge is successful, the supervisory appeal is transferred for review in a court session of the Supreme Court’s Presidium.

A resolution issued by the Supreme Court’s Presidium upon review of the supervisory appeal cannot be further appealed.

2.3.5 Procedural Issues

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 a foreign or local law firm.

Certain formalities must be followed in order for a person to appear as a legal representative in court. The Code of Arbitrazh Procedure (the “CAP”) 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 or other person duly authorized under the law and the constituent documents and bear the corporate seal (if there is one).

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, a statement of defense, appeals, applications
to amend the subject-matter or grounds of a claim, applications for provisional measures, acceptance or withdrawal of claims, transfer of the case to arbitration, concluding an amicable agreement and agreement on facts, delegation as well as the right to sign applications for review based on new or newly discovered facts, challenge court acts, receive awarded funds or other property.

An arbitrazh court needs to send by post only the first ruling on initiation of proceedings in respect of a party (setting the date of the first hearing in a case). The relevant information is also placed in the database of arbitrazh court cases. Thereafter the parties should obtain further information regarding the pending proceedings themselves.

The filing of claims and submissions is done either on paper with the personal signatures of the authorized representatives or electronically via MyArbitr.ru.

2.3.6 Summary Proceedings

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

The peculiar features of summary proceedings include:

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

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4 http://my.arbitr.ru/
examination of the case file, as well as all filings in the case is done electronically, with an individual access code sent to the parties together with a ruling on initiation of summary proceedings;

- a fixed term for filing submissions and evidence is established by the court, and the court does not consider and returns all filings made after this date, unless a party can prove it was unable to comply with the term for reasons beyond its control;

- no minutes are kept;

- the postponement of proceedings is not possible.

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 after appellate review or the request for extension of the term for filing an appeal has been refused.

2.3.7 Personal Jurisdiction over Foreign Respondents

Russian arbitrazh courts have jurisdiction over foreign respondents if:

- The respondent or his/her assets reside or are located in the Russian Federation;

- The management body or a branch or representative office of the foreign party is located in the Russian Federation;

- The dispute arose out of a contract, whose performance should have taken place, or actually took place, in the Russian Federation;

- 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;
• The dispute arose out of unjust enrichment that took place in the Russian Federation;

• The claimant files an action for the protection of its business reputation and is located in the Russian Federation;

• The dispute arose out of a relationship connected with circulation of securities that were issued in the Russian Federation;

• The applicant in a case to establish a fact of legal relevance claims that such fact occurred in the Russian Federation;

• 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

• In other cases where the disputed legal relationship is closely linked with the Russian Federation.

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

• Disputes relating to state property, including privatization disputes and takeovers of private property for public needs;

• Disputes relating to title and other registered rights to real property located in the Russian Federation;

• 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 activity;

• Disputes involving the establishment, liquidation or registration of legal entities and self-employed entrepreneurs in the Russian Federation;
Bankruptcy proceedings with respect to a Russian debtor;

Corporate disputes with regard to a Russian legal entity; and

Disputes arising over administrative and other public law relationships with Russia or Russian state agencies.

Russian arbitrazh courts also have jurisdiction over a foreign respondent 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.

2.4 Administrative Judicial Proceedings

Procedural rules regulating administrative judicial proceedings are contained in the Code of Administrative Proceedings (the “CAS”)\(^5\), CAP\(^6\) and the Code of Administrative Offenses.

2.4.1 Code of Administrative Proceedings

The provisions of the CAS apply to resolution by the Supreme Court and the courts of general jurisdiction of administrative cases for defending the violated or challenged rights, freedoms and legal interests of citizens and legal entities, as well as to other administrative cases arising out of administrative and other public law relations, such as:

- On challenging regulatory legal acts in part or in full;
- On challenging decisions, actions (inaction) of governmental authorities, other state authorities, military authorities,

\(^5\) The CAS was adopted in 2015 and became effective on 15 September 2015 (except for certain provisions). Given its scope of application it is to replace the provisions of the Civil Procedural Code on resolving cases outside public law relations, as well as those of certain special laws.

\(^6\) Section III of the CAP continues to be applicable to cases arising from public legal relations that are within the competence of arbitrazh (commercial) courts.
municipal authorities, public officials, state and municipal officers;

- On challenging decisions, actions (inaction) of non-commercial organizations vested with certain state or public authority, including self-regulated organizations;

- On challenging decisions, actions (inaction) of qualification boards of judges;

- On challenging decisions, actions (inaction) of the Highest Qualifying Examination Commision and examination commissions of RF constituent territories holding qualification exams for judges;

- On defending electoral rights and rights of RF citizens to take part in a referendum;

- On awarding compensation for violation of the right to judicial process within a reasonable term (within the competence of general jurisdiction courts) and the right to execution of a general jurisdiction court act within a reasonable term.

In addition to the joinder of parties in administrative proceedings the CAS introduces the possibility of filing collective administrative claims to defend violated or challenged rights and legal interests of a group of persons in administrative proceedings.7 Such actions are considered by a court if at least 20 persons have joined the claim at the time of its filing.

The CAS allows a court to order provisional relief in administrative cases, the list of which is not exhaustive, and includes such relief as: suspension of the challenged decision in full or in part; prohibition on

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7 Class actions were possible only under the CAP not under the Code of Civil Procedure.
carrying out certain actions. In case of challenging a regulatory legal act only one provisional relief is possible, that is, the court may order that such act not be applied to the administrative claimant.

The procedural coercion measures introduced by the CAS include (1) putting limits on pleading by a party or depriving a party of the chance to plead; (2) an undertaking to appear. Among the procedural changes is a requirement for higher legal education for representatives in administrative cases.\(^8\)

The CAS obligates governmental bodies and officials to prove the legitimacy of their decisions and actions (inaction). However, an administrative plaintiff that challenges such decisions, actions (inaction) is not obligated to prove their illegality (but should indicate which regulations they run contrary to, and show that their rights or the rights of others have been violated).

The CAS allows administrative cases to be heard in a simplified procedure. This procedure is subject to the conditions set out in the code (for example, at the wish of the parties), and no oral hearing is conducted with the court examining only written evidence.

The general term for a challenge in appeal proceedings is one month, however shortened terms of 5-10 days are stipulated for certain types of cases.\(^9\)

2.4.2 Code of Administrative Offenses

The Code of Administrative Offenses regulates the procedure for competent courts and authorities (officials, executive authorities, law enforcement authorities) to resolve cases concerning administrative liability.

\(^8\) At present no such requirement is stipulated either in the CAP or in the Code of Civil Procedure.

\(^9\) Article 298 of the CAS.
Article 23.1 of the Code of Administrative Offenses stipulates the competence of courts in resolving administrative cases by listing the types of administrative offenses subject to the jurisdiction of courts (either general jurisdiction courts (district courts and magistrates) or arbitrazh courts) (part 1 of Article 23.1) as well as those disputes that may be referred to court pursuant to a decision of a competent body and/or official (part 2 of Article 23.1).

The code (Part 3 of Article 23.1) clearly distinguishes those administrative disputes that are to be resolved by arbitrazh (commercial) courts. Such disputes include competition disputes as well as certain disputes when the administrative offense is committed by a legal entity and/or individual entrepreneur.

As to disputes to be resolved by general jurisdiction courts, the general rule is that those are heard by magistrates.

Several exceptions apply, namely, the code specifies cases when a dispute regarding an administrative offense is referred for resolution to a district court. Firstly, these are special types of administrative offenses, such as: violation of the rules for public meetings; violation of the rules regarding cultural heritage objects; failure to perform an order of a supervisory authority responsible for cultural heritage objects; some public security and public order offenses etc. Secondly, district courts resolve disputes where an administrative enquiry has been made, as well as administrative cases entailing certain administrative penalties, such as administrative deportation from the RF, administrative stay of activity and disqualification of state officials.

Please note that anti-corruption cases based on Article 19.28 of the Code of Administrative Offenses (Illegal Remuneration on Behalf of a Legal Entity) are heard by magistrates. The decision of magistrates to impose penalties may be appealed in district courts.
2.5 International Arbitration

As an alternative to 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. Arbitration proceedings may handle 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 Russian arbitrazh courts (e.g., disputes arising from bankruptcy proceedings, or other disputes specifically listed in Russian law).

The principal rules of international arbitration are governed by the Law On International Commercial Arbitration (the “ICA Law”), enacted on 7 July 1993 and based on the provisions of the UNCITRAL Model Law.

In addition, the international commercial arbitration provisions of various international treaties to which the Russian Federation is a party – 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.

In December 2015 the State Duma adopted in the third reading laws that introduce major changes into the regulation of arbitration in Russia. The most important changes to the ICA Law include changes to the scope of application of the ICA Law, softening the requirements for arbitration agreements; and enabling the parties to institutional arbitration to remove the possibility to challenge awards (including awards on jurisdiction). In addition to the changes to the ICA Law itself, arbitration reform in Russia involves several other changes which have an impact on international arbitration in Russia, including:

- Introducing stricter requirements for establishing permanent arbitral institutions, including the need to obtain permission from the Russian Government;
2.6 **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 the judgment has been recognized by a Russian court. Such recognition is available if supported by a relevant international treaty, or on the basis of reciprocity. Russian courts also 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

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10 Arbitration agreements for corporate disputes may be concluded after 1 February 2017.
Russian courts. As a rule, Russian courts may not review any foreign arbitral award on its merits. The grounds for refusal to recognize and enforce foreign arbitral awards are generally the same as those set forth in the New York Convention.

2.7 Alternative Dispute Resolution and Mediation

The Federal Law on an Alternative Procedure for Dispute Resolution with the Participation of an Intermediary of 27 July 2010 (the “Law on Mediation”) regulates dispute resolution procedures involving the assistance of a mediator on the basis of voluntary consent of the parties.

The mediation procedure may be applied to civil disputes (including disputes arising out of economic relations), labor disputes (except for collective employment disputes) and family law disputes. However mediation is not possible in these if they affect public interest or the rights and legitimate interests of third parties that are not participating in the mediation procedure. From the start of mediation the limitation period is suspended.

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

When the parties have concluded a mediation agreement as the result of the mediation procedure after the dispute has been referred to a state court or arbitration, the court or arbitration tribunal may approve the mediation agreement as a decision on agreed terms.

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 performing their duties.