Russia

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Litigation

1 What is the structure of the civil court system?

The structure of the state civil courts (civil courts) in Russia has particular features that distinguish it from other jurisdictions, namely the division of all civil courts into two main categories, arbitrazh (commercial) courts, including, inter alia, the specialised Arbitrazh Court, the Intellectual Property Court and the courts of general jurisdiction. This chapter will deal specifically with each category.

Arbitrazh courts

The arbitrazh courts consider cases and disputes relating to entrepreneurial and other business activity that arise between legal entities and individuals who carry out entrepreneurial activity without the status of a legal entity, and in some cases those that are directly envisaged by legislation, ie, matters that involve the participation of the Russian Federation, its entities, municipal entities, state authorities, local authorities, other authorities, officials, entities without the status of a legal person and individuals without the status of individual entrepreneur.

Given the general rule of jurisdiction, as described above, the arbitrazh courts consider the following types of cases:

- economic disputes arising from civil law;
- economic disputes arising out of administrative law and other public relations (for example, cases challenging laws and regulations or non-regulatory acts; decisions and actions of public authorities relating to the rights and legitimate interests of the applicant in the business sphere; certain cases on administrative offences which fall within the jurisdiction of the Arbitration Court; and cases of recovery of mandatory payments, penalties, etc, from organisations and individuals engaged in entrepreneurial and other economic activities);
- cases concerning the establishment of facts of legal significance in the field of business and other economic activities (such as establishing the fact of possession and use by a legal entity or individual entrepreneur of real estate as its or his own, establishing the fact of possession of a title deed effective in the field of entrepreneurial and other economic activities by a legal entity or individual entrepreneur in case of disagreement between the details of its holder and the actual registration data of the holder, etc);
- cases challenging the decisions of arbitrazh courts and cases seeking to issue writs of execution of arbitral awards relating to disputes arising out of entrepreneurial and other economic activities; and
- cases seeking the confession and enforcement of foreign arbitral awards relating to disputes arising out of entrepreneurial and other economic activities.

Arbitrazh courts also have special jurisdiction over the following categories of cases (cases are considered by arbitrazh courts regardless of whether legal entities, individual entrepreneurs or other organisations and citizens constitute the parties to a dispute or claim):

- insolvency (bankruptcy);
- corporate disputes (relating to, for example, the establishment, reorganisation and liquidation of a legal entity, ownership of stock or other interests in the authorised capital of the legal entity, or the appointment, election, termination or suspension of power of the legal entity, disputes relating to the issuance of securities, disputes arising out of claims of founders or shareholders seeking the recovery of damages incurred by a legal entity);
- cases on refusal of state registration, evasion of state registration of legal entities and individual entrepreneurs;
- cases arising from the depository activities related to the rights of the shares and other securities, and the exercise of other rights and duties established by the federal law;
- cases arising from the activities of public corporations relating to their legal status, management order, creation, reorganisation, liquidation, organisation and the powers of the bodies and responsibility of the persons within their bodies;
- cases on the protection of intellectual property rights with the participation of organisations engaged in the collective management of copyright and related rights;
- cases on the protection of business reputation in the field of business and other economic activities; and
- other disputes arising out of entrepreneurial and other economic activities in cases set forth by the federal law.

The hierarchy of arbitrazh courts in relation to litigation is set out below.

Court of first instance

The court of first instance (arbitrazh court of the constituent entity of the Russian Federation, a total of 83 courts (in 2014 the Russian Federation had two new entities annexed to its territory – the Republic of Crimea and the federal city of Sevastopol), and a separate division of the court of first instance established in one of the entities and constituting the court to carry out proceedings in remote areas of the entity).

The court of first instance tries the case on the merits, with examination and assessment of evidence, as a result of which a judgment is issued (unless the proceedings in the case are terminated or the claim is abandoned or left without consideration pursuant to a court order).

The court of first instance is also authorised to review the judicial acts which it passed earlier and which became effective in law upon newly discovered circumstances; to appeal to the Constitutional Court of Russia seeking to review the constitutionality of the law referred to in the consideration of the case; to examine and summarise legal precedents; draw the proposals on updating legal acts; to analyse legal statistics.

Court of second instance

The judgment of the court of first instance may be appealed to the court of second instance – the arbitrazh appellate court – which has authority over several courts of first instance on a territorial basis. In Russia there are about 21 functioning arbitrazh appellate courts (after the establishment of two new courts of first instance in Russia in connection with annexation of the Republic of Crimea and the federal city of Sevastopol, the 21st Arbitrazh Appelate Court was established to reconsider judgments rendered by the two new courts) that reconsider cases, verifying the legality and foundation of judgments of the court of first instance which did not enter into force, though subject to certain limitations (a case is considered within the scope of the subject matter and cause of action previously declared in the court of first instance; in case of the appeal, no introduction into evidence is allowed except in cases where such evidence was not excusably introduced in the first instance court; the appellate court does not apply the principles of consolidation and separation of several claims or substitution of an improper defendant, etc) in order to detect violations of substantive or procedural law committed by the court of first instance in the course of adoption of its judgment. The judicial acts of arbitrazh

appellate courts that terminate the examination of a case on its merits are referred to as rulings.

In addition to these powers, the courts of appeal are authorised to review the judicial acts which they passed earlier and which became effective in law upon newly discovered circumstances; to appeal to the Constitutional Court of Russia seeking to review the constitutionality of the law referred to in the consideration of the case; to examine and summarise legal precedents; draw the proposals on updating legal acts; to analyse legal statistics.

Court of cassation

The third stage of considering cases in the arbitrazh courts is of cassation organised on a territorial bases, each of such cassation courts incorporating several appellate courts under its jurisdiction. In 2014, these courts were renamed arbitrazh courts of the circuit (instead of federal arbitrazh courts of the circuit).

Therewith, the most important change in the system of courts of cassation associated with the abolition of the Supreme Arbitrazh Court of the Russian Federation was the introduction of the Judicial Board on Economic Disputes into the structure of the RF Supreme Court as an additional cassation instance which also reconsiders cases (the questions below explain in more details).

There are 10 courts of cassation in Russia. The annexation of two new entities – the Republic of Crimea and the federal city of Sevastopol – to the Russian Federation did not result in the establishment of another Court of Cassation with the powers to retrial cases of these two new courts. The decisions of the arbitrazh courts of first instance of Crimea and Sevastopol, as well as judgments of the 21st Arbitrazh Appellate Court are reviewed in one of the previously established courts of cassation.

When considering a dispute, the cassation court does not review the case in its totality with the examination and assessment of evidence. Its competence consists only in detecting violations to the legal rules committed by the courts of the first and the second instance. The acts adopted by the cassation court are referred to as rulings. Special attention should be paid to the fact that appeal to the cassation court for appeals against the decision, as a general rule, is only possible if the person concerned has previously appealed the decision in the cassation court, otherwise the cassation court will not review the judicial act (decision).

For some types of cases, the cassation court adjudicates disputes as a court of first instance, including applications for compensation for violating the right to trial within a reasonable time or the right to execute judgment within a reasonable period of time.

Like the courts of first and second instances, the arbitrazh courts of the circuit are authorised to review the judicial acts which they passed earlier and which became effective in law upon newly discovered circumstances; to appeal to the Constitutional Court of Russia; to examine and summariae legal precedents; to draw the proposals on updating laws and regulations.

As already mentioned, the abolition of the Supreme Arbitrazh Court of the Russian Federation in August 2014 and delegation of its powers to the Supreme Court of the Russian Federation resulted in the establishment of a separate board as part of the Supreme Court – the judicial board on economic disputes (Board) – which is actually the second cassation instance.

Thus, the Board considers appeals against judgments of courts of first instance (courts of entities), judicial acts of appellate courts, judicial acts of district courts and judicial acts of the Court for intellectual property rights.

The Board considers appeals in two stages. The first stage is related to non-public consideration of an appeal together with the response to it, if submitted, by the Board's judge, and rendering a decision on the presence or absence of grounds for judicial review of the judgment in the public session of the Board.

Thus, at the of end of this stage the Board decides either to refuse to refer the appeal to the court session of the Board, or to review the appeal in a public session where the parties and other persons involved are enable to take part. Upon the results of consideration of a case, the Board renders a judgment referred to as ruling.

The grounds for reversal of judgments of lower courts on appeal by the Board are the material violations of substantive law and (or) procedural law which had an impact on the outcome of the case and which must be remedied to restore and protect the violated rights, freedoms and legitimate interests in the sphere of entrepreneurial and other economic activities, as well as to protect legitimate public interests.

Along with consideration of disputes, the Board summarises judicial practice, addresses to the Constitutional Court seeking the constitutionality of law, and exercises other powers.

Supreme Arbitrazh Court of the Russian Federation

Until August 2014, the ultimate stage of proceedings in the arbitrazh courts had been the Supreme Arbitrazh Court of the Russian Federation, which was entitled to review cases (judgments of the first instance court and rulings of the appellate and cassation courts) by way of supervision.

On 6 August 2014, the Supreme Arbitrazh Court of Russia was merged with the Supreme Court of Russia with the delegation of its powers to the Supreme Court, which not only exercises the powers of the Board acting as a cassation instance but also the powers of a supervisory authority represented by the Presidium, which reviews judicial acts rendered by the Board on appeal.

Consideration of a supervisory appeal is similar to the one of a cassation appeal lodged with the Board. In particular, after the supervisory appeal has been lodged with the Board to trial on appeal, the judge of the Supreme Court first examines it in a non-public order without summoning the parties. As a result of such review, one of two judgments shall be rendered, either to refuse to refer a supervisory appeal to be considered in a court session of the Presidium of the Supreme Court of the Russian Federation, where there are no grounds for review of the judgment, or to refer a supervisory complaint to be considered in a court session of the Presidium of the Supreme Court of the Russian Federation.

The list of grounds for review of the case by way of supervision is extremely limited and is predicated on the fact that the breaches committed by the Board in considering the case under cassational procedure shall be material. In particular, such breaches are a violation of human and civil rights and liberties guaranteed by the Constitution of the Russian Federation, generally accepted principles and norms of international law, international treaties of the Russian Federation; violation of the rights and legitimate interests of the general public or other public interests; violation of rules of application and (or) interpretation of law by the courts.

The decisions made by the judge of the Supreme Court of the Russian Federation at the stage of public proceedings by way of supervision are referred to as orders (of refusal of the case's referral to the Presidium for public hearing and affirmation of inferior courts' judgments or of a case's referral to a public hearing in the Presidium) and those adopted by the Presidium at the stage of public hearing of the case are referred to as the rulings.

However, the Presidium's judgment issued upon the results of the supervisory examination of the case is not final. In the case of any objection to such judgment where any significant violation of substantive and (or) procedural law was admitted that affected the validity of the judgment of the Presidium and deprived the parties to the dispute of their rights or significantly restricted such rights, the Chairman of the Supreme Court of the Russian Federation or his deputy shall have the right to recommend to the Presidium a review the supervisory judgment. Such recommendation is considered based on the rules for reviewing cases by the Board, as described above.

Court of Intellectual Property Rights

In addition to the general system of arbitrazh courts, the first specialised court – the Court of Intellectual Property Rights – has been functioning in Russia since July 2013.

Within its jurisdiction in the broadest strokes as the court of first and cassation instances, the Court of Intellectual Property Rights considers disputes relating to the protection of intellectual property rights (eg, cases involving normative legal acts of federal executive in the field of patent rights and rights to selection achievements, the right to integrated circuit layouts, the right to trade secrets (know-how), the right to legal means of individualisation of legal entities, goods, works, services and enterprises, the right to use the results of intellectual activity as part of an integrated process; cases involving disputes on granting or termination of legal protection of intellectual property and equivalent means of individualisation of legal entities, goods, services and enterprises (with the exception of copyright and related rights, and topologies of integrated circuits); cases involving an early termination of the legal protection of a trademark due to passiveness; cases involving identification of the patent holder, cases challenging the decision of a federal anti-monopoly authority recognising unfair competitive actions related to the acquisition of the exclusive right to the means of individualisation of a legal entity, goods, works, services and enterprises, etc). The above cases are heard by the Court of Intellectual

Property Rights, regardless of whether the participants in legal relations, that the dispute arose of, are organisations, individual entrepreneurs or citizens.

Decisions made by the Court of Intellectual Property Rights as the court of first instance after examining the case on its merits can only be appealed to the court of cassation. The Court of Intellectual Property Rights itself is also a cassation court, represented by the Presidium.

Judges

The number of judges involved in the consideration of a case at each level is as follows:

- At first instance, as a general rule, the case is considered by a single judge (there are two exceptions of panel hearing: in case the arbitrazh court assessors are involved, the case is considered by one judge and two arbitrazh court assessors, by a panel composed of three judges by specially named category of cases (eg, cases challenging laws and regulations, cases referred by the court of cassation to the court of first instance to be considered by a panel, etc);
- at second instance (the court of appeal) the case is tried by a panel of three judges, the court of the circuit of the cassation instance composed of three judges.

The Board of the Supreme Court of the Russian Federation considers a case under the cassational procedure as follows: the acceptance and non-public consideration of an appeal is carried out by a single judge a public hearing of the case is carried out by a panel composed of three or another odd number of judges.

The Presidium of the Supreme Court of the Russian Federation considers cases by a panel similar to the one of the Board. Acceptance and non-public consideration of a supervisory appeal are carried out by a single judge, a public hearing is carried out by three or another odd number of judges. In total, there are 13 judges in the Presidium.

As for the Court of Intellectual Property Rights, examination of the case in the first instance is carried out publicly by a panel of three judges; examination in the cassation instance is carried out by the Presidium which consists of the chief judge, his deputies, presiding judges and judges. The Presidium of the Court currently consists of five judges.

Courts of general jurisdiction

The courts of general jurisdiction hear all other cases not falling within the jurisdiction of the arbitrazh courts, including the Court of Intellectual Property Rights. These include, inter alia, litigation with the participation of individuals, organisations, state authorities and local authorities concerning the protection of infringed or contested rights, freedoms and lawful interest in disputes arising out of torts and violations of labour, residential, land, environmental and public law; cases subject to special proceedings (relating to the establishment of facts of legal significance, to the declaration of a person as missing, to the adoption of a child, to the declaration of a minor as fully capable and so on); cases challenging decisions of arbitrazh courts and seeking to issue writs of execution of arbitral awards; and cases seeking recognition and enforcement of foreign judgments and foreign arbitral awards.

The hierarchy of the courts of general jurisdiction is, in general, identical to that of the arbitrazh courts. Thus, the system of the courts of general jurisdiction consists of:

- courts of first instance, where the judge considers cases single-handedly and makes a relevant decision (some types of cases are considered in the first instance court by a panel of three judges, eg, cases involving protection of the electoral rights of citizens);
- courts of second instance, where a panel of three judges reconsiders cases with the examination of evidence and investigation of the facts of the case (only new claims that have not been considered by a court of first instance are rejected by the appeal court; further evidence can be introduced only provided that it was not submitted for a valid reason to the first instance court). Following consideration of the case by the court of appeal an appellate order is issued. At the first and the second levels the case is tried publicly with the summoning of the parties;
- courts of third (cassation) instance, where the case is considered by a panel consisting of no fewer than three judges, and the subject matter includes the acts of lower courts that have become effective. The cassation appeal is considered by the court in absentia (without summoning the parties) and the decision is made to either refuse or allow the transfer of the case for public hearing. Following the results of the public hearing the court makes a ruling or an order, which terminates the proceedings;
- the fourth level is the Presidium of the Supreme Court of the Russian Federation, where the supervisory appeal is first considered by a single judge, who either refuses to transfer the case or decides to transfer it for consideration by the Presidium in a public hearing, which includes summoning the parties. A session of the Presidium shall be valid if attended by the majority of the members of the Presidium (in total, the Presidium shall consist of 13 judges – currently there are 10 judges in the Presidium). In this regard, the refusal to transfer the supervisory appeal to the Presidium can be cancelled by the Chief Justice of the Supreme Court of the Russian Federation or his deputies, and the appeal, therefore, is considered in a public court hearing. Following the public hearing of the case in the Presidium a judicial decision referred to as a ruling is issued. All issues concerning supervisory appeal are decided by the Presidium by a majority vote of the members present. If the votes cast for and against the revision of the adopted decision are divided equally, the supervisory appeal is deemed returned.

Similar to the system of arbitrazh courts, the Presidium's ruling may be appealed to the Chairman of the Supreme Court of the Russian Federation or his deputy, who have the right to recommend to the Presidium to review the ruling issued previously. The procedure for consideration of such recommendation is similar to the procedure for the supervisory examination.

2 What is the role of the judge and the jury in civil proceedings?

Arbitrazh courts

Arbitrazh assessors can be engaged in proceedings in the court of first instance upon the petition of a party in connection with the extreme complexity of the case or the need for expert knowledge in the sphere of economics, finance and management. The role of the assessors is to help the court understand the complex issues of the dispute relating to the specific sphere of knowledge and to help pass a judgment by taking part in the voting.

The judge of the arbitrazh court plays a relatively active role in the proceedings, notwithstanding the fact that one of the fundamental principles of arbitration proceedings is that of the free exercise of material and procedural rights by the parties in adversarial proceedings, whereby the court has to resolve the dispute by passively listening to the arguments of the parties and resolving such a dispute after the hearing is over. Thus, a judge in the course of consideration of certain categories of cases (cases arising out of administrative and other public legal relations) can, on his own initiative, request the provision of evidence: he is entitled to summon and question witnesses or to take other regulatory steps aimed at comprehensive resolution of the dispute. A wide range of powers, which show the judge's role as investigator, follows from the authority vested in him, such as when a judge is entitled to suggest taking a particular step to a party to the dispute and levy a fine for non-compliance by a party with a court order (for example, the court is entitled to suggest providing additional evidence). The court may also issue court orders that promote the collection of evidence to other courts; visit the places of evidence for its inspection, if the latter cannot be presented in court; decide whether other persons should participate in the case (co-defendants, third parties), etc.

Courts of general jurisdiction

There is no jury trial in courts of general jurisdiction in Russia.

As in the arbitrazh court, the role of the judge is quite active. Thus, the court does not merely hear the case in a passive fashion and resolve the dispute on the basis of arguments and evidence submitted by the parties, but in some cases it is allowed to take steps on its own initiative for the purposes of comprehensive consideration of the case (for example, the court defines which circumstances are material for the case; which party is to prove them; it brings up facts for discussion, even if the parties have not referred to some of them; decides the issue of participation in the case of other persons (the defendant, a state body) including of its own motion, etc).

3 What are the time limits for bringing civil claims?

The limitation periods for the arbitrazh courts and the courts of general jurisdiction are identical. Therefore, it is not necessary to describe limitation periods separately for each category.

It should be noted in this respect that in late 2013 the legislation was changed in terms of limitation periods.

In particular, currently there are two types of the so-called general limitation periods in Russia: the objective period which starts from the

occurrence of violation of law and may not exceed 10 years and the subjective period starting from the date when the person learns or should have learnt about the violation of its right and who the proper defendant in a law suit to protect the violated right is. The subjective limitation period lasts three years.

In some cases directly stipulated by law the limitation period may be shortened or, on the contrary, extended in comparison with the general limitation period (for example, in relation to the claims for the protection of violated rights in connection with distribution of information in media discrediting honour, dignity and business reputation, the limitation period is one year from the date of publication of such information; claims for contesting decisions of the meetings' generating legal consequences, the limitation period is six months from the date when the person, whose rights have been violated by the adoption of a decision, learns or should have learnt about it, but not later than within two years from the date when such information about the decision adopted becomes available for the members of the appropriate civil community; claims for recognition of invalidity of a disputable transaction the limitation period is one year; a one-year limitation period is also envisaged for claims arising out of maritime cargo shipment contracts; the shareholder whose pre-emptive right was violated has the right to claim that his rights and obligations of the buyer were retransferred to him within three months, etc).

The limitation period does not apply to claims such as claims for the protection of personal non-property rights, depositors' claims for their deposits against a bank, claims for compensation for bodily harm, claims of the owner or other possessor to remedy any breach of its rights, even though such violation is not associated with dispossession, and other claims directly envisaged by the law.

In Russia there is a strict rule that states that the limitation period may not be altered by agreement between the parties. Along with that, it should be noted that the law contains express rules as to the cases when the running of the limitation period can be suspended (for example, in relation to all situations such as the occurrence of force majeure circumstances; hindrances to the timely lodging of the claim; moratorium of the performance of the obligation declared by the government of the Russian Federation, the status of a serviceman of a plaintiff or defendant in the Armed Forces of the Russian Federation put on a war footing, etc) or when the limitation period can be interrupted (in case of committing of actions by an obligor that would evidence the acknowledgment of debt).

4 Are there any pre-action considerations the parties should take into account?

To file a claim and initiate the proceedings, with subsequent consideration of the dispute on the merits, the claimant needs to comply with two requirements that determine the relevant actions, which can be nominally divided into the following two categories:

- actions, in the absence of which no application to the court can be made (the claim is to be left without consideration); and
- actions, in the absence of which one can apply to the court, but the dispute may be left without consideration or the time limits for its consideration may be substantially increased.

The first point refers to the pretrial settlement of the dispute. In some cases directly stipulated by law (such as disputes seeking the alteration or termination of the agreement) or where the parties provided for such a rule in the agreement when entering into contractual relations, in the event of a dispute the claimant is obliged to settle the dispute by way of negotiations, very often by forwarding a complaint to its opponent (pretrial settlement procedure). Only compliance with this rule allows the person whose rights have been infringed to go to court if the parties to the contract fail to reach an agreement. The failure to comply with this rule entails the court's refusal to consider the claim on the merits. In such a case the claimant is entitled to go to court again, but only after all the steps required for pretrial settlement have been taken.

With regard to the second requirement (in the absence of an obligation concerning pretrial settlement of the dispute or if the desired outcome was not reached as a result of such settlement), the claimant is obliged to forward to all the parties to the dispute a copy of the claim and all the documents it relies on as evidence in the statement of claim, which such other parties (the defendant, the third parties) do not have. If the claimant fails to comply with this requirement before the claim is lodged, the acceptance of the claim for consideration shall be suspended (the claim is left without action) for a period established by the court (which generally does not exceed one month) in order for the claimant to comply with its duty and forward the required documents to the other parties. In case if this requirement is complied, the claim is considered lodged at the date of its original filing and accepted for consideration. Repeated failure to comply with this requirement shall result in the return of the claim to the claimant. In this case the return of the claim does not exclude the possibility of lodging it anew, but only after the circumstances that resulted in its return have been removed. The above rules are significant for complying with the limitation periods.

The requirement concerning the pretrial settlement of the dispute applies in both the arbitrazh courts and the courts of general jurisdiction; the rule concerning the duty to forward the documents that the parties lack alongside a copy of the statement of claim applies only to arbitrazh courts. When applying to a court of general jurisdiction the claimant encloses copies of the claim and its annexes to the statement of claim in the number of persons involved in the case. When allowing a claim the court itself shall provide copies of documents to participants of the proceedings.

5 How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement?

The judicial proceedings in an arbitrazh court, as well as in the court of general jurisdiction, are commenced concurrently with the lodging of the claim, which may be filed directly with the court or forwarded by mail or online by filling in the application forms on the court's official webpage (the filing of claims online is typical of arbitrazh courts only).

Upon the receipt of the claim by the court, provided it was filed in accordance with all the rules, the latter issues an order for the acceptance thereof. In the order concerning the acceptance of the claim the court shall set out the initial steps that the parties should take in connection with the commencement of the proceedings (for example, to submit evidence, prepare arguments, decide the issue of participation of other parties etc). Such order is a hallmark of the commencement of the judicial proceedings.

After the court adopts the order to initiate the proceedings, it shall send such order by mail to all the parties to the trial. In case of arbitration proceedings, the parties receive claim papers from the plaintiff, since forwarding such papers to all the parties to trial is a prerequisite to allowance of a claim. When a case is considered in the court of general jurisdiction, the claim papers that the plaintiff submit in an amount equal to the number of the parties to the dispute shall be sent to all trial participants by the court itself. Subsequently, the trial participants in both types of proceedings shall be entitled to become familiar with the case file and make copies in the prescribed manner.

6 What is the typical procedure and timetable for a civil claim?

Arbitrazh court

As noted above, the claim-filing procedure involves either direct application to the court by handing in the documents to the court's secretarial office or by forwarding them by post, by courier or online.

There are no special requirements as to the time limits for the filing of the claim but it is important that the claim is filed within the limitation period. Otherwise, the particulars of the claim are dismissed if a defendant does not file a respective application. Apart from the claim, the plaintiff shall also submit the documents confirming the particulars of the claim (written evidence); documents confirming payment of state duty; documents confirming the authority of the plaintiff, etc.

With regard to the documents that are to be served upon the parties, the list of such documents is of a general nature. In particular, the claimant has to forward all documents that the parties participating in the proceedings lack to such parties (besides the claim, they often include written evidence that the parties to the proceedings may lack). No specific time limit is established for forwarding the claim to the participants of the dispute, but the law requires it to be done before the claim is filed with the court, since the statement of the claim is presented together with the documents confirming the direction of the documents to the parties in the dispute.

Court of general jurisdiction

The claim is filed with the court of general jurisdiction either by handing it into the court's secretarial office or by sending a letter by post. The law does not require the claimant to forward a copy of the statement of claim with any attachments to other participants to the proceedings. This requirement is covered by the fact that the claimant must file with the court the number of copies of the statement of claim equal to the number of parties to the dispute.

It is worth noting that if the claim is not submitted to the court on the last day of the limitation period, but is in the process of being mailed, the period of limitation is regarded as met, provided that the claim has been taken over to a post office within such period.

7 Can the parties control the procedure and the timetable?

The participants of the judicial proceedings have several ways, in which they can manage the proceedings and the time limits. These include:

- direct participation of a party's representatives in court hearings;
- receipt of judicial decisions sent by the court to their address;
- receipt of information concerning the progress of the proceedings, documents filed and judicial acts rendered by the court in the course of examining case materials outside the framework of a court hearing;
- checking the progress of the case and procedural actions with regard to such case on the court's official webpage; and
- telephone conversations with court employees.

These ways of managing cases are typical of the courts as well as of the courts of general jurisdiction.

Furthermore, in the course of consideration of the case by an arbitrazh court, not only are the parties able to passively monitor the time limits of the proceedings, as described above (ie, by checking the status of the procedural steps), but they can also actively influence them. Thus, if the proceedings exceed the time limit established by law or if there are grounds to believe that such time limit will be breached, the participant of the dispute will be entitled to submit an application to the court president for the acceleration of the proceedings. Upon the consideration of such application, in case if it is well-founded, the chief justice is entitled to take action to expedite the case and to ensure the judge has complied with the term provided by the statute.

8 Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

As regards the preservation of documents before the trial procedure, the law does not establish any specific regulations. The general rules established by special regulations of substantive law on documents' custody, archiving and destruction after the custody period has expired are applied. Both in the arbitrazh court and the court of general jurisdiction at the preparation stage or during the trial the parties are obliged to supply each other with all documents and evidence on which they base their case. In other words, if the law prescribes to keep certain documents for an indefinite period of time or if the prescribed period of storage of the document has not expired by the time of the trial, the party is obliged to disclose such documents before the court and the parties (except in cases where the information contained in such document is protected by law and has a special procedure for its disclosure).

9 Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

As a general rule the participants in the dispute both in arbitrazh courts and courts of general jurisdiction have equal access to all documents contained in case files and all information contained in such documents. However, the law provides for liability for disclosure of information contained in case files if this information has a special legal regime and protected by law. Each party to the dispute is warned by the court about the liability for disclosure of such information.

Since not only attorneys-at-law but also lawyers that do not have the status of attorney-at-law can act as representatives at court, there are exceptions according to which lawyers without the status of attorney-at-law cannot be granted access to case files which constitute state secrets. Attorneys-at-law are allowed access to such documents.

10 Do parties exchange written evidence from witnesses and experts prior to trial?

A general rule concerning the advance disclosure of all evidence (before the commencement of judicial proceedings) applies to the exchange of written witness and expert statements. However, if the parties did not disclose such evidence in advance, which sometimes happens, then in case of disclosure of such evidence immediately during the trial, the other party is entitled to the right to petition the court to adjourn the hearing to review such evidence and prepare the party's case regarding it, or, which is more typical for arbitrazh courts, the court may refuse to satisfy a motion on submission of evidence, if it is not submitted in due time and such failure to submit the evidence is intentional, occurs due to the abuse of rights and aims at delaying or frustrating the trial. In this case, the new evidence is not adduced and the case is considered on the basis of the evidence available in the case file.

The court may also require the person who has committed a breach of the procedure or deadlines for submission of the evidence, to reimburse the court costs.

The above steps ensure that basic principles of justice, such as equality of the parties and optionality, are realised.

11 How is evidence presented at trial? Do witnesses and experts give oral evidence?

In both arbitrazh courts and courts of general jurisdiction, all evidence must be attached to the file in its original form or as duly certified copies (certified by a competent person). Any documents in a foreign language must be accompanied by a translation and notarial certification thereof, as judicial proceedings in Russia are held in the Russian language.

With regard to experts and witnesses, both in the arbitrazh courts and the courts of general jurisdiction the rule concerning the possibility and the duty of such persons, summoned to court, to participate in the court hearing to provide oral witness statements is applied.

12 What interim remedies are available?

The courts of general jurisdiction have a system of interim remedies. It is primarily linked to the existence of the provisional remedy.

Before the claim is lodged, at any time in the course of the proceedings the claimant is entitled to file a petition with the court for the application of interim measures in order to secure the claim or the claimant's pecuniary interests. Interim measures are applied by the court only provided that the non-compliance with these measures may make it difficult or impossible to execute a judicial act, particularly if the execution of a judicial act is expected to take place outside the Russian Federation, as well as to prevent causing significant harm to the applicant. The following interim measures exist:

- seizure of monies or other property of the defendant;
- prohibition of certain steps in relation to the subject of the dispute by the defendant or other persons;
- imposition of the obligation to take certain steps for the purpose of preventing damage or deterioration of the disputed property;
- transfer of the disputed property into the keeping of the claimant or another party;
- suspension of recovery under the enforcement document contested by the claimant;
- suspension of the sale of the property if a claim for the release of such property from the attachment is filed; and
- other measures.

With regard to the application for interim relief envisaged by Russian legislation to support foreign proceedings, such application depends on the domestic law of the respective state where the dispute is considered in which the parties apply for interim relief in the Russian court, as well as on he existence of an agreement between the Russian Federation and the foreign state whereby the interim relief is recognised and enforced on the territory of another state.

13 What substantive remedies are available?

The substantive law outlines the following remedies:

- recognition of the right;
- restoration of the situation that existed before the breach of the right and termination of the conduct that infringes such right or creates the threat of such infringement;
- rendering the voidable transaction to be invalid and application of consequences of its invalidity;
- application of the consequences of invalidity of a void transaction;
- recognition of the resolution of the meeting to be invalid;
- recognition of the act of a state or local authority to be invalid;
- self-help;
- adjudication of the performance of an obligation in kind;
- compensation for loss;
- recovery of penalty;
- compensation for psychological damage;
- termination or alteration of the legal relationship;

- court's refusal to enforce the unlawful act of a state or local authority; and
- other remedies stipulated by law.

With regard to the accrual of interest as a punishment, it should be noted that in addition to the possibility of accrual of interest at the expense of the contractual penalty, the Russian law provides for 'Liability for non-fulfillment of monetary obligation', which enables the lender to charge interest on the funds improperly withheld by the debtor. The amount of such interest depends on and is calculated on the basis of the bank interest rate. As a general rule, the accrual of such interest is made till the date of the actual performance of the monetary obligation by the debtor.

14 What means of enforcement are available?

Judicial decisions are enforced with the help of a special public service, the court bailiff service. To ensure enforcement of judicial decisions the court bailiff service is entitled to take the following steps against the debtor:

- recovery of the debtor's property, including money and securities;
- charge of periodical payments received by the debtor as a result of labour, civil or social legal relationships;
- attachment of the debtor's pecuniary rights, including the rights to receive payments under the enforcement proceedings, in which it acts as the judgment creditor; the right to receive rental payments, as well as the exclusive rights to the results of intellectual activity and means of individualisation; the rights of claim under the contracts of disposal or exercise of the exclusive right to the results of intellectual activity and means of individualisation; the right to use of the results of intellectual activity and means of individualisation held by the debtor as the licensee;
- seizure of the debtor's property adjudicated to the judgment creditor, as well as under the enforcement inscription of the notary public in cases envisaged by federal law;
- attachment of the debtor's property held by the debtor or by third parties in pursuance of the judicial decision for the attachment of such property;
- filing an application with the registration authority for the registration of the transfer of the rights to the property, including securities, from the debtor to the creditor in accordance with the procedure stipulated by law;
- taking the steps set out in the enforcement document on behalf of and at the expense of the debtor if such steps can be taken without the personal involvement of the debtor;
- creditor's forceful occupation of a dwelling;
- eviction of the debtor from a dwelling;
- compulsory release of the non-residential premises from the debtor's presence and its property;
- compulsory deportation out of the Russian Federation of foreign nationals and stateless individuals; and
- compulsory release of the land plot from the debtor's presence and its property; and
- other steps envisaged by federal law or enforcement documents.

As to the failure to perform interim judicial acts, such as those associated with discovery of evidence, a penalty and court costs may be imposed on the obliged party for such a failure.

Moreover, criminal liability may arise in the case of malicious failure to comply with the requirements of the judicial decision.

15 Are court hearings held in public? Are court documents available to the public?

Arbitrazh courts

As a general rule, court hearings are open to the public. Any third party without limitation is entitled to attend such hearings and follow their progress. Judicial acts are declared publicly by the court. Such persons are entitled to make audio recordings of any hearing, and take pictures and video with the prior permission of the court. The exceptions to this rule include cases involving state secrets, as well as proceedings where the petition of a party to the dispute is satisfied that such party successfully proved that the open hearing will entail the disclosure of a commercial, official or any other protected secret. The court renders a respective judicial act to consider the case in closed court session referred to as a ruling.

The documents that are available to the general public include only the judicial acts (both interim and terminating the proceedings) that are published on the official webpage of the court. Written arguments and other evidence of the parties are not published.

Courts of general jurisdiction

Hearings in the courts of general jurisdiction are also open to the public. Any third party without limitation is entitled to attend such hearings.

Court hearings are closed in cases involving information that constitutes a state secret, the secret of adoption of a child, as well as in other cases directly envisaged by law. A closed hearing is also allowed when the petition of a participant to the proceedings is satisfied where such person refers to the need to preserve commercial or any other legally protected secret, or privacy or other circumstances, the public discussion of which may entail the disclosure of such secrets or infringement of the rights and lawful interests of the individual.

16 Does the court have power to order costs?

Arbitrazh courts

The judicial costs borne by the successful parties to the case are recovered from the unsuccessful party. If case of partial satisfaction of the claim the costs are allocated between the parties proportionally to the amount of the satisfied claims.

The representative's fees paid by the successful party shall be recovered by the arbitrazh court from the other party to the case in a reasonable amount. The same applies to the state fee, which shall be recovered from the defendant if the claim is satisfied in full. The exception is when the parties make an agreement concerning the allocation of costs if the claim is satisfied in part. In case of partial satisfaction of the claim the amount of the state fee shall be distributed between the parties pro rata to their successful claims.

As a general rule the costs-allocation issues are resolved by the court through issuance of an order or by a judicial decision that terminates the consideration of the case on the merits.

It should also be noted that in some cases the court may depart from the general rule of imposing legal costs against the losing side or imposing such costs in proportion to the satisfied claims. In particular, in some cases, the arbitrazh court may impose all legal costs on a person abusing its or his procedural rights or failing to exercise its or his procedural obligations if this has led to the disruption of the court session, delay of the trial, obstruction of the proceedings or adoption of a valid and founded decision by the court.

Courts of general jurisdiction

The allocation of costs in the courts of general jurisdiction is similar to that in the arbitrazh courts. The obligation to reimburse the judicial costs is imposed on a party to the proceedings by a court order or decision terminating the proceedings on the merits in the respective tribunal.

When considering cases in courts of general jurisdiction the court may recover compensation for the loss of time. Thus, the court may impose a compensation for the actual loss of time on the party which unfairly lodged an unfounded claim or initiated a dispute concerning a claim or regularly opposed the right and timely consideration and settlement of the case, in favor of the other party. The amount of compensation is determined by the court within reasonable limits and subject to specific circumstances.

Bodies imposing costs on the party which abused its rights and compensation for loss of time shall anticipate an inequitable conduct of the parties to the dispute related to the delay of the proceedings.

17 Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

In accordance with the general rule stipulated in one of the decisions of the Constitutional Court of the Russian Federation, the conclusion of a contingency fee agreement between the principal and the attorney shall not be allowed because, according to the clarification of the Constitutional Court, such agreement actually predetermines the actions of a state authority, since ultimately the outcome of the proceedings is dependent upon the actions of such authority. Owing to the fact that the attorney cannot influence the adoption of a decision by the court, no agreement based on a contingency fee attached to the content of the judicial act or the outcome of

the dispute shall be allowed. In all other cases, the fee shall be determined by agreement of the parties, namely the principal and the attorney.

With regard to the distribution of risks between the party to the dispute and a third party, the relevant legislation allows this (both in the arbitrazh courts and the courts of general jurisdiction). The distribution of risks is arranged by way of an assignment agreement and subsequent procedural legal succession of the third party in relation to the relevant (assigned) part. In this case, the general rules of assignment of claims are applied, according to which, for example, no assignment shall be allowed without the consent of the party with the outstanding obligation in which the identity of the creditor is essential for the debtor. Also, depending on the merits of the claim, in some cases, the assignment is only possible with the prior consent of the debtor, etc.

18 Is insurance available to cover all or part of a party's legal costs?

Russian legislation contains no prohibition on insurance of litigation costs that may be imposed on a party to the proceedings. Such insurance is possible on the basis of general insurance provisions, since no special rules exist that specifically deal with insurance of litigation costs. This applies equally to arbitrazh courts and courts of general jurisdiction.

19 May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Under Russian law a class action is only typical of proceedings in arbitrazh courts. No possibility of lodging a class action is envisaged for courts of general jurisdiction.

With regard to arbitration proceedings it should be noted that a class action may be lodged by an entity or an individual participant to the legal relationship, out of which the dispute or the claim arose, to protect the infringed or contested rights and lawful interests of other participants in the same legal relationship.

The Code of Arbitration Procedure sets out the types of disputes in relation to which a class action may be filed. In particular, a class action can be filed in corporate disputes and disputes relating to the activity of professional security market participants. As the list of such disputes in not exhaustive the relevant legislation allows class actions in relation to other types of disputes subject to certain conditions established by the code.

20 On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Since the courts of general jurisdiction have a four-tier system subject to certain peculiarities specified above in the description of the general court system, there is a possibility of cassation and supervisory appeal after the case has been considered by an appellate court.

It should be noted with regard to the grounds of appeal in arbitrazh courts that the appeal can be lodged by a party to the dispute within one month from the issuance of the judgment of the court of first instance in full. Upon the expiry of this one-month term the appeal can be filed with a petition for restoration of the time limit for the filing of the appeal.

The appeal can also be lodged by someone who is not participating in the dispute if the judicial act concerns their rights and duties.

The grounds for repeal of the decision adopted by the court of the first instance are as follows:

- incomplete examination of circumstances that are material for the case;
- lack of proof of the material circumstances that the court of first instance has deemed to have been found;
- discrepancy between the findings and the facts of the case.
- violation or improper application of the rules of substantive law, which resulted in:
  - non-application of the applicable law;
  - application of the law that was not to be applied; or
  - misinterpretation of the law; and
- violation or improper application of the rules of procedural law if it resulted or could have resulted in the adoption of an incorrect decision.

In addition to the above grounds of repeal of a decision in an appellate court (which are not unconditional) there is a range of grounds of repeal of a decision in any event (unconditional grounds).

The unconditional grounds include:

- consideration of the case by an unlawfully composed arbitrazh court;
- consideration of the case in the absence of some of the participants that have not been properly notified of the time and place of the hearing;
- breach of rules concerning the language in the course of consideration of the case;
- making of a decision by the court concerning the rights and duties of persons that have not been joined to the proceedings.
- failure to get the decision signed by the judge or the signing of the decision by a judge other than the one specified in the decision;
- absence of minutes of the court hearing on case files or the signing of such minutes by persons who did not participate in the making thereof; and
- breach of the rule concerning the secrecy of the justices' deliberations in the course of making a decision.

With regard to the courts of general jurisdiction it should be noted that appeals are also to be filed within one month from the date of the court decision in its final form by the participants to the proceedings.

In general, the grounds for repeal of a decision of the court of first instance are identical to those for repeal of a decision by the arbitrazh appellate court.

21 What procedures exist for recognition and enforcement of foreign judgments?

The procedure of recognition and enforcement of foreign judgments with regard to the arbitrazh courts is as follows.

The recognition and enforcement of foreign judgments are possible if an agreement concerning the recognition and enforcement of such judgments exists between Russia and the state where such judgment was adopted, or if the domestic law allows such recognition and enforcement based on the principle of reciprocity.

The recognition and enforcement of a foreign judgment is done on the basis of an application filed with the arbitrazh court by the successful participant in the foreign judicial proceedings. The application is filed with the court at the location of the debtor or the location of his property (if the location of the debtor is unknown).

The application is considered by a single judge in a court hearing within a time limit not exceeding three months from the receipt of the application by the court. The participants to the dispute are allowed to participate in the court hearing. Following the results of the hearing the court issues an order for the recognition and enforcement of the foreign judgment or a refusal to recognise it. The order issued can be appealed against within one month with the cassation court.

The enforcement of the foreign judgment shall be effected on the basis of an order of enforcement issued by the arbitrazh court that issued the order for the recognition and enforcement of the foreign judgment.

The recognition and enforcement of a foreign judgment in the court of general jurisdiction is also done when a relevant agreement exists between Russia and the foreign state whose decision is subject to recognition, or on the basis of the reciprocity principle. The courts of general jurisdiction recognise and enforce the judgments in civil cases, excluding business disputes and other cases concerning entrepreneurial and other economic activity and criminal sentences in the part relating to the compensation of loss inflicted by a crime.

The enforcement of a foreign judgment is possible within a period of three years. It is within this period that the judgment creditor can file a petition for the enforcement of the foreign judgment. In exceptional cases such term can be extended.

Based on the above, for the purposes of the enforcement the judgment creditor shall file a petition with the court at the location of the debtor or, if his location is unknown, at the location of the debtor's property. The petition filed is subject to consideration in a court hearing with the notification of the debtor concerning the time and place of its consideration.

Following the results of the consideration of the petition the court shall issue an order concerning the enforcement of the foreign judgment or a refusal of its recognition. On the basis of such an order the court shall issue an enforcement order, on the basis of which the enforcement of the foreign judgment shall be effected.

With regard to the recognition of a foreign judgment not requiring enforcement by the court of general jurisdiction, such judgments are recognised without any further proceedings, provided there are no objections from the interested parties. Thus, within one month after it became aware

of the receipt of the foreign judgment the interested party can file its objections to the recognition of such judgment with a court at its location. The objections filed shall be considered in a court hearing with the notification of the party that filed such objections. Following the results of the hearing the court shall issue a relevant order.

22 Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

The relevant procedural legislation does not directly regulate the issue of the collection of evidence for use within civil proceedings in other jurisdictions. General requirements apply to the collection and registration of evidence for the mentioned purposes as applied to each particular jurisdiction. Legal assistance in the course of collecting evidence depends on the availability of a relevant agreement on legal assistance between Russia and the state requiring such evidence. It should be noted that Russia is a party to a number of such international agreements with various countries.

Arbitration

23 Is the arbitration law based on the UNCITRAL Model Law?

Since the Russian Federation acceded to the UNCITRAL Model Law in 1993, the legislation concerning arbitration tribunals is based on the regulations and provisions of this law. This is stipulated directly in the law on international commercial arbitration, which refers to the fact that this law relies on the provisions of the UNCITRAL Model Law.

24 What are the formal requirements for an enforceable arbitration agreement?

The arbitration agreement must be in writing, according to the relevant Russian legislation. The agreement shall be deemed to have been concluded in writing if it is contained in a document that was signed by the parties or made by way of exchange of letters, teletype or telegraphic messages or other forms of electronic communication that ensure the recording of such agreement. The arbitration agreement is also deemed to have been concluded in writing if one party has forwarded another party a claim asserting that there is an arbitration clause between the parties in dispute, and the other party did not object to that in its response.

25 If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The appointment of the arbitrators in cases where the parties at dispute have failed to regulate this issue in the arbitration agreement shall be made as follows.

When the arbitration is to be conducted by three arbitrators, each party shall appoint one arbitrator and the two appointed arbitrators shall choose the third arbitrator. If a party fails to adopt the decision concerning the appointment of the arbitrator within 30 days or if the two arbitrators fail to agree on the choice of the third arbitrator within the same time limit, such arbitrator shall be appointed by the president of the Chamber of Trade and Industry of the Russian Federation (the organisation that unites Russian enterprises and entrepreneurs). The resolution of the president of the Chamber of Trade and Industry concerning the appointment of the arbitrator is not subject to appeal.

26 Does the domestic law contain substantive requirements for the procedure to be followed?

The domestic law contains no special substantive requirements for the arbitration procedure, though it must, of course, comply with constitutional principles.

27 On what grounds can the court intervene during an arbitration?

Under the relevant legislation no interference by a state court with the resolution of the dispute by a state arbitration tribunal shall be allowed. The exceptions include situations where the parties to the arbitration proceedings contest the arbitration award adopted in relation to them. The list of grounds for repeal of an arbitration award is quite short and relates mostly to procedural issues and violations. It is discussed in more detail below.

28 Do arbitrators have powers to grant interim relief?

The possibility of interim relief is directly stipulated by law. It should be noted that the law does not expressly establish the types of interim relief that can be granted to the parties to the dispute in international commercial arbitration; rather, it enables the court (unless the parties have agreed otherwise) to grant any interim relief that it deems fit depending on the essence and the subject matter of the dispute at the request of any party.

29 When and in what form must the award be delivered?

The arbitration award must be issued following the results of the consideration of the dispute. Such award is issued in writing and is to be signed by a sole arbitrator (if the case was considered by one judge) or by the arbitrators (if it was considered collectively). When the case was considered collectively the signatures of the majority of the arbitrators who considered the case must be in place for the award to be considered legitimate, and the reasons for the absence of the signature of the other arbitrator must be specified.

30 On what grounds can an award be appealed to the court?

Appeal against the award is allowed in the following situations. The party that has filed a petition for the repeal of the award has to prove one of the following circumstances:

- the arbitration agreement is flawed, resulting in its invalidity under the law that the parties chose to apply to the agreement, or in the absence of such indication, the law of the Russian Federation;
- one of the parties to the arbitration agreement lacks legal capacity;
- the party to the dispute was not duly informed of the appointment of an arbitrator or of arbitration proceedings, or was unable to provide its explanations in the case for other reasons;
- the award was issued in a dispute that was not envisaged by or does not fall under the conditions of the arbitration award or contains findings that are beyond the scope of the arbitration agreement; or
- the composition of the tribunal or the arbitration procedure did not comply with the agreement between the parties.

The arbitration award can also be repealed if the state court that is reviewing it finds that the object of the dispute could not have been the subject of proceedings in an arbitration tribunal or that the arbitration award conflicts with Russian public policy.

31 What procedures exist for enforcement of foreign and domestic awards?

It should be noted that the Russian Federation is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. In this regard, the provisions of the said Convention are binding on the Russian Federation and enable it to exercise foreign arbitral awards in Russia.

As to the domestic law, it provides that an arbitration award is deemed to be binding and enforced upon the filing of the petition to the state court, irrespective of the country of issuance.

To enforce an arbitration award a party to the dispute must provide the arbitration agreement alongside the petition for the enforcement of such award. If these documents are made in a foreign language, a duly certified translation (for example, a translation certified by a notary public) must be provided to the state court.

The petition for the enforcement of an award issued by a Russian arbitration tribunal shall be considered by the state court within three months of the date of its receipt. Following consideration of the petition the court shall issue an order either for the issuance of an enforcement order in relation to the arbitration award or for refusal to do so.

The procedure of enforcement of a foreign arbitration award is similar to the procedure of enforcement of a foreign judgment described in question 21.

32 Can a successful party recover its costs?

The amount of costs and the procedure of their allocation between the parties to the dispute is established in the arbitration award adopted. On the basis of the award the party is entitled to recover the costs it has borne in connection with the judicial proceedings.

Update and trends

As we pointed out previously, there have been huge changes in the judiciary in recent years.

First, it was the reform of the state court structure at the highest court level, which resulted in the abolition of the Supreme Arbitrazh Court of Russia in August 2014 (the supervisory court in the system of arbitrazh courts) and the delegation of its powers to the Supreme Court of Russia (the supervisory court in the system of courts of general jurisdiction). While the new architecture of the highest state judicial body and the law enforcement practice are being formed, and the experience is being accumulated, the legislator has launched large-scale changes in the judiciary. In particular, the following reforms in the judiciary have been established:

At present, state arbitration proceedings and proceedings in courts of general jurisdiction are governed by separate codes appropriate to them. Arbitration proceedings are governed by the Arbitration Procedural Code. Legal proceedings in the courts of general jurisdiction are held on the basis of the Civil Procedure Code.

The presence of such a dichotomy leads in practice to a lot of inconvenience and problems that will eventually adversely affect the stability of the legal system and investment climate in the state. To solve this problem, the legislator has initiated work on the unification of procedural law and the establishment of a unified Code of Civil Procedure which will regulate both the proceedings of courts of general jurisdiction and arbitrazh courts.

The objective of such unification is to ensure free and fair trials carried out within reasonable period of time in compliance with the procedural rules by competent, independent judges and guaranteed execution of judicial acts.

At present, the working group created to draft a bill on a unified code has already done a lot of preparatory work. In particular, the concept of a unified code has been developed and approved, a public discussion on it has been held, and there are ongoing discussions in the professional community regarding the content of such unified code.

We are continuing to monitor the work on the creation of a unified code and will cover any other interesting new institutions set up in the field of the judiciary. At the same time, it should be said that the work on unification should move the proceedings in Russia to a new level that meets the current needs of society and the state.

The second significant reform currently being carried out in the field of the judiciary concerns a change in arbitration proceedings.

Thus, in early 2015, the Russian legislature introduced a bill 'On Arbitration', which aims to create an improved effective mechanism of legal regulation of the institution of arbitration, which would take into account an accumulated international experience of arbitration in combination with the experience and the current state of Russian arbitrazh courts.

A novelty of this bill is the introduction of unified and independent bodies of assistance to and supervision over arbitrazh proceedings. Such functions are expected to be assigned to state courts in cases related to the formation of the tribunal, settlement of the issue of powers of the arbitrazh court when considering a certain dispute and cases related to cancellation and enforcement of arbirazh decisions.

This bill also provides for and prescribes in detail the requirements for permanent arbitrations. These requirements include, inter alia, the establishment of new arbitration institutions reporting exclusively to non-profit organisations, establishment of organisational requirements for such arbitration institutions by law, including the requirement for the creation and annual rotation of nominating committees. Herewith, a permanent arbitral institution can only exist subject to a permission obtained from a non-profit organisation to which it is reporting, and issued by the Russian government, thereby enabling such permanent arbitration institution to function.

At the same time, the bill introduces liability of arbitrators and arbitration institutions, including in connection with losses incurred by parties to the proceedings owing to a failure of the arbitration to perform its administrative functions in the proceedings. The bill also provides for other changes in the existing arbitrazh court system.

Thus, we can conclude that the legislator is permanently working on the improvement of existing judicial legislation, the goal of which is to create effective mechanisms for the judicial protection of violated rights which would fully meet current needs and ensure maximum stability of the commercial sector.

Alternative dispute resolution

33 What types of ADR process are commonly used? Is a particular ADR process popular?

At present, we can regard mediation as the key type of ADR, the use of which has been enshrined in law since 2010, including procedural codes. Subsequently, the mediation institute was developing at the level of by-laws. However, it should be noted that since the mediation procedure is of an advisory and voluntary nature, it has not been widely used by the contending parties so far.

This mechanism is only beginning to be used and is being practically approved by Russian legal order. We may assume that the lack of popularity of a mediation procedure is associated with a relatively low cost of proceedings in state courts. In this regard, an appeal to a mediator often lacks sufficient motivation, which may be explained by the reduction of court costs.

34 Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Since the mediation procedure is voluntary and parties decide to use it only at their own discretion, the courts are not entitled to oblige them to resolve their dispute in such a way. The relevant legislation indicates that the court can only point at the existence of such a possibility and propose that the parties resolve the dispute amicably, including by way of mediation.

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As to the specific conditions of the use of mediation, it should be noted that it is applied by agreement of the contending parties. The involvement of mediators to resolve the dispute is possible both before the initiation of the legal proceedings and thereafter.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

The swift development of high technologies results in their integration in all spheres of public life, including the judiciary. In previous questions we briefly mentioned some aspects of the development of e-filing in Russia, which is designed to provide a rapid solution to problems by a timely and effective protection for the prevention of rights violations.

Thus, such components of e-filing are consistently being put into action, such as the creation of a databank of judicial decisions, electronic case files allowing prompt monitoring of case progress, creation of a video conferencing system enabling persons located far from the court to participate in the proceedings; creation of a resource to file claims electronically, etc.

At the beginning of 2015, further changes were introduced in the institute of judicial acts aimed at developing e-justice.

In particular, it was legally established that the writ of execution may be sent by the court in the form of an electronic document signed with the qualified electronic signature of the judge. A document prepared in such form is binding on the person to whom it is addressed.

We believe that the introduction of an electronic enforcement order is a positive step towards effective justice and timely protection to prevent of rights violations.