ICLG

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2019

12th Edition

A practical cross-border insight into litigation and dispute resolution work

Published by Global Legal Group, in association with CDR, with contributions from:

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URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George
February 2019

ISBN 978-1-912509-56-0
ISSN 1757-2789

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EDITORIAL

Welcome to the twelfth edition of *The International Comparative Legal Guide to: Litigation & Dispute Resolution*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of litigation and dispute resolution.

It is divided into two main sections:

Two general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting litigation and dispute resolution work.

Country question and answer chapters. These provide a broad overview of common issues in litigation and dispute resolution in 44 jurisdictions, with the USA being sub-divided into seven separate state-specific chapters.

All chapters are written by leading litigation and dispute resolution lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Greg Lascelles and Julia Steinhardt of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

The Russian Federation has a civil law system with statutes being the primary source governing civil procedure. Precedents do not have binding force; however, lower courts often follow the position of higher courts, but do not rely on those directly (except for certain positions of the Supreme Court and the Constitutional Court).

The main sources of civil procedure are:

- the Commercial Procedure Code of the Russian Federation dated 24 July 2002 N 95-FZ ("APC");
- the Civil Procedure Code of the Russian Federation dated 14 November 2002 N 138-FZ ("CPC"); and
- Federal Law "On Enforcement Procedure" dated 2 October 2007 N 229-FZ.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The Russian civil court system has two branches: the arbitrazh (commercial) courts and the courts of general jurisdiction. The arbitrazh courts have jurisdiction to resolve commercial disputes between legal entities or individual entrepreneurs with exclusive jurisdiction over corporate, intellectual property and bankruptcy matters. The courts of general jurisdiction handle all other types of disputes (mostly involving individuals).

Though the systems were very different, today both arbitrazh and civil courts comprise a four-level instances system: the first; appellate; cassation; and supervisory review. The system of general jurisdiction courts is, however, less straightforward and there are many caveats to properly identify each instance depending on the first instance court. The highest court instance is the Supreme Court of the Russian Federation.

There are also specialised courts within the civil court system including military courts and the Intellectual Property Court (the latter, however, has jurisdiction over the limited number of matters and is almost integrated with the arbitrazh courts).

The arbitrazh courts include first instance courts in each subject of the Russian Federation, 21 appellate arbitrazh courts, 10 circuit arbitrazh courts and the Supreme Court. The Supreme Court became the head for both court systems in August 2015 when the Supreme Arbitrazh Court was merged with it. Key positions and clarifications of the Supreme Arbitrazh Court remain in force.

The answers to the questions below are largely based on the arbitrazh court model and proceedings since the general jurisdiction courts' system is currently in a transitional reform stage.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

Stages of the civil proceeding in the Russian Federation include:

1. Sending a pre-action claim to the respondent (usually 30 days before filing a statement of claim).
2. Filing a statement of claim to the court and consideration of the case in the first instance (at least three months, though it can take much longer in practice).
3. Filing an appeal and participation in the appeal proceeding (at least two months).
4. Filing a cassation appeal (second appeal) and participation in the cassation proceeding in arbitrazh courts of the relevant circuit (at least two months).
5. A second cassation appeal is possible with the Supreme Court, but this is currently a selective process and permission needs to be granted by the judge of the Supreme Court to consider the case in panel (from three to nine months).
6. The final stage of the commercial proceeding is the supervisory review by the Supreme Court, in exceptional circumstances (from six to 12 months).

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

The Russian courts generally enforce exclusive jurisdiction clauses unless they contradict with the statutory rules of exclusive jurisdiction of Russian or foreign state courts.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The state duties for civil litigation are calculated in accordance with the Tax Code of the Russian Federation. For monetary claims, the calculation is based on the amount claimed, which ranges from 300 roubles and is capped at a maximum of 200,000 roubles.

The general principle of the costs allocation is that the losing party pays all costs (including reasonable fees for representatives). However, under specific circumstances, the court may decide to split the costs or put the costs on the wining party if such party deliberately lengthened the proceeding or acted in bad faith.

There are no specific rules on costs budgeting in Russia, but, in case of expertise or some extraordinary actions required, the court could require the parties (or party) to allow additional fees to cover the relevant costs.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

There are no particular rules regulating litigation funding, including no prohibitions on third-party funding.

The approach of Russian courts toward contingency fees or conditional fees is controversial. On the one hand, there is a widespread opinion that a contingency fee for legal representation cannot depend solely on the decision of the court or public authority (Resolution of the Constitutional Court of the Russian Federation dated 23 January 2007 N 1-P). Therefore, according to this position, 'no win, no fee' agreements are not enforceable in the Russian courts, and, in such cases, the fees for representation will be calculated by the court taking into account the average market price for comparable services (Resolution of the Presidium of the Supreme Arbitrazh Court of the Russian Federation dated 24 July 2001 N 921/01).

On the other hand, some courts hold that contingency fees are legal if reasonable and proportionate to the services performed (for example, Information letter from the Presidium of the Supreme Arbitrazh Court of the Russian Federation dated 12 December 2007 N 121, Decision of the Arbitrazh Court of the Moscow Circuit dated 19 February 2015 N F05-4768/2014).

The most recent trend is that contingency fee agreements are not void as such, but do not allow the winning party to recover the success fee from the losing party, as they are private agreements between one party and its counsel (Ruling of the Supreme Court of the Russian Federation dated 26 February 2015 N 309-ES14-3167).

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

Generally, the claim or cause of action can be assigned to a third party. However, sometimes such assignment is statutorily prohibited if the creditor's personality has significant importance (i.e., alimony or personal injury claims). The assignment can be performed at any stage of the proceedings, including during enforcement.

1.8 Can a party obtain security for/a guarantee over its legal costs?

There are no specific rules in this respect. Generally, there is no legal mechanism to request the court to grant a security for costs order from another party, and such remedy exists only in relation to freezing orders. But there is no prohibition on obtaining a guarantee over legal costs from the third party. This is not common in the market, and legal costs coverage can be found mostly as an insurance coverage.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

Prior to initiating the proceedings, parties must follow a mandatory pre-trial procedure for most contractual claims. For example, debt claims can only be filed at court 30 days after the claimant has sent to the debtor a request to pay. Corporate disputes among shareholders of a company require a notification to the company of the upcoming claim and substance of the dispute prior to the filing of the claim. Some actions require no pre-trial procedures.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Under Russian law, the limitation period is the question of substantive law. The Russian Civil Code (Civil Code) provides for two types of limitation periods: a general limitation period and a special limitation period.

Under the general limitation period, the claimant has three years to commence proceedings. This period starts from the day when the claimant learned (or should have learned) of the infringement of his or her rights and the identity of the defendant. In addition, there is an objective limitation period of 10 years, starting from the day of the violation of rights. A party is able to assert the three-year subjective limitation period as a defence within the 10-year objective long-stop period.

In the absence of a special limitation period, the general limitation period of three years applies. In some cases, the law provides for special limitation periods, such as:

- 20 days: for challenging the decisions adopted by the creditors' committee under the insolvency law;
- three months: for claims arising from alienation of shares in a nonpublic company in violation of pre-emptive rights;
- six months: for claims challenging decisions adopted by a meeting (on the condition that the claim is filed within two years after information about the decision became generally accessible to the participants), and for claims to enforce a 'preliminary agreement';
- one year: for claims filed in connection with the distribution of information damaging honour, dignity or business reputation; claims on challenging voidable transactions; claims on challenging public tenders; and claims seeking registration of a contract;
- three years: for claims against a carrier arising from the transportation of passengers and their luggage by inland vessels; and
- five years: for claims filed by the Russian Federation in connection with the provision and execution of state guarantees by the Russian Federation.

Special limitation periods are also subject to the 10-year objective period (see above). Additionally, the law establishes other rules with respect to special limitation periods, such as rules determining the commencement date.

The limitation period applies only upon application of a party to the dispute. Such application can be made at any stage before the court renders its final decision. Once a limitation period has lapsed, then, upon the motion of a party, it may serve as adequate grounds to dismiss the claim. However, if the lapse of a limitation period is not

raised by a party, the court must consider the claim and render judgment regardless of the expiration of the limitation period.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

Civil proceedings are commenced by the claimant filing a statement of claim to the court. The claim can be filed by post or courier or in person. In addition, filing a claim in the commercial court can be made electronically. Once the court accepts the claim and commences proceedings, parties are notified about the hearing date and their obligations prior to the hearing.

It should be noted that the courts in large cities (such as Moscow) are very busy. Accordingly, if claims are filed in a court in such a city, hearings are likely to be delayed, and less time than normal will be allocated to oral hearings.

Service of foreign proceedings is performed in accordance with bilateral or multilateral treaties, most commonly under the Hague Convention 1965 on the Service Abroad of Judicial and Extrajudicial Documents.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

Pre-action interim remedies exist as preliminary injunctions and are largely used in Russia to protect proprietary interests of a claimant. In a ruling granting the injunction, the court should set out the period for submitting a claim (no more than 15 days). The application for preliminary injunction generally requires a counter security provided by the applicant (though not always).

3.3 What are the main elements of the claimant's pleadings?

The claimant's pleading must be in a written form and contain the following information (article 125 APC):

- the name of the arbitrazh court to which the claim is addressed;
- the names of the claimant and respondent and their addresses;
- the subject of the claim with reference to laws supporting the claim;
- necessary background information (facts) with evidence supporting the facts;
- an amount of the claim, if it may be assessed;
- calculation(s) of the amount claimed (or contested);
- proof of fulfilment of any pre-action procedures that might be provided by contract or law;
- evidence of any injunctive relief granted before the proceedings; and
- a list of exhibited documents.

The pleading should also include proof that copies of the statement of claim have been sent to the other parties as well as evidence of paying the state fee.

3.4 Can the pleadings be amended? If so, are there any restrictions?

The claimant may amend its statement of claim by changing either the subject matter of the claim or grounds supporting the claim at any time before the end of hearings in the first instance court.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

The pleadings can be withdrawn at any stage of the proceeding (provided that no counter-claim has been filled) before the final decision and, if appealed, before the appeal instance closes the oral hearings. By withdrawing the claim, the claimant loses its right to resubmit the claim with the same subject matter and based on the same legal grounds (so variations are possible in practice).

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

According to article 131 of APC, the statement of defence should contain the following:

- names and addresses of the claimant and respondent;
- objections to each argument of a statement of claim with legal and factual reasoning provided;
- a list of exhibited documents in support of the statement of defence;
- necessary contact information; and
- documents evidencing that copies of the statement of defence (with exhibits) have been sent to the other parties in the proceedings.

The defendant has the right to bring a counter-claim and/or claim a set-off.

4.2 What is the time limit within which the statement of defence has to be served?

There is no specific time limit for the statement of defence submission, and it should be submitted before the first hearing to allow for consideration by the court and other parties. It is common for the courts to establish a time period for submitting a defence, but there are no practical sanctions for failing to timely do so. In practice, parties are at liberty to submit new defence statements during the whole first instance consideration.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

There is no direct mechanism for a defendant to pass on or share liability by bringing an action against a third party, but a subsequent claim by the defendant against such party is possible. Generally, the defendant would request the court to include such party as a third party to the proceedings (which has large procedural rights), as the outcome would affect their relations.

4.4 What happens if the defendant does not defend the claim?

If no defence is made against the claim, the court will take into account the claimant's arguments and render the decision in absence of a defence and/or the defendant. Therefore, a court's decision *in abstentia* is common.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant can dispute the court's jurisdiction on the merits at any time prior to the first submission in the first instance court. If there is an arbitration (or another choice of jurisdiction) agreement between the parties, the court will not dismiss the case unless the defendant timely submits such objection.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Third parties can join the ongoing proceeding before the final decision of the court of first instance is rendered. Generally, there are two types of third parties:

- a third party which has independent claims on the subject matter of the dispute. Such third party's legal status is very similar to that of the claimant, meaning that the third party has independent (from initial relief sought) claims against the defendant. To join the proceedings, the third party has to file a statement of claim to the same court; and
- a third party without independent claims on the subject matter of the dispute. Such third party does not have independent claims and joins the proceedings on the claimant's or the defendant's side, as the court decision may potentially affect such third party's rights and obligations. The third party can be joined in the proceedings upon its own request, upon request of a party of the case, or at the initiative of the court.

In either case, once the third party joins, the proceedings need to be started over.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

The arbitrazh court has the right to consolidate similar proceedings between the same parties on its sole discretion. Also, the proceedings can be consolidated if there is a possibility of rendering contradicting decisions, so it generally requires either the same parties to the dispute, or the same subject matter of the dispute between different parties.

The consolidation of the proceeding can be done at any stage prior to obtaining the decision of first instance.

5.3 Do you have split trials/bifurcation of proceedings?

The arbitrazh court has the right to split proceedings if it deems it necessary for effective dispute resolution, but this is not too common in practice.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

The default rule is that the claim is filed at the place of registration or location of the defendant. If such place is unknown, the claim can be filed at the place of the defendant's assets' location or the last known place of location of the defendant. Article 38 of APC provides for exclusive jurisdiction in particular cases. For example, a claim arising out of corporate relationships is submitted to the court of the place of location of the company, and a claim in connection with the immovable property is submitted to the court of location of such immovable property.

Within the court, cases are allocated between the judges according to their specialisation.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Distinct case management is rare in practice, as judges prefer to adhere to the general process under the Code but have wide powers to schedule hearings and generally determine the conduct of proceedings.

Under Russian procedural laws, the following interim measures are available to parties in civil proceedings in commercial and general jurisdiction courts, *inter alia*:

- arrest of funds in bank accounts or other property;
- prohibition on carrying out certain actions in relation to the subject matter of the dispute;
- obligation to continue certain activities;
- seizure of disputed property to be held by the claimant or a third party; and
- suspension of performance of a legal act, writ of execution or sale of the property.

The courts are allowed to impose other interim remedies, so the above list is not exhaustive, provided that such remedies are proportionate to the claim. Russian courts have the authority to order injunctions in support of arbitration proceedings (but these are not available in support of foreign court proceedings).

It should be noted that injunctions are not easy to obtain in practice.

6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

During the proceedings, the Russian court can impose administrative fines or remove from the courtroom the person who disobeys court orders or directions.

Once the decision of the court is rendered, failure to perform it may result in administrative and criminal liability. Also, the court may oblige the debtor to pay interest charged during the delay in the decision's execution.

6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

Russian law does not entitle the courts to divide or strike out part of the statement of case, but, in a final judgment, the court may grant part of the claims and dismiss (or deny to consider) another. At the same time, the court may strike the case at the stage of acceptance if it is clearly filed in violation of the jurisdiction, or at the preliminary hearing without looking into the merits. It is not unusual for the judge to hear the entire case and then dismiss it. Further, the courts may use other remedies: leaving the claim without consideration or terminating the procedures (see question 6.6 below).

6.5 Can the civil courts in your jurisdiction enter summary judgment?

Arbitrazh courts may enter an equivalent of a summary judgment. The summary judgment is available for cases in which the claimed amount does not exceed a certain threshold defined in the code (quite low), and the debt is confirmed by indisputable evidence.

6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Russian courts are entitled to discontinue a case by leaving the claim without consideration or by terminating the proceedings.

Leaving the claim without consideration (e.g. if the claimant did not participate in court hearings for two or more times) does not prevent the claimant from filing the same claim again after rectifying the defects. Termination of the proceedings (e.g. if the parties concluded a settlement agreement) prevents the claimant from filing a claim again. The judge may not discontinue the case at the midpoint, and cases of non-participation of the parties will continue towards the judgment.

There are also cases when the court suspends proceedings. For example, if the expert examination is appointed, the proceedings are suspended for the examination period.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

There is no disclosure procedure in Russia similar to disclosure procedure in common law countries. Parties may only request the court to assist in locating and claiming evidence, but such evidence needs to be very precise and related to the subject matter of the dispute. No broad document collection is allowed.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

In general, Russian law does not recognise the concept of legal privilege for the parties' legal representatives, unless such representatives are attorneys-at-law (advocates), who are licensed members of the bar. However, even in that case, legal privilege is limited and basically means that such privileged documents cannot be used as evidence in a criminal case.

As a matter of Russian law, legal advice from an in-house lawyer (whether local or foreign) or outside counsel will not be considered privileged. Therefore, no objection can be made against including such documents as evidence. However, it will largely depend on the court whether it would be willing to review and consider the information provided in such legal advice and the weight that will be subsequently given to such evidence. Generally, it is rare in practice.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

There are no specific rules on disclosure procedure by third parties. However, the court has the power to require third parties to provide certain documents/evidence.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

As indicated above, there is no formal 'disclosure' process. A Russian court will review and examine any documents provided by a party if they are relevant to the case. If a party cannot obtain evidence itself, it may ask the court to assist by seeking an order requiring the defendant or any third party to provide evidence to the court. However, such a request must be very specific to the subject matter of the dispute, otherwise the court will deny it on the basis that it is too broad.

In the absence of such an order by the court, the parties have no obligation to share relevant documents with each other.

Under existing procedural rules, there is no duty of the parties to preserve documents and other evidence pending trial, although the court may draw inferences if key documents to the dispute have not been made available without a valid cause. In some cases (i.e. bankruptcy), lack of prime evidence can be grounds for personal liability of the controlling persons and directors.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

There is no general regulation, but particular procedural rules regulate the examination of documents containing legally protected 'secret information' (relating to bank secrets, commercial secrets, etc.) which cannot be made public.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

APC provides that all parties to a dispute have equal rights to present evidence and to participate in the proceedings. Each party to the proceedings has the burden to prove the facts and circumstances they refer to.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

The evidence is admissible if provided in written form or as material evidence, explanations of the persons participating in a case, expert

opinions, testimonies of witnesses, sound recordings or videotapes. Evidence received in violation of law is not admissible (e.g. by way of hacking).

8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

Witnesses must appear in person to give evidence, as otherwise their statements will not be accepted by the court. In practice, written documents would outweigh witness statements.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

An expert or expert commission can only be appointed by the court, either with its sole discretion or upon request of the party. In such case, the court orders appointment of the expert and specifies the questions for his/her consideration and may invite the parties to suggest candidates. The expert or expert commission has to produce a written report with the following information:

- the time and place of conducting the expert examination;
- the reasons for conducting the expert examination;
- data on the state court expert institution and on the expert (surname, first name, patronymic, specialty, working record, scientific degree and academic status, office) entrusted with the conduct of the court expert examination;
- expert's acknowledgment of criminal liability for giving knowingly false testimony;
- questions posed to an expert or an expert commission;
- objects of examination and materials of the case presented to an expert for conducting the court expert examination;
- contents and results of the examination with an indication of methods used;
- an evaluation of the results of examination and conclusions with regard to posed questions and their substantiation; and
- other data in compliance with federal laws.

Materials and documents illustrating the opinion of an expert or an expert commission are to be attached to an expert opinion.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

Basically, the court's acts and judgments may be divided into four groups:

- rulings of the court relating to the procedural issues (e.g. a third party to join the proceedings). Such rulings are issued by the courts of any instance;
- court orders are issued by the courts of first instance as a result of summary proceedings. The court order is an enforceable executive document;
- judgments are issued by the courts of first instance as their final decision on the subject matter of the dispute; and
- decrees are issued by courts during appellate, cassation and supervisory review proceedings.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

By default, the winning party is entitled to make a claim against the losing party for recovery of court costs, including the court state fee and attorney's fee. However, if the party's abuse of procedural rights caused unnecessary delay and other damage, then the court may allocate costs on such party regardless of the outcome.

9.3 How can a domestic/foreign judgment be recognised and enforced?

Domestic judgment, provided it came into force, is subject to enforcement under Russian Law "On Enforcement Proceedings", with no further recognition. Generally, the court issues a writ of execution, which is a main execution document under the mentioned Law. However, some court decisions (e.g. court orders under summary judgment) are executive documents themselves and may be enforced directly.

Decisions of foreign courts are recognised and enforced by the Russian courts in accordance with international treaties and Russian laws.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

As a general rule, each party can appeal the decision of the court to a higher instance court and, in most cases, bring a further appeal against the appellate court decision to the 'cassation' (second appeal) court. The party bringing the appeal must prove that there have been substantial violations by the lower instance court through wrongful application of the law, wrongful interpretation of the facts or violation of mandatory procedural requirements.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Parties are always welcomed to settle the disputes amicably. Courts encourage parties to do so and are often ready to postpone hearings if the parties are in settlement discussions, and settlement can be made at any stage, including during the enforcement.

II. ALTERNATIVE DISPUTE RESOLUTION

1 General

1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

There are generally three types of alternative dispute resolution ("ADR") mechanisms that are legally recognised and used: negotiation; mediation; and arbitration (domestic and international). Negotiation is one of the more commonly accepted forms of ADR and is usually used as a first stage of dispute resolution.

The second type of ADR is mediation, which is governed by a proper law. A mediation agreement is concluded in writing. As decisions of the mediator are not legally binding, compliance with the mediation agreement is based upon the principles of cooperation and good faith of the parties. There are discussions on making mediation agreements enforceable.

The third type of ADR is arbitration. The dispute can be referred to arbitration if there is a valid arbitration agreement between the parties and the dispute is arbitrable under Russian law (please see the response to question 1.2).

Expert determination is not recognised separately under law but exists in practice and is widely used in complex construction disputes as a variation of traditional negotiation.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Mediation is governed by the Federal Law N 193-FZ on an Alternative Procedure for the Settlement of Disputes with the Participation of an Intermediary (Mediation Procedure) dated 27 July 2010.

Domestic arbitration is regulated by Federal Law N 382-FZ dated 29 December 2015 on Arbitration (Arbitration Proceedings) in the Russian Federation.

The Law of the Russian Federation N 5338-1 dated 7 July 1993 on International Commercial Arbitration applies to international commercial arbitration, which is very close to the UNCITRAL Model Law 1985. The enforcement of the award is subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards dated 1958 (New York Convention), to which the Russian Federation is a party.

1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

There are several areas of law which cannot use arbitration as a means of alternative dispute resolution. The following disputes are not arbitrable:

- antitrust disputes;
- insolvency and bankruptcy disputes;
- disputes involving state registration matters (certain disputes on immovable property located in Russia, disputes concerning establishment or liquidation of legal entities and individual entrepreneurs, disputes involving intellectual property (trademarks, patents, etc.), and registration);
- family and inheritance law matters; and
- disputes arising from state procurement contracts (though this area is now about to become arbitrable, in limited institutions).

There are also some types of disputes that cannot be resolved in mediation.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

Russian state courts have the following powers to provide assistance and supervision to arbitral tribunals (unless parties expressly waived most of such rights to apply to Russian state courts):

(i) granting interim relief;

(ii) assisting the arbitral tribunal in taking evidence (available only for institutional – not *ad hoc* – arbitration);

(iii) appointing and challenging arbitrators or terminating an arbitrator's mandate;

(iv) challenging an interim arbitration ruling on competence of the arbitral tribunal;

(v) setting aside arbitral awards; and

(vi) enforcing arbitral awards.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

Arbitral award is binding on the parties unless challenged or set aside. Once an arbitrazh court considers a case on challenging an arbitration award, its judgment enters into force immediately. The parties could appeal that judgment to the cassation instance (arbitrazh court of the relevant circuit) and then to the Supreme Court.

The decision of a mediator is not binding.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

The major alternative dispute resolution institution is The International Commercial Arbitration Court at the Chamber of Commerce and Industry (CCI) of the Russian Federation (https://mkas.tpprf.ru/en/), and the Arbitration Court at the Union of Entrepreneurs and Industrialists (https://arbitration-rspp.ru/) can resolve international, domestic and corporate disputes.

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