

## RUSSIA BUSINESS LITIGATION GUIDE 2021

**We consider Russian court litigation as effective mechanism for protection of commercial interests for foreign persons. An enforceable court decision may be obtained within roughly 6-10 months. The maximum state duty is USD 2 800; attorney fees vary, subject to complexity of the case and litigation strategy, from USD 4 000 to USD 10 000 per first instance. Enforcement of the court decision requires additional skills and resources and we would strongly recommend to engage an attorney with both litigation and enforcement competence.**

### Jurisdiction

There is the system of specialized commercial courts in Russia called *arbitrazh courts* there the most of the commercial litigation is conducted. These courts belong to the state judicial authority and should not be confused with arbitral tribunals that resolve disputes by way of [arbitration](#).

Generally, the arbitrazh courts in Russia deal with any type of economic disputes involving legal entities as well as private persons duly registered as "individual entrepreneurs". Both contract and property disputes, corporate conflicts, bankruptcy proceedings, business reputation cases and review of business related decisions by state bodies and officials (tax, customs, licencing, fines etc.), all of these falls within jurisdiction of arbitrazh courts.

When it comes to a foreign business company, it may recourse to the Russian arbitrazh court with commercial dispute in any of the following cases:

- defendant (a defaulting party) is located (or resides) in Russia;
- defendant's property is located in Russia;
- the dispute arose from a contract that had to be performed in Russia;
- the dispute arose from unjust enrichment that took place in Russia;
- the dispute arose from relations around outstanding securities issued in Russia;
- the claim arose from property damage accident that took place in Russia

and some other cases.

Also, the arbitrazh courts can hear any other case if the relations in dispute are closely connected to the Russian Federation.

## Filing the statement of claim

To initiate a case, the plaintiff shall file a statement of claim with the arbitrazh court of the federal entity (a region in Russia) where the respondent is located. To check the address, you can search your defendant in the [Company Registry](#) (use name / registration number "ОГРН" / taxpayer number "ИНН"). The plaintiff also may choose the court of the region where the contract was to be performed. Moreover, the parties may agree the competent court to hear their cases, either in contract ("prorogation clause") or separately. This may be highly advisable for a foreign company wishing to avoid the court of the Russian partner's locality. Arbitrazh court of Moscow is usually the preferred option.

In debt collection cases arising from contracts or unjust enrichment, it is compulsory to send a pre-litigation letter of claim to the defendant one month ahead of filing the statement of claim, unless the contract provides other timing / procedure.

There are no special requirements for a foreign plaintiff except that it shall provide the court with the evidence of its legal status (including authorized persons) and the right to conduct business activities. Typically, this means a < 30 days statement from the official company (trade) registry or similar. Any such document shall be apostilled and accompanied with notarized translation into Russian.

Hiring a local Russian lawyer is not a prerequisite. A foreign plaintiff is free to act through its executive body or another authorized representative under the national laws. However, having a representative in Russia brings certain benefits: to say least, it allows to avoid the extended service of process (6+ months). The power of attorney shall be signed and sealed by the company. The apostille is not formally required unless there are any stamps / notes / signatures or similar by official bodies on the face of it.

The statement of claim shall set forth the plaintiff's case in rather detailed narrative, including all the circumstances that give rise to the claim and the legal reasoning behind it (citations of laws). The plaintiff shall also file its evidence along with the statement.

Filing fees depend on the amount of claim. You can check the sums with the [calculator](#) by the Arbitrazh court of Moscow. The maximum state duty is RUB 200 000 (~ USD 2 800).

Note that the claim shall be filed within 3 years from the date of default by the counterparty (general limitation period).

## Interim Relief

The plaintiff may file for pre-judgement relief if absence of such relief may complicate or render impossible the execution of the court decision, as well as to prevent significant damage to the party. This can include arrest of defendant's money and other properties, preliminary injunction and other measures. The application for interim relief may be filed alongside with the statement of claim or later on at any stage of the arbitrazh process. The court shall review the application within one day which results in an interim order or dismissal. The interim order is enforced by the Federal Service of Court Offices in the same manner as the court decision.

However, the usual chances to obtain an interim order are poor. The courts are extremely

reluctant unless the plaintiff provides an overwhelming evidence of assets concealment by respondent or other heavy misdoings.

## **Court proceedings**

The court shall commence proceedings within 5 days after receipt of the statement of claim. This timing is normally upheld. If it accepts the statement for proceedings, the court shall issue an order that sets a date of "preliminary hearings" (which is in practice held in a month or more) and requires the parties to perform specific actions in preparation of trial. The defendant is typically prescribed to submit the statement of defence with legal and factual objections to each claim.

Any pending case can be tracked at the [Database of the Arbitrazh Cases](#) that contains every order and the final decision in the case. Use the case number ("Номер дела") or the name of the party ("Участник дела") for search.

At preliminary hearings, the parties can briefly present their cases, submit evidences and file their motions (to dismiss the claim without hearing, to add third parties, to request documentary evidences from third parties etc.). Then the court appoints hearings on the merits of the case.

At the hearings (court session) on the merits, the court reviews evidences and circumstances essential for the case while the parties can make statements, file motions, put questions to each other and present their arguments on all issues in question. In simple claims for non-payment of goods and services (where no foreign party involved), it may take 1-2 sessions to complete the case.

In the arbitrazh court proceedings, the documentary evidence is given primary weight, while oral testimonies and witness examinations are very rare. Russian laws do not provide for direct, party-to party discovery. The court may suggest the parties to present the evidence, but generally, due to the adversarial principle both plaintiff and defendant shall each bear the burden to prove its claims and objections.

A party may request that the court retain an expert "to clarify the questions that require special knowledge" and make suggestions as to the particular expert (or expert institution) to be retained. However, the court ultimately determines whether an expert is necessary, selects the expert and formulates the questions to be answered (albeit with input from the parties).

The court is responsible for the determining the content of foreign law, if applicable to the relationship of the parties, with due account to "its official interpretation, application and doctrine in the relevant foreign state". In practice, the court relies on the legal opinion obtained by the party from foreign attorneys.

Compared to other countries, proceedings in Russia are expeditious. The court must issue a decision within 6 months after receipt of the statement of claim, while the court of appeal must review the case within 2 months from the day when the case has arrived. According to the statistics by the Supreme Court, these timelines are met in 97 and more per cent of cases.

The final decision is announced at the conclusion of the last hearings, after a brief (5-20 minutes or more) recess in which the judge considers the matter. A written decision in full, with

statement of evidence on which it is based, legal norms which guided the court and other reasoning, shall be issued within 5 days (practically, 2-4 weeks).

The court decision enters into force 30 days after issuance, unless it is appealed (which must be done within 30 days). If appealed, the decision enters into force from the date of the final ruling by the court of appeal, unless it amends or annuls the decision.

## **Appeal**

There are three levels of appeal in Russia which shall be followed one after another, including:

- 1) regional courts of appeal;
- 2) district courts (cassation);
- 3) Commercial Bench of the Supreme Court ("second cassation").

In the court of appeal, the panel of three judges reviews both the facts and the law, generally re-trying the case; however, new evidence may be submitted only upon showing that it could not have been presented in the court of first instance due to the reasons beyond this party's control.

In the district court of cassation, the appeal is also heard by a panel of three judges; cassation review is limited to the issues of law. A cassationary appeal does not automatically stay the execution of the court decision (or the appellate ruling); however, a stay may be issued upon a motion by the party.

In the "second cassation", the Supreme Court judge reviews the arguments of appeal without meeting the parties and then renders a ruling on whether or not to accept the appeal for hearing at the session of the Commercial Bench. The average success rate of overcoming this filter is 1 per cent.

## **Litigation costs**

The losing party shall pay the court costs of the prevailing party, including the filing fees (state duty) and attorney fees. If the claim was partially sustained, the costs are allocated in proportion to which the plaintiff prevailed on its claim.

The chances to recover the attorney fees in full are minute. The laws establish that the court shall award attorney fees within "reasonable limits", which most often means dramatic reduction of the paid sums. There is a common practice of awarding RUB 20 000 - 100 000. Expecting more than RUB 150 000 is hardly realistic.

The prevailing party may submit an application for the attorney fees award within 3 months after the last decision / ruling on the merits of the case.

## **Enforcement**

Once the court decision has entered into force, the plaintiff can apply for the writ of execution. When obtained, this may be submitted directly to the debtor's bank that is obliged to debit the debtor's account with the awarded amount. If no results, the plaintiff may resort to the official enforcement regime.

Enforcement is done by the Federal Service of Court Officers (marshals), which is the part of the Ministry of Justice. Due to the marshals' heavy workload that may be as high as 700 new cases monthly, the task may end up fruitless if left alone. Thus, professional attorney support that may facilitate the process is strongly advised.

This guide is available in [Chinese](#) and [Turkish](#).

## Ask a question

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