

GENERAL OVERVIEW OF THE JUDICIAL SYSTEM OF THE RUSSIAN FEDERATION

Bulletin September 2006



GENERAL OVERVIEW OF THE JUDICIAL SYSTEM OF THE RUSSIAN FEDERATION

Before entering a foreign market, any prudent business person needs to evaluate the risks and opportunities connected with their potential recourse to local courts.

This bulletin provides general insight into the structure of the Russian judicial system as well as the enforcement procedure of court decisions and arbitral awards.

It should be noted that the Russian Federation is among civil law countries, i.e. the countries that have built their legal systems on codified civil law. Therefore, by default, Russian courts base their judgments on the provisions of codes and statutes from which solutions to particular cases are to be derived and the reasoning for the decision is extensively based on the general rules and principles of the code. Precedent is not recognized to be binding on courts in adjudicating cases which have already been adjudged or on which a decision has already been taken by another court.

The administration of justice in the Russian Federation is performed solely by courts established in accordance with the Constitution of the Russian Federation and the Federal Constitutional Law “On the Judicial System of the Russian Federation” of December 31, 1996, No. 1-FKZ. It is prohibited to create a court not named in said Federal Constitutional Law.

Parties to a civil law contract may choose to settle their disputes in Russia on an alternative basis, i.e., without applying to the state courts for adjudication. In such instances, disputes can be resolved by non-state arbitral tribunals based on the Federal Law “On Arbitral Tribunals” of July 24, 2002, No. 102-FZ, and the Law of the Russian Federation “On International Commercial Arbitration” of July 7 1993, No. 5338-1. Such arbitral tribunals resolve business related civil law disputes other than those

assigned to the exclusive jurisdiction of the state courts (e.g., disputes arising from public affairs, bankruptcy cases and disputes about state property, etc.). However, to enforce arbitral awards, including those in respect of which decisions were issued abroad, it is necessary to apply to the state courts for an issuance of respective writs of execution.

It is worth noting that the Russian state arbitration courts which resolve economic disputes are called “*arbitrazhnye sudy*” (hereinafter “**arbitration courts**”), and arbitral tribunals for alternative dispute resolution are called “*treteiskiye sudy*.”

I SYSTEM OF THE STATE COURTS¹

Russia has a uniform judicial system established by the Constitution of the Russian Federation and the Federal Constitutional Law “On the Judicial System of the Russian Federation” of December 31, 1996, No. 1-FKZ. Proceeding from the federal territorial composition of Russia, said Federal Constitutional Law envisages two strata of judicial system, namely, the federal courts and the courts of federal entities.²

Federal courts include:

- The Constitutional Court of the Russian Federation;
- Courts of general jurisdiction, including the Supreme Court of the Russian Federation, supreme courts of federal entities, judicial district courts and military courts of all levels;³ and

¹ See also the organization chart below.

² Federal entities in Russia are republics, territories (*krai*), regions (*oblast*), autonomous areas, autonomous regions and the cities of federal significance - Moscow and St.-Petersburg.

³ Note: Federal Constitutional Law “On the Judicial System of the Russian Federation” of December 31, 1996, No. 1-FKZ also names specialized courts as a constitutive

- Arbitration courts, including: the Higher Arbitration Court of the Russian Federation, 10 federal district arbitration courts, 20 arbitration appellate courts and the arbitration courts of the federal entities of Russia.

There are the following courts of federal entities:

- Constitutional (charter) courts of federal entities; and the
- Justices of the Peace (hereinafter also “JP”).⁴

The constitutional (charter) courts of federal entities deal with cases concerning the compliance of a federal entity’s normative legal acts with its constitution (charter). They also give the authentic interpretation of such constitutions (charters). Decisions of constitutional (charter) courts taken within their competencies are not subject to appeal.

Among the cases that fall within the competencies of JPs are property-related cases (if the amount in dispute does not exceed 500 minimum monthly wages as set forth in Russia), criminal cases (if the maximum penalty does not exceed a two year imprisonment term), and most family and employment disputes. The decisions of JPs can be appealed in the relevant district court of general jurisdiction.

I The Constitutional Court of the Russian Federation

The Constitutional Court of the Russian Federation is the authorized body of constitutional control. The following matters fall within its exclusive jurisdiction:

part of the federal courts, but, as of the time of preparation of this document, there have been no specialized courts established in the Russian Federation.

⁴ Justices of the Peace are recognized judges of general jurisdiction of federal entities (Article 4(4) of the Federal Constitutional Law “On the Judicial System of the Russian Federation” of December 31, 1996, No. 1-FKZ).

- Cases relating to compliance with the Constitution of the most important normative legal acts of the Russian Federation, including federal laws, normative legal acts of the Russian President, the Federation Council, the State Duma and the Government;
- Disputes between different federal bodies of state power concerning their competence;
- Disputes concerning the breach of constitutional rights and freedoms of citizens;
- Interpretation of the Constitution;
- Other powers set forth in the Russian Constitution and the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” of July 21, 1994, No. 1- FKZ.

Please note that the Constitutional Court deals only with questions of law refraining from the establishment of facts in most cases. Constitutional Court decisions are not subject to appeal.

II Arbitration Courts of the Russian Federation

Russian arbitration courts resolve economic and other business-related disputes, the parties to which include legal business entities, entrepreneurs, and, in cases specified by Russian Arbitral Procedural Code and other federal laws, the Russian Federation, its federal entities, municipal regions, public authorities and even citizens who are not involved in business activities. Citizens can submit their disputes to arbitration courts concerning:

- insolvency (bankruptcy);
- the creation, reorganization and liquidation of legal entities;
- differences between a participant (shareholder) in a business entity and

such business entity (except for labor disputes);

- other issues provided for by the relevant legislation.

Arbitration courts of the Russian Federation have a four-tier organizational structure:

- *The Higher Arbitration Court of the Russian Federation* heads the hierarchy of arbitration courts. As a court of the first instance, the Higher Arbitration Court resolves cases challenging the validity of the normative legal acts of Russia's President, the Government and federal public authorities if such acts breach the rights and legitimate interests of organizations and citizens in the economic and entrepreneurial sphere. Among the exclusive powers of the Court is also reviewing inferior arbitration courts' decisions already entered into force and issuing guidelines concerning judicial practice.
- *Ten arbitration courts of federal judicial districts.* The main responsibility of these courts is to serve as courts of appeal ("kassats'ya" in Russian) with respect to inferior arbitration courts, i.e. they check the legality of the decisions that have entered into legal force.
- *Twenty arbitration appellate courts.* These courts reexamine decisions passed by the first instance arbitration courts that have not come into legal force.
- *Arbitration courts of federal entities.* These courts are the first instance arbitration courts for all economic disputes except those which fall within the exclusive jurisdiction of the Higher Arbitration Court. There are more than 80 arbitration courts of federal entities.

Arbitration courts can consider the disputes of parties which include foreign citizens or foreign legal entities if such dispute is closely connected

with the territory of the Russian Federation, for example, if the respondent or its assets reside in Russia; a branch or representative office of a foreign entity is located in Russia; the performance of an agreement in dispute is taking place, is to take place or has taken place in the Russian territory or the dispute is connected with securities issued in Russia.

Within the exclusive jurisdiction of the arbitration courts fall disputes arising from public and administrative relations as well as disputes with regard to state property, real estate located in Russia or rights to it, intellectual property registration in Russia, the invalidity of entries in state registers (cadastres) of the Russian Federation, legal entities' creation, liquidation or reorganization in Russia or challenges to the decisions of such legal entities' bodies.

Arbitration courts by virtue of Article 244 of the Russian Arbitral Procedural Code shall refuse the recognition and enforcement of foreign courts' decisions if the dispute should have been resolved exclusively by Russian arbitration courts.

Please note that the above mentioned exclusive jurisdiction can be limited only by international treaties to which the Russian Federation is a party.

III Courts of General Jurisdiction of the Russian Federation

Courts of general jurisdiction of the Russian Federation consider disputes arising from civil, criminal, administrative, labor and other relations except those differences arising from entrepreneurial and economic activities that fall within the jurisdiction of the arbitration courts.

Claims falling within the jurisdiction of both the arbitration courts and the courts of general jurisdiction should be apportioned, and, in case this is not feasible, such claims should then be considered by the relevant court of general jurisdiction.

For example, the claims of the shareholder (natural person) against a joint stock company arising out of both corporate and labor relations must be split up, or, if this is impossible, such claims are to be considered by a JP or a district court of general jurisdiction. Judicial practice suggests another example: Disputes between a company's CEO (or a member of its board of directors) , if they have an employment agreement with the company, and such company concerning the company's authorized body's decision to terminate the powers of their CEO or director early should be resolved in the courts of general jurisdiction⁵.

The organizational structure of the federal courts of general jurisdiction is comprised of three levels. (Military courts belong to the system of courts of general jurisdiction and have their own three-tier structure, but their top instance is also the Supreme Court of the Russian Federation):

- *The Supreme Court of the Russian Federation* is the highest judicial body among the courts of general jurisdiction. It is exclusively authorized to resolve cases challenging such normative legal acts of Russia's President, Government and federal state authorities that affect the rights, freedoms and legitimate interests of citizens and organizations (except for cases concerning the compliance of the above-mentioned acts with the Constitution of the Russian Federation⁶). Among the exclusive powers of the Supreme Court are also the liquidation of federal political parties, non-governmental and religious organizations; challenges to the decisions of the Central Election Commission of the Russian Federation and differences between governmental authorities. At the same time, the Supreme Court supervises the activities of

all courts of general jurisdiction and provides clarifications as to the unified method of law application by the courts of general jurisdiction. The decisions of federal entities courts can be appealed to the Supreme Court of the Russian Federation.

- *Supreme courts of federal entities.* These courts act as a higher instance for district courts and resolve cases concerning state secrecy issues, challenges to normative legal acts of federal entities (excluding their constitutions (charters)⁷), liquidation of local branches of political parties and local non-governmental organizations as well as appeals to local election commissions' decisions.
- *District courts* resolve all civil, criminal, administrative cases which fall outside the jurisdiction of the JPs, the federal entities' supreme courts and the Supreme Court of the Russian Federation. These courts constitute a higher and appellate instance with regard to district's Justice of the Peace courts.

II RUSSIAN ARBITRAL TRIBUNALS. ENFORCEMENT OF AWARDS.

Generally, arbitral tribunals in Russia act on the basis of the two following laws. The Federal Law "On Arbitral Tribunals" of July 24, 2002, No.102-FZ, regulates domestic arbitration issues, whereas the Law of the Russian Federation "On International Commercial Arbitration" of July 7, 1993, No. 5338-1, is devoted to international arbitration which takes place in Russia. Russia is a party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, New York, (hereinafter also the "**New York Convention**")

⁵ Decision of the Plenary Session of the Supreme Court of the Russian Federation of November 20, 2003, No.17.

⁶ Decision of the Constitutional Court of the Russian Federation of January 27, 2004, No.1-P.

⁷ Decision of the Constitutional Court of the Russian Federation of July 18, 2003, No.13-P.

and the European Convention on International Trade Arbitration, 1961, Geneva.

Arbitral tribunals are non-state judicial bodies for an alternative dispute resolution. They deal with disputes arising from any civil and commercial matters other than those assigned to the exclusive jurisdiction of the state courts.

As a rule, disputes are arbitrable in such tribunals if the parties have concluded an arbitration agreement. An arbitration agreement means an arbitration clause in a contract⁸ or a separate written agreement. Such an agreement may be concluded at any time, even after the dispute has arisen.

Please note that the arbitration clause should be considered to be independent from the other provisions of a contract, such that the legal invalidity of the contract does not affect the arbitration clause. The presence of an arbitration agreement does not infringe on the parties' constitutional rights to apply to the state courts for judicial protection⁹.

There are permanent and ad hoc arbitral tribunals. Permanent ones can be established by professional associations or large organizations, such as chambers of commerce, stock exchanges, public associations of entrepreneurs and consumers, and other organizations which are legal entities established in accordance with the laws of the Russian Federation. Permanent arbitral tribunals cannot be established before federal bodies of state power, bodies of state power of federal entities of the Russian Federation and bodies of local self-government.¹⁰

The most commonly used permanent arbitral tribunal for resolving disputes, including disputes in which at least one party is non-resident in Russia, is the International Commercial Arbitration Court at the Russian Chamber of Commerce and Industry (hereinafter the "ICAC").

On the whole, there are 5 permanently acting arbitral tribunals at the Russian Chamber of Commerce and Industry, namely:

- the ICAC;
- the Arbitral Tribunal for the Settlement of Economic Disputes;
- the Maritime Arbitration Commission;
- the Association of Average Adjusters; and
- the Sport Tribunal.

Dispute resolution in arbitral tribunals consists of 4 stages which are similar to the stages of dispute resolution in the state courts:

1. Submitting an application to the chosen arbitral tribunal, which decides whether or not the dispute is arbitrable;
2. Choice (appointment) of arbitrators;
3. Arbitral proceeding and decision awarding;
4. Enforcement of the decision.

The parties usually enforce the award voluntarily. However, if this does not happen, an award can be enforced in Russia by the State Bailiffs' Service on the basis of an enforcement order issued by the relevant state arbitration court. The state arbitration court may refuse to issue such an order on grounds stipulated in the Arbitral Procedural Code, including the invalidity of an arbitration agreement, lack of due process, non-arbitrability of the dispute

⁸ The ICAC Rules recommend the following arbitration clause: "Any dispute, controversy or claim which may arise out of or in connection with the present contract (agreement) or the execution, breach, termination or invalidity thereof, shall be settled by the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in accordance with its Rules".

⁹ Resolution of the Constitutional Court of the Russian Federation of June 21, 2000, No.123-O.

¹⁰ Federal Law "On the Arbitral tribunals in the Russian Federation" of July 24, 2002, No. 102-FZ, Article 3(2).

under federal laws and/or the fact that the decision has not become binding for the parties etc¹¹.

The participants to a dispute may file an application for setting aside the award with the relevant state arbitration court within 3 months following the date of receiving such award by the party seeking to challenge it. The party applying for the setting aside of an ICAC award should inform the other party to the dispute about its action.

The arbitral award can be set aside by the court on grounds exhaustively enumerated in the Arbitral Procedural Code¹² and the Civil Procedural Code¹³. The applicant should prove to the court, for instance, that:

- the arbitral award is invalid under the federal law of the Russian Federation;
- the party was not duly notified of the appointment of the arbitrators or the time and place of arbitral process;
- the award was rendered on a dispute not envisaged by the arbitration agreement;
- the composition of the arbitral tribunal or the proceedings did not comply with the agreement of the parties or federal laws.

The arbitration court can reverse the award if it determines that the dispute is not arbitrable under Russian federal law or the award encroaches on fundamental principles of Russian law.

The enforcement of awards abroad is generally regulated by said New York Convention, which states that “Each Contracting State shall recognize arbitral awards as binding and enforce

¹¹ Arbitral Procedural Code of the Russian Federation, Article 239.

¹² *Id.*, Article 233.

¹³ *Id.*, Article 421.

them in accordance with the rules of procedure of the territory where the award is relied upon...”¹⁴.

I Advantages of Arbitral Tribunals

The advantages of dispute resolution by means of arbitral tribunals as compared to the state court litigation include:

- The parties may agree on the procedure of appointing and number of arbitrators,
- The parties can agree on the language of the procedure, while the state courts hear cases only in Russian;
- The parties may agree on a place where the dispute is to be proceeded;
- Confidentiality of the dispute (hearings in the state courts are generally open¹⁵);
- It is a simple and time-saving procedure.

III ENFORCEMENT IN RUSSIA OF COURT DECISIONS AND ARBITRAL AWARDS ISSUED ABROAD

Russian arbitration courts can consider the issue of the recognition and enforcement of foreign court decisions concerning business issues and arbitral awards issued abroad on the basis of ratified international treaties of the Russian Federation and federal legislation¹⁶.

¹⁴ New York Convention, Article 3.

¹⁵ Exceptions are set forth by Russian legislation: e.g. hearing *in camera* is held if during the proceedings state secrets or other legally protected secrets may be disclosed. Note, unlike the Federal Law “On Arbitral Tribunals”, the Law “On International Commercial Arbitration” contains no confidentiality requirement. However, some arbitral institutions may set forth such requirements in their Rules. For example, the ICAC Rules (§ 25) provide for the non-disclosure of confidential information.

¹⁶ Arbitral Procedural Code of the Russian Federation, Article 241 (1).

However, in the absence of a relevant international treaty or federal legislation, foreign court decisions and awards can be recognized by Russian courts and, subsequently, enforced on the basis of reciprocity (comity). Despite the fact that the reciprocity principle is not fixed in Russian legislation as yet (except for bankruptcy law matters¹⁷), judicial practice generally confirms it¹⁸.

Though general procedural issues are regulated by the Russian Arbitral Procedural Code, the procedure of recognizing and enforcing foreign court decisions can be different in each particular case depending on the terms and conditions of the relevant international treaties and the level of legal and economic cooperation with a certain country.

Arbitral awards are enforced in Russia on the basis of the Arbitral Procedural Code, the Law of the Russian Federation “On International Commercial Arbitration” of July 7, 1993, No. 5338-1, and international treaties, including the New York Convention.

The New York Convention is binding on more than 110 countries, including Russia.¹⁹ It is notable that, in its instrument of ratification, the USSR reserved the right to apply the provisions of the New York Convention to arbitral awards rendered in non-participating jurisdictions on the basis of reciprocity.

Pursuant to the Arbitral Procedural Code, for the decision or award to be recognized and enforced in Russia, the party in whose favor said decision or award was rendered (resident or non-resident of the Russian Federation) shall file a written application with the arbitration court of the Russian federal entity (region) where the other

party resides or in the circumstance that such place cannot be identified, the application should be filed in the region where the property of the other party is located. The application should be signed by the applicant or their representative.

In the case of a **foreign court decision**, the applicant should attach the following documents to the application and, if needed, their translation: a duly certified copy of the foreign court decision; a duly certified document proving the entry into force of the above mentioned decision; a document proving the notification of the other party about the proceeding in the foreign court; a document proving the authority of the person who signed the application and a document confirming the sending of a copy of the application to the other party.

In dealing with **arbitral awards issued abroad**, the application should include the duly authenticated award or its duly certified copy and the original written arbitration agreement or arbitral clause or its duly certified copy. A certified translation into Russian of the above mentioned documents should be also attached, if necessary.

Within one month upon filing the application, without reviewing the merits of the case, the court, then consisting of a sole judge, shall decide whether the foreign court decision or award can be recognized and enforced. The court will notify the participants in the process. However, their non-appearance before the court does not affect the consideration of the case.

Among the reasons why the Russian court may refuse to recognize and enforce a **foreign court decision** are²⁰:

- the submitted court decision has not entered into force pursuant to the laws of the jurisdiction where it was rendered;

¹⁷ Federal Law “On Insolvency (Bankruptcy)” of October 26, 2002, No. 127-FZ, Article 1 (6).

¹⁸ Decision of Federal Arbitration Court of Moscow Region of December 2, 2002, No. KG-A40/7813-02.

¹⁹ The New York Convention was ratified by the USSR on August 24, 1960, and entered into force on November 22, 1960.

²⁰ Arbitral Procedural Code of the Russian Federation, Article 244 (1).

- the party against whom the decision was rendered was not timely and duly notified about the time and venue of the proceedings or was otherwise unable to present its case;
- the case falls within the exclusive jurisdiction of Russian courts;
- there is a decision in force rendered by one of the Russian courts on a case involving the same parties, on the same subject and on the same grounds or such case has already been tried in or filed with one of the Russian courts;
- the three year time limit (commencing as of the date of a foreign court's decision entering into force) for enforcement of the decision has expired and it was not renewed by the Russian court;
- the enforcement of a foreign court's decision would run counter to the public order of the Russian Federation.

The grounds for a refusal of a **foreign award** recognition and enforcement are somewhat different and include²¹:

- one of the parties to the arbitration agreement was under some kind of legal incapacity;
- the arbitration agreement is invalid under the governing law, or, if the governing law was not specified, under the law of the country where the award was made;
- the party against whom the award was rendered was not duly notified of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
- the award deals with a dispute not contemplated by the arbitration agreement;

²¹ New York Convention, Article V; The Law of the Russian Federation „On International Commercial Arbitration“ of July 7, 1993, No. 5338-1, Article 36.

- the composition of the arbitral tribunal or the arbitral procedure did not comply with the arbitration agreement or, in the absence of such an agreement, with the laws of the venue;
- the award has not yet become binding on the parties.

The recognition and enforcement of the award may be refused if the court decides that the subject matter of the dispute is not arbitrable in the Russian Federation or the recognition and enforcement would run counter to the public order of Russia. It is worthy of note that Russian arbitration courts in some cases tend to interpret the public order clause too broadly which leads to a de facto reconsidering of the case on the merits.

On the whole, all civil law disputes are arbitrable in the Russian Federation. However, for example, the following disputes, generally, may not be referred to arbitration:

- bankruptcy cases;²²
- disputes related to state property;
- cases concerning ownership rights to immovable property located and/or registered in Russia.²³

Upon the positive decision of the court, the court will issue an enforcement order to be submitted by the applicant to the Federal Bailiffs' Service which performs the enforcement in practice²⁴.

²² Federal Law „On Insolvency (Bankruptcy)“ of October 26, 2002, No. 127-FZ, Article 33 (3).

²³ Decision of The Presidium of the Higher Arbitration Court of the Russian Federation of May 11, 2005, No.207/04.

²⁴ According to the Arbitral Procedural Code, Article 321, and the Federal Law “On the Enforcement Process” of July 21, 1997, No.119-FZ (as amended), Article 14 and 80, an enforcement order issued by the court can be submitted for enforcement within three years of its entry into force, but for enforcement orders concerning Russian arbitral

This Bulletin provides general information about the judicial system of the Russian Federation and does not serve as legal advice. All the information provided herein is based on Russian legislation as it is currently written.

Please, do not hesitate to contact us for further information and details.

Best regards,

BBH Legal

Bolshoy Gnezdnikovsky per. 1,

bldg 2, 7th floor

125009 Moscow

Russian Federation

Tel: +7 495 540 42 85; Fax: +7 495 540 42 86

Email: moscow@bbh.cz

www.bbhlegal.ru

tribunals awards the law generally provides a 6-month term.

JUDICIAL SYSTEM OF THE RUSSIAN FEDERATION

FEDERAL COURTS

