TOP 10 RUSSIAN PROCEDURAL LAW CHANGES FOR 2020
“Dentons houses one of the strongest practices specialising in litigation and international arbitration in Russia, considering the knowledge and expertise of its lawyers, the success rate in handling disputes, and the high-profile nature of its clients”.

– The Legal 500, 2020

The novel coronavirus pandemic in 2020 profoundly affected almost all areas of public life. Procedural regulation was no exception and underwent quite serious changes. However, many of the new developments are unrelated to the spread of COVID-19. This alert briefly describes the most important changes that we have ranked by degree of importance.
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1. It is now possible to participate in court hearings online

The steps taken in civil and commercial arbitration procedure to fight the spread of COVID-19 have made remote participation in court hearings possible, outside of the court building.

Until 2020, a court hearing could be attended remotely by using video conferencing systems (Article 155.1 of the Civil Procedure Code of the Russian Federation, or **CPC**, and Article 153.1 of the Arbitrazh (Commercial) Procedure Code of the Russian Federation, or **APC**). However, a visit to the court building was required in order to attend the hearing in that format.

The COVID-19-related restriction on court operations led to a search for new ways of attending a court hearing remotely without needing to visit the court building. Russia’s Supreme Court first took advantage of this opportunity in April 2020 when it held its first online hearing. The positive experience of that hearing was noted in Russian Supreme Court Presidium and Russian Council of Judges Presidium Resolution No. 821 of April 8, 2020. That document recommended that courts hold hearings using a web conferencing system if they had the technical capability and considering the opinions of the parties to the proceedings.

Resolution No. 821 and the one that amended it, Russian Supreme Court Presidium and Russian Council of Judges Presidium Resolution No. 822 of April 29, 2020, are no longer in effect. So, the form of participating in a court hearing recommended in them is not formally regulated by either the procedural legislation (the APC and CPC) or by a Russian Supreme Court Presidium resolution. Therefore, the various issues of holding an online hearing (for example, when to file a motion to participate in an online hearing) continue to be resolved differently by different courts.

A web conference makes it possible to attend a court hearing not only from the office or from home, but also from other countries. For example, a participant in one of the first online hearings at Russia’s Supreme Court joined it from California.

Online hearings can now be held at 99 commercial courts. These include the Supreme Court, the Intellectual Property Court, the Moscow Circuit Commercial Court, nine Commercial Courts of Appeal and others. It is still not possible in the courts of general jurisdiction.

To attend an online hearing, one must have an account in the unified system of identification and authentication. A motion to participate in the online hearing also needs to be filed with the court. Copies of a passport, proof of education (degree) and a document confirming the representative’s powers must be attached.
2. Rules have been set for out-of-court bankruptcy for individuals

The new concept of out-of-court bankruptcy was introduced by a law that went into effect on September 1, 2020. Federal Law No. 289-FZ of July 31, 2020, on Amendments to the Federal Law on Insolvency (Bankruptcy) and Certain Legislative Acts of the Russian Federation regarding Out-of-Court Personal Bankruptcy introduced a new paragraph 5, “Out-of-Court Personal Bankruptcy” to Chapter X of Russia’s Insolvency (Bankruptcy) Law (Federal Law No. 127-FZ of October 26, 2002, the “Bankruptcy Law”).

Out-of-court bankruptcy differs from the traditional in-court procedure in that a court does not control the process, there no insolvency officer, and no fee is charged for considering the bankruptcy petition.

A person files a petition for out-of-court bankruptcy with a multifunctional public services center. The person’s total debts must be between RUB 50,000 and RUB 500,000. If the amount is higher, the bankruptcy can be handled only in court. The calculation of total debts includes financial obligations, arrears for taxes and duties, obligations to pay alimony and obligations under suretyship agreements (regardless of delay by the principal debtor).

Two conditions must be met at the same time for an out-of-court bankruptcy procedure: (1) enforcement proceedings against the debtor must have ended due to lack of recoverable assets and (2) other enforcement proceedings must not have commenced after the writ of execution has been returned.

The out-of-court bankruptcy procedure takes six months. Then the multifunctional center includes information about completion of the procedure in the Unified Federal Registry of Bankruptcy Information. As of that time the person is no longer liable to creditors for the amount stated in the petition.

Out-of-court bankruptcy does not release the individual from debts not mentioned in the out-of-court bankruptcy petition if those debts arose during the out-of-court bankruptcy procedure. Such debts include compensation for personal injury, for payment of salary, for compensation of moral harm, for alimony and, in the event of subsidiary liability, for compensation of damages caused to the company of which the individual was a member, to compensate for damage caused to property deliberately or through gross negligence, and also if the debtor is held liable for wrongful conduct during the bankruptcy or if he acted illegally when the obligations arose or were performed.

After the bankruptcy proceedings are over, the individual is not entitled for five years to take out credits or loans without mentioning the bankruptcy, for three years to hold positions in the governing bodies of a legal entity, and for 10 years to hold positions in the governing bodies of a lending institution. If the person ceased being an individual entrepreneur less than one year before filing for out-of-court bankruptcy, then he or she cannot register as an individual entrepreneur or participate in managing a legal entity for five years after the end of the proceedings.
3. Russia’s Supreme Court has clarified how to apply the APC when cases are considered in a commercial court of appeal

The Supreme Court has issued new clarifications. They are contained in Russian Supreme Court Plenum Resolution No. 12 on the Application of the Russian Federation Arbitrazh (Commercial) Procedure Code when Considering Cases in a Commercial Court of Appeal, adopted on June 30, 2020. The new clarifications are largely based on earlier instructions set out in Supreme Arbitrazh (Commercial) Court of Russia Plenum Resolution No. 36 of May 28, 2009; however, there is much that is new, and the clarifications codify certain legal approaches developed by the judicial practice in recent years.

The new resolution clarifies in more detail which court rulings are subject to appeal and which rulings may be appealed only in cassation proceedings. It also specifies the list of court rulings to which objections can be made only by appealing the judicial act finalizing the consideration of the case on its merits.

Other issues clarified have to do with the procedure and timing of filing appeals, the grounds for reinstating the time to appeal a judicial act, and the court’s actions to accept, discontinue and return an appeal.

Reinstatement of the time limits for filing an appeal is again a separate focus. It has been clarified, in particular, that the time for an appeal is not extended if the commercial court of first instance misses the deadline specified by the APC to send a copy of the judicial act by mail or is late publishing the judicial act on the Internet. However, these are grounds to reinstate the missed deadline if the applicant files the appropriate motion. Missing the deadline for filing an appeal because the court of first instance mistakenly determined the deadline has been named as a separate ground for reinstating the deadline for appealing a judicial act.

The Supreme Court has provided more detailed clarification of the rules for appeal courts to admit and evaluate new evidence. In contrast to the previous rules, the new clarifications state that the appeal court ruling may be reversed by the court of cassation not only for not admitting additional evidence without stating the reasons when there were grounds to admit the evidence, but also where such evidence was admitted without justification, if this led or could lead to an incorrect ruling being issued. It was also stated separately that a party’s motion to file additional evidence in the appeal court could be considered only before the start of hearing the appeal on the merits.

Notably, the Supreme Court also somewhat narrowed the scope of considering an appeal. In contrast to the earlier clarifications of the Supreme Commercial Court which stated that the appeal court should, among other things, consider the arguments set out in the objections to the appeal even if those arguments go beyond the scope of the filed appeal, the new clarifications contain instructions not to consider those arguments.
4. Russia’s Supreme Court has clarified how to apply the APC when cases are considered in a commercial court of cassation

Another resolution adopted on June 30, 2020, was Supreme Court Plenum Resolution No. 13 on the Application of the Arbitrazh (Commercial) Procedure Code when Considering Cases in the Commercial Court of Cassation. It replaces the repealed Supreme Commercial Court Plenum Resolution No. 13 of September 24, 1999.

The new clarifications on applying the APC have generally systematized existing rules in light of accumulated practice and legislative amendments. And some provisions of the newly adopted resolution repeat the Supreme Court’s new clarifications on applying the APC in appeals (for example, it similarly states that the right to waive a cassation appeal is not a special power and should not be mentioned in a power of attorney separately from the right to appeal judicial acts). However, the resolution contains a number of important procedural changes having to do with the consideration of cases by the court of cassation.

In particular, the resolution says that it is possible to file a motion for stay of enforcement of judicial acts directly with the court of cassation, in other words, even before the cassation appeal physically reaches that court or is accepted for hearing. This is possible if the cassation appeal is filed online or a copy of the cassation appeal with a note that it has been received by the court of first instance is attached to the motion. It is worth noting that the Supreme Court previously prohibited such a practice.

The new clarifications also entitle the parties to submit supplements (written explanations) to the court of cassation if they contain a “purely legal” justification of their arguments and objections. The supplements must be based on evidence that is in the case file and must not contain new claims. The supplements need to be sent to the other parties to the case in advance. The court of cassation will not accept the submitted documents if these requirements are not met.

It is noted separately that when cassation appeals are considered, judges must check whether the lower courts’ findings are consistent with the legal positions of the Supreme Court set out in the Plenum resolutions, reviews of practice and other documents. At the same time, the resolution expressly states that a party may submit case law materials for cases with similar facts as documents supporting the arguments and objections to the cassation appeal. The materials must, in the party’s opinion, confirm that substantive or procedural rules were properly applied. This clarification could make judges more attentive to other courts’ existing approaches.

In addition, in its clarifications the Supreme Court urges not to allow a case to be heard repeatedly according to the trial court rules with new substantiation of claims, calculations or additional source documents being submitted if the appellant will thereby be released from unfavorable consequences of not having taken procedural actions when the case was considered the “first time around.”
5. The APC has been amended to give commercial courts in the Russian Federation exclusive jurisdiction in sanctioned person disputes

A new law took effect on June 19, 2020. It is Federal Law No. 171-FZ of May 27, 2020, on Amendments to the Arbitrazh (Commercial) Procedure Code of the Russian Federation to Defend the Rights of Russian Individuals and Legal Entities and Their Foreign Counterparties in Connection with Restrictive Measures Imposed on Them by a Foreign State, a Foreign Association and/or State (Interstate) Institution of a Foreign State or a State Association and/or Union (the “Law”).

The Law amends the APC, adding the new articles 248.1 and 248.2 which (1) establish the exclusive jurisdiction of Russian state courts to hear sanctioned person disputes, and (2) prevent the commencement or continuation of such proceedings (“Injunctive Relief”).

**Exclusive jurisdiction of Russian state courts in sanctioned person disputes**

The new provisions of the APC establish the exclusive jurisdiction of Russian state courts to hear sanctioned person disputes, defined as:

Disputes involving persons under sanctions imposed by (1) a foreign state, (2) a group (union) of foreign states, (3) a state (interstate) institution of a foreign state or group (union) of foreign states (“Sanctions”)

Disputes involving persons of any personal statute (including foreign individuals and legal entities), that have arisen due to Sanctions against Russian individuals and/or Russian legal entities.

The Law concerns disputes that the parties have agreed to refer to a foreign state court or foreign arbitral tribunal (international arbitration).

Article 248.1 of the APC defines sanctioned persons as (1) Russian individuals, (2) Russian legal entities, and (3) foreign legal entities if subject to Sanctions because of the Sanctions against Russian individuals or Russian legal entities.

Importantly, if the parties have an agreement that their disputes are to be resolved via international commercial arbitration (arbitration agreement) or by a foreign state court (prorogation agreement), the new rules on exclusive jurisdiction of Russian state courts over such sanctioned person disputes will still apply, but only if a party to the agreement claims in a Russian court that the Sanctions prevent that person from accessing the courts. In other words, the exclusive jurisdiction of the Russian courts over sanctioned person disputes does not mean a dispute cannot be referred to another court or arbitration court.

The Law also provides an exception to the general rule that a foreign state court or international commercial arbitration decision rendered in contempt of the Russian state court exclusive jurisdiction provisions over sanctioned person disputes cannot be enforced. Such a decision may still be recognized and enforced if a sanctioned person initiated proceedings in a foreign state court or arbitration court, or a sanctioned person did not resist resolution of the dispute and did not request the Injunctive Relief.
**Injunctive Relief in sanctioned person disputes**

Together with sanctioned persons being under the exclusive jurisdiction of the Russian state courts, the Law allows sanctioned persons to request Injunctive Relief from a Russian commercial court for its counterparty either not to (1) commence new proceedings or not to (2) continue proceedings in foreign state courts or international commercial arbitration outside of Russia.

The first type of Injunctive Relief implies that an applicant has to prove that the dispute falls within the exclusive jurisdiction of Russian state courts as provided by the Law, citing a risk of his rights being violated in connection with the new arbitration due to the effect of the Sanctions. Moreover, a court will not grant Injunctive Relief if the applicant does not provide evidence that proceedings against him will be initiated outside of Russia in future. However, the Law does not set any criteria for a sanctioned person to confirm they cannot obtain appropriate relief in foreign proceedings or to confirm that those proceedings will inevitably be initiated. The courts will likely be able to accept a simple statement from the party and a copy of the counterparty’s claim warning that the proceedings are being commenced.

For a court to grant the second type of Injunctive Relief, the applicant must also prove that the dispute is within the exclusive jurisdiction of Russian state courts, including that the applicant is unable to perform the prorogation or arbitration agreement because he is unable to access the courts in the proceedings already commenced outside of Russia. In that situation the party could furnish evidence that the Sanctions prevent them from getting legal representation abroad, paying the arbitration fee and other costs because foreign banks refuse to work with sanctioned persons.

The Injunctive Relief introduced by the law is somewhat similar to the common-law anti-suit injunction. Russian state courts will be able to issue Injunctive Relief only against certain persons (parties to a dispute) and not against foreign state courts or international commercial arbitration tribunals (they will determine on their own whether they have jurisdiction over the disputes). In order to ensure the compliance of Injunctive Relief, the Law gives Russian courts the authority at the request of a sanctioned party to award a certain «monetary amount» payable to the counterparty who brought or continued an action in contempt of such Injunctive Relief granted by a Russian court. By «monetary amount,» the Law most likely means the concept of the court penalty (l’astreinte) mentioned both in the RF Civil Code (Article 308.3) and the APC (Article 174(4)).

An appeal against Injunctive Relief must be filed directly with the court of cassation within one month, which potentially makes the process quite quick.
6. Moratorium on bankruptcy is now possible

In April 2020 a new Article 9.1 was added to the Bankruptcy Law. For the first time, that article allowed a moratorium to be imposed on creditors’ initiation of bankruptcy proceedings and set forth general rules and consequences of such a moratorium (the “Moratorium”).

The amendments authorize the Russian Government to impose a Moratorium, determine how long it will last and make a list of economic activities and groups of people (债务人) covered by the Moratorium. A Moratorium may be imposed to “stabilize the economy in exceptional cases” (in case of natural and man-made emergencies, significant changes in the ruble exchange rate and similar circumstances).

During a Moratorium, creditors may not file involuntary bankruptcy petitions against debtors. Debtors are no longer obliged to file voluntary bankruptcy petitions during the term of the Moratorium. Also, no penalties will accrue for default on monetary obligations, enforcement (foreclosure) procedures for claims that arose before the Moratorium was imposed will be stayed, and the payment of dividends and distribution of profit between a debtor’s participants will be prohibited, etc.

The Moratorium rules appeared in the Bankruptcy Law due to the COVID-19 pandemic and the economic crisis that accompanied it. The objective was to prevent possible large-scale bankruptcy of Russian companies and individual entrepreneurs. Within its newly granted authority, the Russian Government issued a decree in early April 2020 imposing a six-month Moratorium for debtors from a list of industries of the Russian economy who suffered the hardest from the pandemic, and debtors deemed systemically important and strategic organizations and enterprises.

The Moratorium was later extended for another three months for debtors from industries most affected by the pandemic, and ended on January 8, 2021. However, the Moratorium rules in the Bankruptcy Law still continue to be relevant.

For example, the Bankruptcy Law has a number of essential features for bankruptcy cases initiated within three months of the end of the Moratorium. These include a change in the rules for calculating time periods for identifying interested parties and challenging the debtor’s suspicious transactions; and the scope and amount of creditors’ claims that arose before the Moratorium are determined on the date it was imposed, not on the date the first bankruptcy procedure was instituted.

In addition, the new Article 9.1 of the Bankruptcy Law and detailed clarifications from the Supreme Court on issues of applying that article (Supreme Court Plenum Resolution No. 44 of December 24, 2020) have created a legal basis for the Russian Government to impose other potential moratoria on initiating bankruptcy cases in the future, including those unrelated to the COVID-19 pandemic.
7. Further steps have been taken to prevent international treaties from being interpreted in ways inconsistent with Russia’s constitution

The Russian procedural codes have been updated to state that the rules of international treaties to which the Russian Federation is a party cannot be applied if the interpretation is inconsistent with the Russian Federation Constitution. This new development has to do with both procedural and applicable substantive law. The amendments were made to the CPC (Article 1 and Article 11), the APC (Articles 3 and 13) and the Administrative Procedure Code (Article 2 and Article 15).

A Russian court should not use its own discretion to determine whether there is a conflict of interpretation between various rules of international treaties and Russia’s Constitution. It can be done only after the Constitutional Court hears cases regarding the possible enforcement of decisions of an interstate body. The Constitutional Court may find that the decision is based on the provisions of an international treaty to which the Russian Federation is a party but the interpretation results in the provisions being in disagreement with the Constitution. In that case the Russian court will not use that interpretation.

For practical purposes, this is most significant for applying the Convention for the Protection of Human Rights and Fundamental Freedoms (signed at Rome on November 4, 1950; as amended on May 13, 2004) (the “Convention”). The European Court of Human Rights (ECHR) is authorized to interpret the Convention’s provisions. Now, if the Constitutional Court determines that any ECHR judgment cannot be enforced because its interpretation of the Convention is a variance with the Russian Constitution, the Russian state courts should not follow that ECHR interpretation in other disputes.

This new development is a logical continuation of the amendments made to the Constitution in the summer of 2020 and the relevant changes to the Federal Constitutional Law on the Constitutional Court of the Russian Federation.
8. Rules on the arbitrability of professional sports disputes and how they are considered in arbitral tribunals have been updated

The rules regarding the arbitrability of sports disputes changed in 2020. The industry’s laws updated the list of arbitrable disputes so that sports training disputes, which expressly could not be referred for arbitration before, are now arbitrable.

The sports arbitration laws have also added a new rule that some disputes may be heard only by permanent arbitration institutions administering the arbitration of disputes arising in professional and elite sports ("PAI").

Those disputes include:

- Disputes over antidoping rules violations
- Disputes over sports sanctions
- Individual employment disputes of professional and elite athletes and trainers

The laws also mention that sports disputes are referred for arbitration by making a separate arbitration agreement. This could be interpreted to mean that sports disputes cannot be referred for arbitration via an arbitration clause in an employment contract between an athlete and an employer because the arbitration laws usually interpret the words “separate agreement” to mean a separate document.

The requirements for arbitrators who are included on the PAI list of recommended arbitrators have been substantially revised. In addition to requiring that half of the arbitrators on the list be experienced, they now state that the other half of the arbitrators must hold academic degrees. And at least one third of all arbitrators must be arbitrators who are on the recommended list of arbitrators proposed by the professional union.

The CPC has also been aligned with the sector-specific arbitration laws by explicitly mentioning the arbitrability of sports disputes.
9. The Federal Law on Enforcement Proceedings has been amended to provide debtors with further guarantees due to the COVID-19 pandemic


As it became possible to impose a moratorium on creditors’ initiation of bankruptcy proceedings (for more on that, please see item 6 above), Article 40(1) of the Law on Enforcement Proceedings gained a new rule that a bailiff needs to stay the enforcement proceedings where a debtor is covered by such a moratorium. The law also separately made one-time payments of RUB 10,000 per child authorized by Presidential Decree No. 249 of April 7, 2020, immune from enforcement.

Other recent changes in the Law on Enforcement Proceedings are unrelated to the COVID-19 pandemic but could be considered even more significant. On July 31, 2020, Federal Law No. 259-FZ on Digital Financial Assets, Digital Currency and Amendments to Certain Legislative Acts of the Russian Federation was adopted. It added a part 4 to Article 68 of the Law on Enforcement Proceedings. The new part specifically provides that digital currency is deemed property for the purposes of enforcement proceedings.

This rule is brief and does not answer many practical questions that could arise in seeking to recover digital assets. Yet its adoption should certainly be considered favorable as a first step toward providing judgment creditors additional guarantees and preventing the use of digital currencies to avoid recovery.
10. “Technical” updates have been made to certain provisions of the CPC

A number of Russia’s federal laws have been amended to no longer mention that amounts are calculated in minimum wages. In the CPC these changes have affected the rules on enforcement immunity. That is a situation where certain categories of an individual debtor’s property cannot be recovered pursuant to writs of execution.

In the new version of the CPC, property an individual debtor needs to engage in their professional occupation is not subject to enforcement, other than items valued at more than 10,000 rubles. The value of that property was previously defined as 100 minimum wages.

Provisions have also been added that allow someone to refuse to testify. Pursuant to the new version of the CPC, not only the Russian Federation human rights ombudsman but also human rights ombudsmen for the Russian Federation constituent entities, among others, may refuse to testify.

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