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1. Change in the rules for applying the mandatory pre-arbitration dispute resolution procedure when filing with Russian commercial courts

Amendments to Article 4(5) of the RF Commercial Procedure Code entered into force on August 10, 2017 for disputes that must follow the mandatory pre-trial (pre-arbitration) dispute resolution procedure.

The changes were a response to justified criticism from the legal community of the rules on the mandatory pre-trial dispute resolution procedure that appeared earlier in the RF Commercial Procedure Code, including because those rules were not sufficiently developed. For example, problems had arisen in practice due to the need to prove that the
pre-arbitration procedure had been followed for claims of a non-monetary nature, when it either couldn’t be applied or there was no sense in doing so (for example, cases to invalidate transactions, to declare ownership of real estate, etc.).

As a result, the new amendments have eliminated the general rule about the need to follow the pre-arbitration procedure for resolving economic disputes and have reasonably limited the range of cases for which it is mandatory, which now include:

- civil-law disputes for recovery of funds;
- other civil-law disputes if the law or the agreement establishes that they must be resolved using the mandatory pre-trial procedure;
- economic disputes arising out of administrative and other public-law relationships if the law establishes that they must be resolved using the pre-trial procedure.

The amendments made can generally be considered favorably as previous defects in the regulation have mainly been eliminated and certain problems previously confronted by participants in commercial proceedings have been resolved.

2. Entry into force of rules allowing to enter into an agreement to resolve corporate disputes in arbitration proceedings

Rules allowing to resolve internal corporate disputes in arbitration proceedings entered into force on February 1, 2017. This can be considered the completion of an important stage of the arbitration reform that started back in 2015.

Until these amendments entered into force, corporate disputes, including those arising out of share purchase agreements and shareholders agreements, were considered non-arbitrable in light of existing court practice. Following the reform it has become possible, with some exceptions, to refer corporate disputes to arbitration.

Under the current regulation all corporate disputes that can be considered in arbitration proceedings can be divided into two groups:

1) Outside corporate disputes whose resolution does not require compliance with special requirements to entering into an arbitration agreement (this includes, inter alia, disputes related to ownership of shares and participatory interest in share capital, and disputes arising out of the activities of registrars of securities holders).

A mandatory requirement established for this category of disputes is that they be considered in an arbitration administered by a permanent arbitration institution (Article 45(7) of the Federal Law on Arbitration (Arbitration Proceedings) in the Russian Federation, Article 225.1(5) of the RF Commercial Procedure Code). The RF Government grants the right to engage in activity to administer arbitration, and the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Russian Federation Chamber of Commerce and Industry are automatically granted that right. Other Russian and foreign arbitration institutions are required to undergo a special procedure and meet a number of detailed requirements provided for by law in order to be entitled to administer disputes on a permanent basis.

2) Internal corporate disputes that may be referred to arbitration only if special requirements to the form of the arbitration agreement are met. These include, inter alia:
• disputes appealing resolutions of a legal entity’s governing bodies;
• disputes under claims of a legal entity’s participants for compensation of losses caused to the legal entity;
• disputes related to the establishment, reorganization or liquidation of a legal entity;
• disputes arising out of agreements of a legal entity’s participants on how to govern that legal entity, including disputes arising out of corporate agreements;
• disputes under claims of a legal entity’s participants to invalidate transactions completed by that legal entity and/or to apply the consequences of the invalidity of those transactions.

A number of requirements set by law (parts 3 and 4 of Article 225.1 of the RF Commercial Procedure Code) must be met in order to refer these disputes to an arbitration court, namely:

• the dispute must be considered in an arbitration administered by a permanent arbitration institution;
• the seat of arbitration must be the Russian Federation;
• the permanent arbitration institution must approve and deposit with the Ministry of Justice of Russia and post on its website special rules for adjudicating corporate disputes and the content of those rules must meet the mandatory requirements of the Law on Arbitration;
• the legal entity, all of its participants, and also other persons who are claimants or respondents in such disputes (e.g., the legal entity’s counterparties in claims challenging transactions) must be parties to the arbitration agreement.

Failure to meet any of the conditions listed above makes it impossible to consider the dispute in an arbitration court from the positions of Russian law.

3. Clarification of the rules for taking provisional measures in cases requiring that the mandatory pre-trial dispute resolution procedure be followed

Amendments having to do with the rules for taking provisional measures in accordance with Article 99 of the RF Commercial Procedure Code entered into force as of July 12, 2017.

Under the new rules, if an application for provisional measures is filed for claims for which the pre-arbitration procedure must be followed, the applicant is given not more than 15 days to send the claim to the other party, and also a period of not more than five days to file the statement of claim which starts running from the last day for taking steps for pre-trial resolution.

If the applicant misses these deadlines or fails to submit proof of enforcement of the ruling that was rendered to the court, the security is canceled by the same commercial (arbitrazh) court.

These changes have eliminated the previous contradiction between the 30-day period set by Article 4(5) of the RF Commercial Procedure Code to wait for a reply to a claim, and the maximum 15-day period for filing the action, which was to be set by the court according to the previous version of Article 99(5) of the RF Commercial Procedure Code.
4. New rules set for calculating the limitation period for presenting a writ of execution for enforcement

June 9, 2017 saw the entry into force of amendments concerning the rules for calculating the limitation period for presenting a writ of execution for enforcement. Article 321 of the RF Commercial Procedure Code, Article 356 of the RF Administrative Procedure Code, and part 3.1 of Article 22 of the Federal Law on Enforcement Proceedings were all amended at the same time.

According to the new version of the law, if enforcement under a previously presented writ of execution has ended because the recoveror recalled the writ of execution or because the recoveror took actions preventing it from being enforced, the period from the day the writ of execution was presented for enforcement to the day enforcement under it ends on one of the above grounds is deducted from the respective period for presenting the writ of execution for enforcement established by law.

These amendments were adopted to implement the RF Constitutional Court Ruling of March 10, 2016 in a case checking the constitutionality of Article 21(1), Article 22(2) and Article 46(4) of the Federal Law on Enforcement Proceedings in connection with a complaint from an individual, M.L. Rostovtsev. The Constitutional Court found that the previous procedure for presenting writs of execution which made it possible to “reset” the general three-year period in cases where the enforcement proceedings had been halted by the recoveror, and thus to extend them indefinitely, did not comply with the Russian Constitution, as it seriously infringed the rights of the debtor.

5. Adjustment of the rules of the RF Civil Procedure Code on reinstating procedural periods

Amended rules for reinstating missed procedural periods in cases considered according to the procedure of the RF Civil Procedure Code entered into force as of July 30, 2017.

Currently a request to reinstate a missed procedural period for filing a cassation appeal with the judicial panel of the RF Supreme Court must be addressed directly to the RF Supreme Court. The request is considered by a judge of the Supreme Court without summoning the parties. The list of reasons that are considered valid has not changed. These include, for example, serious illness or helpless condition of the appellant, and others.

If a request to reinstate a period is not granted, the appeal is to be returned without a hearing on the merits. And the Chairman of the Supreme Court or his deputy has the right to disagree with the ruling of the judge who considered the request and to render a different ruling: to refuse to reinstate the missed period for filing the cassation appeal or, on the contrary, to reinstate it.

A similar procedure has been established for reinstating periods for filing supervisory complaints with the Supreme Court.

6. The rendering of Ruling No. 23 of the RF Supreme Court Plenum on Consideration by the Commercial Courts of Cases in Economic Disputes
Arising out of Relations Complicated by a Foreign Element dated June 27, 2017

In June 2017 the RF Supreme Court rendered a ruling that contains important clarifications for the consideration of cases complicated by a foreign element. These clarifications contain answers to many controversial issues that were previously resolved by the courts ambiguously, and thereby stabilize the relevant court practice.

This ruling pays considerable attention to issues of international jurisdiction. For example, the Supreme Court has confirmed the possibility of foreign companies entering into agreements to refer disputes for resolution by Russian commercial courts, the autonomous nature of agreements on international jurisdiction (prorogation agreements), and also the admissibility of terms in agreements about filing a claim with a court of the state in which the claimant is located.

The Supreme Court has clarified that formal registration or accreditation according to the procedure established by law are not required in order to file an action with a Russian court against a foreign organization that actually engages in activity in Russia. For example, the presence of information about the foreign entity’s activity on a website registered with a Russian domain extension (e.g., "RU", "SU" and "РФ") in the Russian language is a justification of the Russian court’s jurisdiction.

These clarifications also provide answers to many questions having to do with establishing the legal status of a foreign entity, general features of considering cases with a foreign element, requirements to documents of foreign origin, and also determining the content of foreign law.

It is worth mentioning separately references to the possibility of a single ruling scheduling both the main and backup dates for holding hearings, and also dates of the preliminary and main court hearing. From the practical perspective also important is the Supreme Court’s confirmation of the position that a power of attorney from a foreign entity issued in a foreign state is not an official document and, according to the general rule, does not require mandatory certification in the form of consular legalization or apostillization.

The rendering of this ruling generally confirms the increasing integration of Russian justice into the international justice system for economic disputes and recognition of the utmost importance of such processes at the level of the Russian Federation’s highest court.

7. Change in the rules for setting temporary restrictions on the debtor's leaving Russia

A new version of Article 67 of the Law on Enforcement Proceedings governing temporary restrictions on a debtor’s leaving Russia has been in effect since October 1, 2017.

The law increased from RUB 10,000 to RUB 30,000 the amount of claims for which debtors may be subject to a temporary restriction on leaving Russia. The restriction on leaving the country can also be applied if the debt amount exceeds RUB 10,000 and the debtor does not comply with a requirement of an enforcement document within two months of the end of the voluntary enforcement period.

The threshold of RUB 10,000 remains only for claims for recovery of alimony, for compensation of harm caused to health, compensation of harm in connection with the death of a breadwinner, property damage and/or moral harm caused by a crime.
As previously, a restriction on leaving the country can also be imposed if the debtor fails to satisfy claims of a non-monetary nature.

Information about indebtedness and its amount is available on the official website of the Federal Court Bailiff Service. Debtors can also pay their debts on that site.

It must be borne in mind that after the debt is paid and even after the court bailiff issues an order lifting the temporary restriction on leaving the country the debtor is not automatically removed from the so-called “stop list” of the Federal Security Service of Russia’s Border Service. In practice this happens three to five days after the court bailiff’s order to lift the restriction is sent to the Border Service’s Border Control Department.

8. The introduction to the Federal Law on Insolvency (Bankruptcy) of Chapter III.2 on the liability of the debtor's director and other individuals in a bankruptcy case

Misconduct during bankruptcy procedures used in the Russian Federation is unfortunately quite a widespread phenomenon. It is often found out during a bankruptcy that the debtor no longer has any significant assets at all, although the debtor could have been actively engaged in business for many years and had high turnovers. Often assets may be stripped in favor of beneficial owners or companies friendly to the debtor.

Combating such misconduct, lawmakers and law enforcement officers have been consistently expanding creditors’ options to recover a debtor’s stripped assets, improving the relevant legislative framework. Chapter III.1, which governed issues of challenging the debtor’s transactions, was introduced to the Federal Law on Insolvency (Bankruptcy) in 2009. Over the ensuing years extensive court practice has been formed on the basis of that chapter.

The introduction by Federal Law No. 266-FZ dated July 29, 2017 to the Federal Law on Insolvency (Bankruptcy) of a separate chapter III.2 “Liability of the Debtor’s Director and Other Individuals in a Bankruptcy Case” has become a logical continuation of that line. This chapter has thoroughly resolved issues of the liability of persons controlling the debtor: directors, parent companies, beneficial owners, etc., and the law uses the broadest possible “ontological” understanding of that term, which is intended to make it more difficult to get around these rules with the help of any formalities.

Both the norms of insolvency legislation and general civil-law norms also previously provided for the possibility of vicarious liability of the debtor’s controlling persons. However, those norms were disparate and unsystematic, which made it difficult to implement them in practice. Moreover, without detailed regulation the courts often had procedural questions when considering such claims.

The newly introduced chapter III.2 clearly systematizes the grounds for third-party liability for a debtor’s obligations and for losses caused to a debtor (or to its creditors), highlighting primarily the following three: inability to discharge creditors’ claims due to the fault of the person controlling the debtor (for example, the person has caused the debtor losses), late filing of the bankruptcy petition (which caused losses and debts to mount) and other violation of bankruptcy laws (for example, interfering with the activity of the debtor’s receiver). The law specifically states that such claims are generally not related to challenging any of the debtor’s transactions, which expands creditors’ options, as the challenging of transactions is associated with a number of procedural limitations.

The new chapter also regulates in detail procedures for filing and considering claims to impose liability on third parties.
in a debtor’s bankruptcy case. For example, the range of persons entitled to file such a claim has been defined; the procedure for considering it has been clarified; and the rights of the parties to the dispute have been established. Issues of assigning such claims and enforcing the judicial acts on them have received special treatment; these issues are of particular importance because it is often necessary to liquidate a debtor company without drawing out the bankruptcy procedure. The new chapter clearly addresses instances of considering such claims after bankruptcy procedures have been completed, while previously the courts were forced to form such practice themselves.

It should also be noted that many procedural issues in the new chapter have been resolved by analogy with the norms on challenging the debtor’s transactions which have already proven themselves in practice. On the whole, these novelties are intended to cut down the number of dishonest delinquent payers and make the bankruptcy tools provided for by law more effective to provide creditors with additional guarantees that their rights will be protected, which is generally worth supporting.

9. The rendering of Ruling No. 10 of the RF Supreme Court Plenum on Certain Issues of the Application by the Courts of the Provisions of the RF Civil Procedure Code and of the RF Commercial Procedure Code on Simplified Procedure dated April 18, 2017

There are a number of reasons why it was necessary to render this ruling. First of all, we remind readers that the institution of simplified procedure appeared in the RF Civil Procedure Code only in 2016. There were essentially no clarifications on how to use it. Second, Ruling No. 62 of the RF Supreme Commercial Court Plenum on Certain Issues of the Consideration by Commercial Courts of Cases in Simplified Procedure dated October 8, 2012 was in effect for the RF Commercial Procedure Code, although the rules of the RF Commercial Procedure Code were substantially updated in 2016. Finally and thirdly, more and more cases are being considered according to the simplified procedure, which has necessitated clarifications to stabilize practice and eliminate errors.

The quite large document (58 items) contains detailed clarifications on the main issues having to do with considering cases according to the simplified procedure. The ruling contains clarifications on how to proceed to considering cases according to the general rules, on specific features of rendering judicial acts for this category of cases and on how to appeal them.

The following provisions should be noted:

- The rules for combining in a single application claims from different categories of cases, one of which is considered according to the simplified procedure and the other according to the general procedure have been clarified. Situations had arisen quite often in the court practice where the applicant was at the same time challenging a non-regulatory act of public authorities and a decision of administrative authorities imposing sanctions. Usually those claims are related. At the same time, for example, if the administrative fine is less than RUB 100,000, cases challenging it are considered according to the simplified procedure. However, the non-regulatory act on the basis of which that fine was imposed is usually challenged according to the general procedure. The Russian Supreme Court clarified that in these instances all related claims must be considered according to the general procedure.

- How to determine the value of property in cases to declare ownership of and recover property has been clarified.

These amendments have eliminated one of the longstanding discrepancies between the law and existing practice. Federal Law No. 260-FZ dated July 29, 2017 has updated the provisions of the RF Civil Procedure Code having to do with consideration of the same court case at more than one hearing.

Following the traditions of Soviet times, the RF Civil Procedure Code operated on the assumption that generally a court case should be considered in the course of a single continuous court hearing. Based on this, the law clearly delineated the principles that a court hearing be continuous and immediate. A recess in a court hearing was allowed only as an exception, and during the recess the judge was prohibited from considering other cases. If a hearing were adjourned, the law generally required that the entire case be considered again at each subsequent hearing.

However, due to the increasing complexity of social relations and legal regulation, for objective reasons it is impossible to consider many cases in a single court hearing. Also, considering the heavy caseload, judges cannot refrain from considering other cases while waiting for the first case to conclude, nor can they examine all of the...
evidence again at each new hearing. For this reason, the previous provisions of the RF Civil Procedure Code addressing the principles that the hearing be continuous and immediate were not applied in every instance, and the principle that the court hearing be continuous received lip service.

The introduction of these amendments enshrined in law the procedure actually used by the courts of general jurisdiction. So, it has been established that a recess in a court hearing of a case may be declared during which the court may consider other cases. At the same time, the rule of the RF Civil Procedure Code on examination of evidence has been updated: after a recess or adjournment a court hearing does not start over, but continues from the point at which it was recessed or adjourned, and it is not necessary to re-examine evidence that has already been considered. This has unified the provisions of the RF Civil Procedure Code and similar norms of the RF Commercial Procedure Code which have already been used by the commercial courts for a long time.

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