



UNIFYING ARBITRATION AND CIVIL PROCEEDINGS

For the attention of heads of companies' legal departments

Pepeliaev Group advises that on 16 February 2016 the State Duma passed a law¹, which amends the Russian Commercial (Arbitration) Procedure Code (the “Code”) and unifies the procedural rules applied by general jurisdiction courts and state commercial (arbitration) courts

Introducing the mandatory pre-trial procedure for legal actions

The pre-trial procedure for resolving disputes has been introduced into the Code.

When the amendments become effective, a dispute may be referred to a state commercial (‘arbitration’) court 30 (thirty) calendar days after the day when a complaint was filed (the parties having first taken measures to settle it under a pre-trial procedure), unless another timeframe or procedure is established by law or contract.

Unlike the 1992 version of the Code, the parties may make provision in a contract for a pre-trial procedure for settling disputes that differs from the complaints procedure.

Exceptions to this rule are the following cases, the features of which do not allow for the pre-trial procedure to be applied:

- actions to establish facts of legal importance;
- actions to award compensation for the violation of the right to a trial within a reasonable timeframe or the right to have a court judgement enforced within a reasonable timeframe;
- insolvency (bankruptcy) cases;
- corporate disputes; and
- actions to protect the rights and lawful interests of a group of persons.

The pre-trial procedure will also apply to economic disputes arising from administrative and public law relationships, but only if a federal law so provides.



According to the amendments that have been passed, compliance with a pre-trial procedure becomes a general rule that has effect irrespective of whether a contract makes provision for such a procedure. If the contract lacks a term providing that a pre-trial procedure is compulsory and stipulating its form, then, by default, the pre-action complaint procedure is regarded as binding.

The consequences of failing to apply the procedure prescribed by the law remain as follows: The court will return any application (if the violation is identified at the stage when such application is accepted for prosecution) or will decline to examine it (if the violation is identified after it has been accepted for prosecution).

Also, as before, if the circumstances are eliminated that served as a ground for the above consequences to be applied, a party may once again apply to the court to protect its rights and lawful interests.



It is important to remember the need to apply (including with a repeat application) within the bounds of the limitation period. Otherwise, a person risks being deprived of their entitlement to judicial protection; and a court is scarcely likely to consider failure to comply with the binding pre-trial procedure (or more likely, regard this factor as having been eliminated) as a valid reason for missing the deadline.

¹ At the date of publication of this alert, the Law has yet to be approved and it has not been signed by the Russian President. However, based on the practice for passing laws, this will happen in the near future.

The return of the institution of injunctions

The Code has been supplemented by a new article 188.1 'Injunctions'.

This institution was applied a fairly long time ago by courts of general jurisdiction, while it existed in the state commercial courts under the Arbitration Procedure Code as in effect between 1991 and 1995. The institution aims to eliminate violations of legislation that are identified while a case is being heard on the part of state authorities, local government bodies and other bodies or organisations which federal law vests with state or public powers, as well as the officers of such bodies, attorneys and persons engaged in professional occupations.

An injunction is sent directly to the person themselves who must take measures to eliminate a violation and must inform the court of such measures.



The institution of injunctions may be the main leverage applied to eliminate violations that have been committed and that hinder and/or otherwise affect not only the course of specific court proceedings but also the regulation of similar disputes. In this connection, it is possible to apply to the court with a proposal that an injunction be handed down with respect to specific officers, state or local government authorities to avoid future violations. At the same time, bearing in mind that this institution is not sought after in courts of general jurisdiction, it is highly likely that nor will injunctions be widespread in the state commercial courts.

Writ proceedings appear in the Code

In the context of the procedure for unifying proceedings in courts of general jurisdiction and the commercial ('arbitration') courts, a new chapter 29.1 has been added to the Code. 'Writ proceedings'

A court order will be issued in cases of the following categories:

- claims arising from the non-performance or improper performance of a contract (not exceeding RUB 300,000 for a legal entity and RUB 100,000 for an individual entrepreneur);
- a claim based on a protest by a notary of a bill of exchange concerning non-payment, non-acceptance or a failure to date the acceptance (not exceeding RUB 300,000 for a legal entity and RUB 100,000 for an individual entrepreneur);
- a claim to recover mandatory payments and penalties (the overall amount of the monetary sum to be recovered amounting to a maximum of RUB 100,000).

In all other respects, it is identical to the new chapter of the Civil Procedure Code governing the writ proceedings regime.

Moreover, since the claims in relation to which a court order may be issued overlap to some extent with cases being examined under the writ proceedings regime, a higher value threshold has been set for the latter. This is RUB 400,000 for legal entities and RUB 200,000 for individual entrepreneurs.



The main feature and advantage of writ proceedings lies in the fact that the court order is at the same time also an enforcement document. This allows a party to more promptly safeguard an infringed right.

Help from your adviser

The professionals of Pepeliaev Group's dispute resolution and mediation practice are ready to provide multifaceted support on issues related to litigation in state commercial courts and courts of general jurisdiction at all levels.

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