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there is a material increase in the number of disputes referred to arbitration in Russia and a decrease in the number of ‘valid’ arbitral awards dismissed by Russian state courts, or on which state courts refuse to issue writs of execution. That is a commendable goal, and we hope to see progress towards it over the medium term.

Notes

- 1 Under Russian legislation, Corporate Disputes are disputes related to the establishment of a legal entity, its management, or participation in a legal entity. This can include, therefore, certain disputes arising from shareholders’ agreements, sale-purchase agreements, or share pledge agreements.
- 2 Arbitral institutions which are closely connected to one of the parties to a dispute.
- 3 Resolution of the Federal Arbitrazh Court of Moscow region dated 10 October 2011 on case No. A40-35844/11-69-31
- 4 Provision enters into legal force on 1 January 2017.

New procedural opportunities in the Russian state commercial courts

Commercial disputes in Russia are heard by the state commercial (*‘arbitrazh’*) courts, which, together with the courts of general jurisdiction, are now headed by the Supreme Court of the Russian Federation. For several years, state commercial courts in Russia have been developing technology and introducing various electronic systems to assist with the business of the courts. An electronic system of judgments and rulings was created, which meant that subscribers could find judgments and rulings online and receive case updates. The next step was the introduction of an online document submitting system (*‘My Arbitr’*). Lastly, there was the possibility to have the case adjudicated through the internet only (within the simplified summary proceedings). We will describe these recent developments of the Russian judiciary, which made justice more transparent, accessible and modern, as well as cheaper and faster, and changed not only the technical part of litigation work, but also its legal framework.

Electronic database of judgments

The electronic database of judgments (www.kad.arbitr.ru) underwent several stages before it became a user-friendly and convenient method of publication and a good search tool

for judgments. First, the database itself was created as an internal system of the courts. This enabled the publication of judgments. Later, a user-friendly interface was developed with search and subscription options. One can search by case number, case participants, court, category of case (eg, bankruptcy cases) or any word in the text of a judgment or ruling.

As a result of the adoption of this technology, it is now stipulated in the Commercial Procedure Court (CPC) that information on initiation of proceedings, date, time and place of hearings shall be published at least 15 days prior to the hearing date. Also, judgments shall be published in the electronic system of the courts by court personnel within 24 hours of issue. Each judgment has a QR-code, which can be used to locate the case in the database. For most references (eg, for appellate proceedings), a copy of a judgment from the system is sufficient; there is now no need to obtain a paper copy with stamps and signatures from remote courts to appeal a judgment.

It is now also provided by the CPC that, after the first notice on the case, the parties are not summoned or otherwise informed of progress in the proceedings except by means of the electronic database, which parties are required to monitor (previously,

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all notices were sent by post). Monitoring is not burdensome: one can easily subscribe to several dozen disputes in the Electronic Guard service. Consequently, the courts now have less paperwork and no postal expenses for handling notice of each ruling and judgment.

The time and date of publication are indicated in the system and failure of the courts to follow the statutory time limits for publication may have a serious impact on the proceedings. For example, if the publication of the judgment was untimely and a party appealed to the higher court beyond the statutory time for appeal because of that (the time for appeal starts from the date of issuance of the judgment, not the date of publication), the higher court will restore the term and accept the appeal.

The system contains information not only about judgments, but also about most of the procedural actions of the parties, such as motions, statements and submitting evidence. Each time a document is registered, a subscriber receives an email notification about that.

Online document submitting system ('My Arbitr')

Parties to proceedings in state commercial courts have been able to submit all procedural documents electronically since 2010. Uploading the documents on the court website has the same legal effect as if the documents were filed directly with the court or sent to it by post.

To proceed with uploading, one creates an account on www.my.arbitr.ru. Creating the account takes a matter of minutes: only the applicant's name and email address are required. After that, if one wishes to file a document in a case, one needs only to enter the case number, the name of the court within which to file the documents, and the type of document.

The service allows submitting trial documents of any kind, with just a few exceptions. For uploading to be effective, the party must scan the signed trial document, its power of attorney, and any supporting documents.

The document is deemed submitted as of the time the sender receives an email confirmation of uploading. The court usually needs a couple of days to process a document and publish the case update online.

My Arbitr also provides other online services such as:

- Electronic Guard (email subscription to receive any updates on cases and notices of new cases filed);
- calculator for state filing fees;
- calculator for statutory interest on debt; and
- schedule of court sessions and session breaks.

Overall, the online document submitting system greatly benefits lawyers and clients by simplifying the procedure and reducing legal costs. The nightmare of missing the post when filing documents on the last day of a procedural deadline has passed.

The most common obstacles that can prevent a party from using the online service are: (i) a huge number of attachments (which means that the uploading can take time); and (ii) procedural tactics. As to the second obstacle, under the CPC, trial documents are deemed submitted as of the moment they are accepted by the post office if sent by post. If a party wants to delay the court and the counterparty learning about a document, but still comply with procedural deadlines, it can send the documents by post. Taking into account the distances in Russia, the time advantage can amount to a couple of weeks.

Videoconference

A party to a dispute heard by state commercial courts can now participate in hearings in remote courts by means of videoconference arranged by a nearby court. This can be done through other state commercial courts or courts of general jurisdiction.

To arrange for videoconferencing, a party needs to submit electronically a special application to the court considering the dispute. If it is technically possible to arrange a videoconference and the equipment is not booked for the date and time of the hearing, the application will be granted. The party will come to the nearest court, a judge will check the identity of the representative and his/her powers, and the hearing will proceed by videoconference. A video recording of the hearing is made and attached to the case file. Videoconferencing can also be used for hearing witnesses or experts and for examination of written evidence. In the latter case, however, copies of the written evidence must be sent to the court by fax or email.

Audio recording

In addition to traditional hard-copy minutes of hearings, audio recording is widely used. Sometimes it even substitutes hard-copy minutes.

Judicial clerks are obliged to record hearings in the trial commercial courts and appellate commercial courts. Only hearings which no party attends, or hearings which are held without summoning the parties, are not recorded.

If recording fails for technical reasons, the judge must suspend the trial until the clerk can continue recording. Audio files of all hearings are downloaded on a CD and annexed to the case file. The parties can receive a copy of the recordings free of charge and use the copies in appellate or cassation proceedings.

In addition to court-controlled recording, each party has the right to record a hearing itself: no motion or prior notification is required.

Summary proceedings and court orders

Summary proceedings (*‘упрощенное производство’, ‘uprotschennoe proizvodstvo’*) have been in force for several years and have proven to be effective. Statistical data of the Russian Supreme Court shows that approximately 50 per cent of all decisions in state commercial courts are issued in summary proceedings.

Summary proceedings apply to simple cases when the disputed amount does not exceed RUB 500,000 (approximately €7,000) or on request of the claimant when the defendant does not object. The court issues the decision without summoning the parties, on examination of documents from the claimant and defendant. It takes about two months for the court to adjudicate a dispute by summary proceedings, including time for the additional explanations or written evidence.

The documents from the parties are uploaded to the electronic database of the court and are made available for the parties online. Each party receives a special access code to open the electronic case file. The whole procedure from submitting the claim until issuance of the decision is in electronic form. The database also contains case schedules, including the date of adjudication and dates when the parties submitted documents.

On 1 June 2016, the new rules regarding judicial decisions in summary proceedings entered into force. Since that date, the judge prepares a reasoned decision only if the participants request it. The operative part of the decision (that is, the result of the decision, without reasoning) must be drafted and uploaded online by the deciding judge no later than the day after the case is considered. Thus, the parties can quickly see the case result.

In addition to summary proceedings, the recent amendments to the CPC set forth another simplified adjudication procedure – so called court orders (*‘судебный приказ’, ‘sudebny prikaz’*) for monetary claims. A party can initiate issuance of a court order when the claim does not exceed RUB 400,000 (approximately €5,500) and the debtor does not object to it. The procedure also applies to certain debts based on promissory notes and for the collection of mandatory payments and sanctions not exceeding RUB 100,000 (approximately €1,400). Although there are not yet any statistics on use of this procedure in the state commercial courts, it is expected that the procedure will be as successful in the commercial courts as it has been in courts of general jurisdiction, where it has existed for many years.

Prior to filing a court order request, the creditor must notify the debtor of the start of the procedure and send the debtor a copy of the request. The judge issues a court order without a trial within ten days after receipt of the request. The debtor is not to file any documents before the court order is issued. The debtor has ten days after receipt of the order to protest. If a protest is filed, the judge automatically annuls the court order and the creditor must file an ordinary lawsuit to collect the debt. If not protested against, the court order enters into force and can be challenged only in a cassation court, which generally considers only challenges based on issues of law. It is important to note that court orders cannot be issued against foreign parties; standard rules of lawsuits apply to them.

Mandatory pre-trial procedure

Since 1 June 2016, sending an official letter of complaint to the proposed defendant before filing a suit has been required for the majority of commercial cases and contractual disputes in particular. This change is aimed at developing alternative dispute resolution methods and decreasing the workload of the courts.

To file a lawsuit, the claimant must first send a pre-trial letter of complaint to the defendant and wait for the answer 30 days after its dispatch. A contract between the parties or a statute can provide a different procedure. This allows the parties to negotiate resolution of the claim and avoid suit if they wish. If the claim is not settled or the defendant does not

answer within 30 days, the claimant can resort to court. If a claimant fails to comply with this mandatory pre-trial procedure, the judge must return the statement of claim and decline to proceed with it. The claimant may then resort to the courts again once the pre-trial procedure is observed.

The CPC lists cases that fall outside this mandatory pre-trial procedure as a result of their nature, such as the establishment of facts of possession, corporate disputes, class actions, bankruptcy, and others.

The mandatory pre-trial procedure continues the legislation trend that started several years ago when the administrative procedure of challenging decisions of tax authorities prior to adjudication was introduced. As a whole, it corresponds to similar procedures in European jurisdictions (eg, *Mahnung* in German law) and is aimed at decreasing the high caseload of state commercial courts.

Judicial costs

The costs involved in judicial proceedings, such as state fees, expenses for experts, travel expenses and legal fees, can be recovered by the winning party on

presentation of documents supporting the amount sought. While these costs are not always recovered, they are recoverable as a general rule. The practice of recovering costs is still developing, and courts tend to award significantly less than the costs actually borne by the winning party. Nevertheless, in recent years there have been a number of important judgments where judicial costs totalled up to US\$1m.

In early 2016, the Supreme Court of the Russian Federation adopted a new clarification of law, in the form of a Ruling of the Plenum, where details on recovering judicial costs were specified. It is widely recognised as a sign for courts to more fully award judicial costs, including legal fees.

Conclusion

The Russian system of state commercial courts has been considerably modernised during recent years. Several important advantages now include modern infrastructure, such as online services, videoconferencing and opportunities for speedy resolution, such as summary proceedings and court orders, which lower judicial costs and reduce the caseload of the courts.

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Federal Supreme Court decision on access to third-party banking information in Switzerland under the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters

A recent decision of the Swiss Federal Supreme Court (Switzerland's highest court) dealing with a request for access to Swiss banking information under the 1970 Hague Convention on the Taking of Evidence Abroad in Civil or Commercial

Matters (the 'Convention') specifies the requirements in cases where banking information of third parties is concerned.¹ The decision also addresses a number of further points that are of interest to international litigation practitioners.