

MAIN AMENDMENTS TO THE ARBITRAZH (COMMERCIAL) AND CIVIL PROCEDURE CODES

On 1 October 2019, amendments to the RF Arbitrazh (Commercial) Procedure Code ("**APC**") and the RF Civil Procedure Code ("**CPC**") came into force. One set of amendments relates to the commencement of work by certain appellate and cassation courts of general jurisdiction (though the amendments also address other matters as well)¹. The other set deals with reform of class action litigation². This briefing summarises the main changes to the consideration of disputes by Russian arbitrazh (i.e. state commercial) courts and courts of general jurisdiction.

COMMERCIAL LITIGATION

Exclusion of the term "jurisdiction": what it means

Previously, both the CPC and the APC used the term "jurisdiction" (*подведомственность*). The rules on jurisdiction determined the system – the arbitrazh courts or the courts of general jurisdiction – under which a given dispute should be heard. Now instead of "jurisdiction" the term "competence" (*компетенция*) is used. But since the actual rules on demarcation of the competence of the arbitrazh courts and the courts of general jurisdiction remain unchanged, these changes can be said to be cosmetic.

However, an important new rule has been added. Previously, if an arbitrazh court found that a case should be heard by the courts of general jurisdiction, the court terminated proceedings in the case³ (APC Art. 150(1)(1)). Now in such circumstances arbitrazh courts must act as follows: 1) if an arbitrazh court determines when deciding whether or not to accept a statement of claim that the dispute in question should be heard by a court of general jurisdiction, it must return the statement of claim without instituting proceedings (APC Art. 129(1)(2)); 2) if an arbitrazh court comes to such conclusion after already having accepted a statement of claim, it must transfer the case to the court of general jurisdiction. Such transfer of cases is realised in a rather original way in the law. Most civil suits in the courts of general jurisdiction are heard at the

Main changes in commercial litigation:

- exclusion of the term "jurisdiction" (*подведомственность*), and regulation of the transfer of cases from arbitrazh courts to courts of general jurisdiction and vice versa
- requests for challenge of a judge will now be considered by the judge himself (herself)
- now only advocates, lawyers or persons with a higher education in law can represent parties in court (with few exceptions)
- court fines have slightly increased
- in cases where the defendant is a natural person, personal identification numbers associated with that individual must be included in the statement of claim
- the standard time frame for proceedings in the first instance in arbitrazh courts is increased from 3 to 6 months
- arbitrazh courts have been granted the right to limit the duration of oral submissions

¹ The amendments were enacted by Federal Law No. 451-FZ of 28 December 2018 On the Incorporation of Amendments to Certain Legislative Acts of the Russian Federation ("**Law No. 451-FZ**").

² The amendments were enacted by Federal Law No. 191-FZ of 18 July 2019 On the Incorporation of Amendments to Certain Legislative Acts of the Russian Federation ("**Law No. 191-FZ**").

³ Termination of proceedings in a case means completion of the case without the possibility of filing the same action again in arbitrazh court.

level of the district courts (or equivalent). However, arbitrazh courts must transfer cases not to the relevant district court directly, but through the court that is superior to the relevant district court (i.e. the regional court or equivalent) (APC Art. 39(4)).

A rule on transferring cases from courts of general jurisdiction to arbitrazh courts has now been added to the CPC (CPC Art. 33(2.1)), but a court of general jurisdiction must transfer a case directly to the arbitrazh court which by law has jurisdiction.

Challenge of judges

Previously, in commercial litigation the question of challenge of a judge would be considered by a different judge – either the chairman of the arbitrazh court, the deputy chairman of the arbitrazh court, or the chairman of the judicial panel. Now, as is the case in the courts of general jurisdiction, requests for challenge are considered by the same judge who is hearing the case.

Representation in court

Russian civil proceedings differ from many foreign legal proceedings in that a person's representative in court need not necessarily be a member of a professional group (such as a bar association). Now in most disputes only advocates and persons with a higher legal education or who hold a degree in law can represent parties in court (APC Art. 59(3)). But persons who do not hold a degree in law can still represent themselves in court. Companies can be represented by their directors, who also need not hold a law degree.

In cases heard by magistrates and district courts of general jurisdiction (i.e. in most civil litigation, based on the total number of cases) it will still be possible to be represented by persons who are not professional lawyers (CPC Art. 49(2)).

Higher court fines

Previously, court fines (e.g. for disorderly behaviour in court or failure to obey a summons) could not exceed RUB 2,500 for individuals, RUB 5,000 for corporate officers and officials, and RUB 100,000 for organisations. Now the maximum court fines are RUB 5000, RUB 30,000 and RUB 100,000, respectively. But given that the courts rarely exercise their right to impose such fines, this change is not expected to be particularly consequential.

New requirements on the content of statements of claim

Previously, in cases where the defendant was a natural person it was sufficient for the claimant to specify his/her name and address in the statement of claim. Now it is required to also indicate the person's date and place of birth, place of work (if known), and one of several personal identification numbers associated with that individual (insurance number of individual personal account, taxpayer identification number, series and number of passport, series and number of driver's licence) (Art. 125(2)(3) APC, Art. 131(2)(3) CPC). However, such identifying numbers are not publicly available, so claimants may have difficulty initiating legal action against defendants if they do not know the relevant numbers. Hence it is advisable to take steps beforehand to obtain the personal identification numbers of individuals who could potentially be named as defendants.

On 25 September 2019, the RF State Duma passed a bill in its third reading which will delay the entry into force of the above provisions of the CPC (but not the APC!) by 180 days⁴. On 9 October 2019, the RF Federation Council approved the bill. As of the date of this briefing the bill has not been signed by the RF President, so it has not yet come into force.

New grounds for returning statements of claim

Courts are to return a statement of claim if it "*has not been signed or... has been signed and submitted to the court by a person who did not have the authority to sign it and/or submit it to the court*" (APC Art. 129(1)(6)); the CPC has had a

Main changes in commercial litigation:

- the time frame for submission of comments on the record of proceedings has been lengthened
- the threshold value of claims heard through summary procedure has been increased
- appeals against rulings of courts of first instance are to be heard by a judge sitting alone

⁴ <https://sozd.duma.gov.ru/bill/759178-7>

similar rule since the date it was originally enacted). The same grounds are envisaged for the return of appeals (Art. 264(1)(1.1) APC) and cassation appeals (Art. 281(1)(1.1) APC).

Therefore, when preparing a procedural power of attorney it should be thoroughly checked and expressly stated that the person's legal representative has the power to sign and submit the statement of claim and any appeals to court, in order to avoid the risk of their being returned.

Longer time frame for proceedings in arbitrazh court

The standard time frame for proceedings in the first instance in arbitrazh courts has been increased from 3 to 6 months (APC Art. 152(1)).

Duration of oral submissions

Arbitrazh courts have been given the ability to "*determine the duration of oral submissions*" (APC Art. 153(2)(8)). The courts are expected to actively make use this new power and limit the length of oral submissions.

Longer time frame to submit comments on the record of proceedings

Previously, parties had 3 days from the date the record of proceedings was signed to submit any comments on it. But in some courts it was practically impossible to obtain a copy of the record of proceedings within that time. For example, in the Arbitrazh Court of the City of Moscow "*the case file is made available for review on the 4th (fourth) business day after the court receives the request [to review the case file]*"⁵.

Now this period has been increased to 5 days from the date the record of proceedings is signed (APC Art. 155(7)).

Higher threshold value of claims heard through summary procedure

Previously, a dispute was to be heard through summary procedure (i.e. without the parties being summoned, based on the documents submitted by the parties and within a shorter time frame) if the value of the claim did not exceed RUB 500,000 (in cases where the defendant was an organisation) or RUB 250,000 (in cases where the defendant was an individual entrepreneur). Now the thresholds have been increased to RUB 800,000 and RUB 400,000, respectively.

Appeals (not) to be heard by judges sitting alone?

Art. 266(1) of the APC expressly stated that "*cases are considered in an appellate arbitrazh court by a panel of judges at a session of the court*". The stipulation that such cases be heard by a panel of judges has been expunged from that article by Law No. 451-FZ (although Art. 17(4) of the APC still contains the wording "*cases in arbitrazh courts of appellate and cassation instances... are considered by a panel of three or another odd number of judges, unless otherwise established by [the APC]*").

The amendments made to Art. 266(1) of the APC gave grounds to suggest that practically all appeals in arbitrazh court will be heard by a judge sitting alone⁶.

Nevertheless, after 1 October 2019 appeals continue to be heard by panels of judges in appellate arbitrazh courts. Only appeals against rulings (and not judgments) rendered by arbitrazh courts at the trial court level will be heard by a judge sitting alone (APC Art. 272(2)) (and, as before, appeals against judgments rendered through summary procedure will also be heard by a judge sitting alone).

NEW PROCEDURE FOR APPEALING JUDICIAL ACTS IN COURTS OF GENERAL JURISDICTION. "BLANKET" CASSATION

A judicial decision can be appealed in appellate and cassation proceedings. In arbitrazh courts "non-selective" cassation it has long been in effect, i.e. if all requirements applicable to the form and content of a cassation appeal are met, then it must be considered by the court of cassation on the merits (compare this with, for example, "selective"

⁵ http://www.msk.arbitr.ru/process/poryadok_oznakomlenia

⁶ I. Prikhodko. A Procedural Revolution. Which Problems Have Been Solved and Which Have Not? // *Journal of the Russian School of Private Law*. Issue No. 3. May-June 2019.

"second" cassation in the RF Supreme Court, where a single Supreme Court judge examines the cassation appeal and decides whether or not it should be passed on to the RF Supreme Court for consideration on the merits).

In contrast, before 1 October 2019 there was "non-selective" cassation in the courts of general jurisdiction: a judge (in most categories of cases a judge from a regional or equivalent court) would examine the appeal and pass it on to the presidium of the regional court for consideration on the merits only if "material" violations or violations of "public interests" were found. Accordingly, the proportion of cassation appeals ultimately heard on their merits was insignificant; cassation appeals were considered by the same court that heard the appeal in the second instance.

Effective 1 October 2019, "non-selective" cassation has been introduced in the courts of general jurisdiction. For most civil disputes the appeal procedure is as follows:

- First instance, where the dispute is heard on the merits: district court (or equivalent court, e.g. the Lefortovsky District Court of the city of Moscow).
- Appellate instance: regional court (or equivalent court). In total there are 85 such courts in Russia (for example, judicial acts of the Lefortovsky District Court of the city of Moscow are appealed in the Moscow City Court).
- Cassation instance: new cassation courts of general jurisdiction. Russia has 9 such courts (for example, judicial acts of the Moscow City Court are appealed in the Second Cassation Court of General Jurisdiction, located in Moscow).
- "Second" ("selective") cassation instance: RF Supreme Court.
- Supervisory instance: Presidium of the RF Supreme Court.

Main changes:

- introduction of "non-selective" cassation
- 9 new cassation courts established
- in cases heard in the first instance by regional (and equivalent) courts, appeals will be heard by new appellate courts (5 new appellate courts established)

Five new appellate courts have also been established. They hear appeals against judicial acts rendered by regional (and equivalent) courts as courts of first instance. The categories of such cases are set out in Art. 26 of the CPC. They include civil disputes involving state secrets and proceedings on recognition and enforcement of foreign court judgments and foreign arbitral awards⁷.

CLASS ACTION (GROUP/COLLECTIVE ACTION)

A chapter on class action litigation was first added to the APC in 2009. But the number of cases heard according to the rules set out in that chapter has been miniscule.

Law No. 191-FZ substantially revises the chapter on class action litigation. Among other things, Art. 225.11 of the APC, which set out the categories of disputes that can be heard under the rules on class actions⁸, has been repealed – the legislators' intention probably being to pave the way for wider use of class action in practice.

The conditions that must be met (collectively) in order to file a class action lawsuit are set out in more detail:

- the defendant is the same for all members of the group;
- the subject matter of the dispute is common or uniform rights and legitimate interests of the members of the group;
- the rights of the members of the group and the defendant's obligations derive from a similar factual background;
- the same remedy is sought by all members of the group.

In Russia, class actions are based on a mixed model: a party is regarded as having asserted a claim only if it has expressly consented to join the action (the opt-in element); but if a party that has decided not to opt in subsequently files an individual lawsuit against the same defendant with the same subject matter, the court must terminate

⁷ The Moscow City Court also has special competence to consider cases involving protection of intellectual property rights.

⁸ The list included, among other things, corporate disputes and disputes involving the activities of professional securities market participants.

proceedings in the individual case unless it finds that there were good reasons for filing an individual lawsuit (APC Art. 225.16(7)) (the opt-out element).

Art. 225.16 of the APC now contains a new rule dealing with situations where there is a conflict between a class action and an individual lawsuit that has been brought by a member of the group: if a party brings an individual lawsuit, then proceedings in that case are to be suspended pending the entry into force of the judicial decision in the class action, even if the class action was filed at a later date.

The new rules will likely facilitate an increase in the number of cases heard according to the rules on class actions. It is expected that more cases will be seen where the right of action is dependent on a certain threshold being reached, which can only be met by acting collectively. For example, the following types of claims can be brought by shareholders that hold at least 1% of a company's ordinary shares:

- seeking compensation of losses caused to the company by wrongful acts on the part of its director (JSC Law Art. 71(5));
- challenging a major transaction (JSC Law Art. 79(6));
- challenging an interested party transaction (JSC Law Art. 84(1)).

The greater the combined share of the shareholders that opt in to a class action challenging a decision of the general shareholders' meeting, the greater the chance of proving that those shareholders' votes could have affected the outcome of the voting (JSC Law Art. 49(7)) and, accordingly, the greater might be the prospects of success.

In addition to the above, Art. 37 of the Competition Law allows civil suits (e.g. for compensation of losses) to be brought by persons whose interests have been infringed as a result of violation of the antitrust legislation. Class actions will most likely be brought in situations where infringement of the antitrust legislation has led to infringement of the interests of a group of persons.

Class actions may also find application in the context of activities on the securities market (e.g. when the acquirers of securities in the course of an issuance are the injured parties):

- According to Art. 25(12) of the Securities Market Law, mass-issue securities holders and other entities that have suffered losses as a result of violations committed in the course of issuance or in connection with recognition of an issue (or additional issue) of mass-issue securities as void or invalid are entitled to claim damages from the issuer or third parties.
- According to Art. 22.1(3) of the Securities Market Law, the persons that signed or approved a securities prospectus and the auditing firm that drew up the auditor's opinion on the accounting (financial) statements of the issuer disclosed in the securities prospectus bear secondary liability jointly and severally for losses caused by the issuer to an investor or holder of the securities as a result of inaccurate, incomplete or misleading information contained in the prospectus.

Law No. 191-FZ also introduced a new chapter on class actions to the CPC. The main provisions of that chapter essentially mirror the new regulation in the APC. Class actions will probably find wide application in cases of mass infringement of consumer rights (especially considering that when finding in favour of consumers the courts impose a fine on the defendant (e.g. the manufacturer, seller or importer) for failing to satisfy the consumer's claims voluntarily, equal to 50% of the amount awarded to the consumer – Consumer Rights Law Art. 13(6)).

Main changes:

- significant amendments made to the APC chapter on class actions, originally introduced in 2009
- the conditions that must be met to file a class action lawsuit have been amended
- more extensive use of class action lawsuits can likely be expected (e.g. in the corporate sphere; when seeking damages for antitrust violations; or as a result of disclosure of misleading information in the context of issuance of securities)
- a new chapter on class actions has also been added to the CPC
- class action lawsuits can likely be expected in cases of mass infringement of consumer rights

CONTACTS



Timur Aitkulov
Partner*

T +7 495 725 6415
E timur.aitkulov
@cliffordchance.com



Dmitry Malukevich
Senior Associate

T +7 495 660 8072
E dmitry.malukevich
@cliffordchance.com

* Advocate's office of T. D. Aitkulov
in co-operation with Clifford Chance

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, Ul. Gasheka 6, 125047
Moscow, Russia

© Clifford Chance 2019

Clifford Chance CIS Limited

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Moscow • Munich • New Castle • New York •
Paris • Perth • Prague • Rome • São Paulo •
Seoul • Shanghai • Singapore • Sydney •
Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.