

RUSSIA

Global litigation guide



About

Welcome to The Global Litigation Guide (the “**Guide**”) which has been prepared by DLA Piper’s civil litigation experts around the world for the purpose of presenting key aspects of civil litigation in jurisdictions in which DLA Piper operates.

For each country, the Guide focuses on the following aspects:

- Overview of court system
- Limitation
- Procedural steps and timing
- Disclosure and discovery
- Default judgment
- Appeals
- Interim relief proceedings
- Prejudgment attachments and freezing
- Costs
- Class actions

This global Guide provides practitioners, in-house counsel and clients with a comparative source of reference that covers some of the intricacies of civil litigation in 30 jurisdictions worldwide. DLA Piper has prepared separate guides that deal with matters that are closely related to civil litigation, such as DLA Piper’s guide to [Legal Professional Privilege](#) and (coming soon) DLA Piper’s guide to Third Party Funding. Criminal or administrative litigation (as well as litigation relating to other specialist areas of law that require different procedures such as tax and employment) are outside the scope of the Guide.

The Guide is not a substitute for legal advice. Should you have a civil claim, or if you would like further information, please contact any of the individuals listed in the Guide.

About DLA Piper

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

For further information visit www.dlapiper.com.

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Russia

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Overview of court system

Russia is a civil law jurisdiction and its judicial system consists of three main court branches:

- state commercial (*Arbitrazh*) courts. These courts resolve commercial, civil and administrative disputes between legal entities or entrepreneurs and have exclusive jurisdiction over certain types of disputes (e.g. corporate and bankruptcy matters). For a creditor of a Russian debtor, proceedings in state commercial courts are usually the preferred option (as compared to litigation in foreign courts or arbitration). The process is reasonably straightforward, fast and cost effective;
- courts of general jurisdiction. These courts adjudicate:
 - civil non-commercial disputes;
 - criminal cases; and
 - administrative cases, which do not arise from commercial activities of companies (e.g. violations of fire safety, labor regulations etc.); and
- constitutional courts. These courts resolve issues regarding the constitutionality of laws and treaties.

The Supreme Court is the highest judicial authority for state commercial courts and courts of general jurisdiction.

Limitation

The standard limitation period for submitting a claim in Russia is three years from the day when the claimant became aware, or should have become aware, of both the violation of its right and who the appropriate respondent is. There are certain shorter limitation periods (e.g. for challenging a voidable transaction).

Procedural steps and timing

As commercial disputes are predominantly heard by state commercial courts, this summary outlines the general procedure for commercial disputes in state commercial courts.

There is no requirement for representation by an attorney (i.e. an *advocate* registered with one of the Russian regional bars) in state commercial courts. However, legislative amendments expected to enter into force by 1 October 2019 will require representatives to have a higher legal education or a degree in law, with some exceptions outlined in the legislation (e.g. for CEOs, patent and trademark attorneys in IP disputes and bankruptcy managers in the performance of their duties in bankruptcy cases).

For certain types of disputes specified by law, including claims for the recovery of funds, a claimant should first send the respondent a mandatory pre-trial demand letter. Generally, 30 days after sending the letter, the claimant may submit a statement of claim with supporting documents to the relevant state commercial court. If there is no requirement to send a pre-trial demand letter, the claimant may submit a statement of claim without the need to engage in pre-trial correspondence.

Usually, the claim is submitted to the court with jurisdiction over the respondent's registered address. Once the claim is registered with the court, the judge has five business days to check whether the documents comply with the procedural rules for initiating proceedings specified by the *Arbitrazh* Procedure Code of the Russian Federation (i.e. the statement of claim contains all the information required by the *Arbitrazh* Procedure Code, including information about the subject-matter and parties to the case; all the documents required by the *Arbitrazh* Procedure Code are attached to the claim, etc.). If the documents are in order, the judge initiates the case and schedules a date for the preliminary (procedural) court hearing. The hearing is usually scheduled for a date one month after the commencement of the proceedings.

At the preliminary hearing, the court schedules a hearing based on merits. It is usual that several hearings take place before a final judgment is made.

In a straightforward case, the proceedings in the court of first instance may take approximately four to six months. However, proceedings may take longer, depending on the court's workload and the case management of the proceedings by the parties.

There are also fast-track procedures whereby the court does not conduct a hearing and will make a ruling based on documentary evidence, these are (i) a court order; and (ii) summary proceedings. Such procedures are applicable to small claims below RUB500,000 (approximately USD7,500) or RUB800,000 (approximately USD12,000) or claims where the respondent had acknowledged its obligations but failed to perform them (e.g. the respondent acknowledged a debt in writing but failed to repay it). Simplified proceedings may take up to ten days (in the case of a court order) or up to two months (in the case of summary proceedings).

Disclosure and discovery

In Russia, there is no extensive disclosure more typical of common law jurisdictions. Although parties must substantiate their statements with evidence, the parties are free to determine which evidence they would like to use.

The proceedings do not include court-ordered disclosure or discovery as a separate stage. Nonetheless, courts may request additional documents from the parties to the proceedings or third parties. If a party to litigation is unable to obtain the necessary evidence, it may ask the court to order the provision of evidence by another party or third parties (e.g. state authorities, banks, etc.). However, fishing expeditions are not allowed and the requesting party should indicate the following in its application: what specific evidence it seeks; the location of the evidence; relevance to the dispute; and why it cannot obtain such evidence.

State commercial courts favor documentary evidence. While witnesses of fact are admissible, they are rarely used. The parties may provide the court with reports of expert witnesses or ask the court for a court-appointed expert to conduct their expert review.

Default judgment

All parties are responsible for adhering to the relevant procedural actions and, as such, are expected to be proactive in the proceedings.

If a respondent, who has been duly notified of the proceedings, does not appear at the court hearing on the merits, the court may adopt a judgment in the respondent's absence. The claimant, however, would still need to satisfy its burden of proof and present the necessary evidence to the court.

The respondent is entitled to appeal the judgment in the usual way (see further details under [Appeals](#)); however, the respondent cannot submit new evidence to the court of appeal unless it proves that it was unable to do so due to circumstances beyond its control.

If the claimant fails to appear at the court hearing twice without filing a motion to try the case in its absence and the respondent does not require the court to consider the case on its merits, the court may dismiss the claim without consideration.

Appeals

As commercial disputes are predominantly heard by state commercial courts, this summary outlines the general procedure of appeal in state commercial courts.

Generally, a judgment of the state commercial court may be challenged as follows:

- an appeal in the state commercial court of appeal: the parties have one month to appeal a judgment in the court of appeal. The decision will not enter into force until the expiry of such period or until the court of appeal issues its decision. Proceedings in the court of appeal usually range from two to three months;

- a cassation appeal in the state commercial court of a district: once the resolution of the court of appeal is issued, the parties have two months to challenge it at the court of cassation. Usually, proceedings in a court of cassation can take between two to three months;
- a review by the Supreme Court: the Russian Supreme Court is the court of extraordinary instance which deals with major misapplications of substantial and procedural laws by lower courts. Leave is required from a judge of the Supreme Court for a case to be considered, either by:
 - the Economic Collegium of the Supreme Court: second cassation appeal, which may be submitted within two months from the date of the judgment of the state commercial court of a district. The second cassation appeal is aimed to review the substantial violations of law that have affected the outcome of a case;
 - the Presidium of the Supreme Court: supervisory review petition, which may be submitted within three months from the date of judgment of the Supreme Court judge.

Since the Presidium of the Supreme Court is the last appellate instance, it only considers appeals based on extraordinary grounds.

Interim relief proceedings

Interim relief measures aim to secure enforcement of a future judgment and to prevent harm to the subject of the case or to the applicant.

The law does not provide an exhaustive list of injunctive relief. Injunctions may include, for example, freezing monetary assets, securities, rights to real estate and moveable assets of the respondent (for further details see [Prejudgment attachments and freezing orders](#)) or prohibiting the respondent or other persons from committing certain actions concerning the subject of the dispute.

An application for injunctive relief may be submitted simultaneously with the statement of claim or in the course of proceedings before the judgment is rendered by the court.

Upon an application by the claimant, a state commercial court may grant injunctive relief sought by the applicant. The court will consider an application no later than the next day after the submission of the application to the court. There is no requirement that the application should be signed by an attorney (*advocate*).

The court may grant an injunction in circumstances where it finds it appropriate, relevant to the dispute, and necessary to ensure the status quo. An injunction is granted *ex parte*. The respondent may challenge an injunction within a month from the date of the court ruling granting injunction. Representation by an attorney in interim relief proceedings is not mandatory. However, legislative amendments expected to enter into force by 1 October 2019, will require representatives to have a higher legal education or a degree in law (with some exceptions outlined in the legislation).

In practice, state commercial courts are reluctant to grant injunctive relief.

Prejudgment attachments and freezing orders

Pre-judgment attachments / freezing orders are categories of interim relief intended to secure the assets before the statement of claim is submitted to the court. The respective application may be filed to the court, for example, at the claimant's registered address, or at the location of monetary assets or other property in respect of which the preliminary relief is requested.

The application should specify the subject-matter of the case, the reason for seeking the preliminary injunction and the relief sought, for example: attachment of respondent's property or funds in a bank account or transfer of the item in dispute into the custody of the claimant or a third party. The respondent's money and other assets may be subject to a freezing order.

When submitting such application, the applicant is usually required to also provide counter security (by way of a bank guarantee, deposit etc.) in the amount of the relief sought. A preliminary injunction is granted *ex parte* and state commercial courts are reluctant to grant preliminary injunctive relief even if sufficient counter security is provided by the applicant.

If the preliminary injunctive relief is granted, the claim on the merits must be submitted to the court within a period set by the court, which will be no more than 15 days, otherwise the injunction will be lifted. If the claim is not brought within the stipulated time period, or the claim is later dismissed on the merits, the claimant will also be liable for the damages of the respondent arising from the injunction.

Costs

The costs of litigation in Russia can be divided, practically speaking, into court fees (state duty, expert fees, etc.) and legal fees.

Court fees tend to be nominal; however, they depend on various factors, such as, the amount of the claim, the nature of claim, and the involvement of experts. State duty ranges between RUB6,000 (approximately USD100) for non-pecuniary claims and a maximum amount of RUB200,000 (approximately USD3,000) for state duty monetary claims.

The party against whom the judgment was made should reimburse the opposing party's court fees. Reimbursement for legal fees is also possible. In practice, however, it is often the case that only a fraction of the actual legal fees is reimbursed.

Class actions

In Russia, the concept of class action and the respective procedure varies depending on the court:

Class actions in state commercial courts

Although class actions are provided for in the Arbitrazh Procedure Code of the Russian Federation, there are only certain limited circumstances when a class action may be brought in a state commercial court, these being:

- corporate disputes;
- disputes related to activities of the securities market professional participants and
- claims of persons who are parties to the same legal relationship from which the dispute arose (e.g. disputes related to one land plot, claims of bank account holders to the defaulted bank, etc.).

In the above-mentioned cases, a group of persons may join the claimant acting on behalf of the group. At least five persons must join the claim in order for it to qualify as a class action (Article 225.10(2) of the Arbitrazh Procedure Code of the Russian Federation).

The state authorities (e.g. prosecutors or the federal service for protection of consumer rights) and organizations may bring claims "for the protection of the general public" (rather than in the protection of specific individuals).

However, in practice, the above-mentioned types of actions are not widely used in Russia.

Class actions in courts of general jurisdiction

From 1 October 2019, individuals will be able to defend their collective interests through class actions in the most common disputes in areas such as consumer protection, labor relations, real estate, shared participation and construction.

A class action may be brought by a selected representative of a group of at least 20 members with a similar claim or, if permitted by law, by another party (such as a public consumer association). Group members can change their representative, for example, if the representative decides to leave the group.

Under the new rules a lawsuit will be considered if all of the following are present:

- The same respondent
- Common or similar claims of persons comprising the group
- Similar factual circumstances
- The same method of protecting violated rights.

Class actions fall under the exclusive jurisdiction of courts at the respondent's registered address in order to prevent forum shopping.

Information on the filing of a class action lawsuit must be published in the media so that new claimants can join the lawsuit.

Disclaimer

This publication is intended as a general overview and discussion of the subjects dealt with. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. If you would like further advice, please contact your usual DLA Piper contact.