

Russia Practice

July 2017

Reform of the mandatory pre-court dispute settlement procedure

In June 2016 Russia introduced a mandatory pre-court settlement procedure for commercial disputes. These disputes could only be referred to the courts after the parties had taken steps for pre-court settlement.

The following categories of disputes were exceptions to this rule:

- bankruptcy procedures;
- procedures for the early termination of legal protection of a trademark due to disuse;
- procedures for challenging arbitral awards;
- procedures for establishing legally relevant facts;
- procedures concerning corporate disputes;
- procedures for awarding compensation for violation of the right to a trial within a reasonable period or the right to the enforcement of a court order within a reasonable period;
- procedures for defending the rights and lawful interests of a group of persons.

These new rules have given rise to a number of problematic situations and issues. These include, among other things, the need to conduct a pre-court proceeding when filing a statement of counterclaim or difficulties when applying for protective measures, and several other issues that caused legitimate criticism from practising lawyers.

For this reason, amendments were introduced to the Commercial Procedural Code of the Russian Federation and the Civil Code of the Russian Federation in July 2017 that address some of the open questions with regard to the pre-court dispute settlement procedure. Pursuant to these amendments which entered into force from 12 July 2017, the mandatory pre-court procedure before filing a statement of claim in a commercial court is imperatively required for the following civil law disputes:

- actions for payment of claims arising from contracts and other transactions or unjust enrichment;
- actions on account of the violation of exclusive rights (if the right holder sues for compensation of disadvantages or payment of compensation for a violation of exclusive rights);
- actions on account of early termination of legal protection of a trademark due to disuse.

As before, the parties are entitled to agree on a mandatory pre-court procedure for other categories of civil law disputes in the contract. It may also be regulated by law that a mandatory pre-court procedure for resolving disputes arising from administrative and other public legal relations (for example, in case of appeal against non-normative decisions of the tax authorities or the actions or forbearance of their officials).

The following categories of disputes which, as a general rule, do not require compliance with the pre-court procedure were added to the list of exceptions previously in effect:

- writ proceedings;
- disputes on recognition and enforcing the decisions and awards of foreign courts and arbitration tribunals;
- any matters related to participation in and monitoring of arbitration proceedings by commercial courts;
- cases on the filing of claims in a commercial court by the general prosecutor's office, state authorities, local government bodies and other authorities for the purpose of protecting public interests, and the rights and lawful interests of organisations and citizens in the area of entrepreneurial and other economic activities (unless otherwise provided by law).

If there is no such pre-court settlement procedure, the action may be rejected, dismissed or simply not processed. The claimant may re-file the claim to the court after the pre-court settlement procedure has been completed.



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