

## **SECTION 1.**

### Introduction to Dispute Resolution in Russia

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## **1.1. The court system of the Russian Federation**

This introductory chapter will describe the court system in Russia and the jurisdiction and competence of lawsuits in the commercial courts.

There are two primary court systems in Russia: the courts of general jurisdiction and the commercial courts. Additionally, there is the Constitutional Court of Russia and the constitutional (charter) courts of the constituent entities of Russia, which operate independently of the two primary court systems.

### **1) Courts of General Jurisdiction**

Courts of general jurisdiction have a residual jurisdiction and consider most types of disputes. They hear civil disputes between individuals and between individuals and companies, family disputes, labor disputes, criminal cases, tax disputes involving individuals, administrative offence proceedings, and military disputes. They also hear most categories of administrative review proceedings, in which an individual, or in certain cases a company, contests an act of a state authority.

The Supreme Court of Russia heads the system of courts of general jurisdiction, and is the court of the highest instance. Normally, The Supreme Court solely hears appeals against judgments of lower courts. The only cases which begin in the Supreme Court are extraordinary cases, such as actions against Russia's President or Government.

The Supreme Court publishes quarterly reviews to summarize court practice and occasionally issues plenum resolutions, in which the court issues binding clarifications on the application of certain Russian laws. Lower courts often refer to the text of the Supreme Court's quarterly reviews and separate resolutions in their judgments. Furthermore, parties often refer to other decisions of the Supreme Court as uniform court practice that lower courts may wish to follow.

Therefore, although Russian law officially does not recognize court decisions as a binding source of law, the Supreme Court's quarterly reviews, plenum resolutions, and decisions on specific cases have a certain precedent value in Russia because they are to achieve a uniform application of the Russian law.

Lower courts of general jurisdiction are further divided into the main courts and the military courts:

- The main courts of general jurisdiction hear most types of disputes except those which involve a member of the military. There are three levels of main courts:
  - Justices of the peace: A justice of the peace hears only minor disputes, including petty administrative offences and criminal proceedings, most categories of family disputes and civil claims in which the amount at issue does not exceed RUB 50,000.00 (less than \$1,000 USD).
  - District courts: A district court has a residual jurisdiction and hears most types of disputes. The district courts also hear appeals against judgments of justices of the peace.
  - Courts of a constituent entity (a federal region of Russia): A court of the constituent entity normally hears appeals against the judgments of the district courts. A limited number of disputes begin in the courts of constituent entities, for example, serious criminal and administrative review cases and disputes which involve classified governmental information.

- Military courts consider disputes which involve a member of the military. There are two levels of military courts:
  - Garrison military courts: a garrison military court hears most types of disputes involving a member of the military.
  - Circuit (or fleet) military courts: a circuit (or fleet) military court normally hears appeals against judgments of garrison military courts. A limited number of disputes begin in a circuit (or fleet) military court, for example, serious criminal cases and disputes that involve governmental classified information.

In July 2018 a new law entered into force that seeks to introduce another level of courts in the system of courts of general jurisdiction.<sup>1</sup> Pursuant to this law, Russia's government will create two new types of courts in Russia by October 2019:

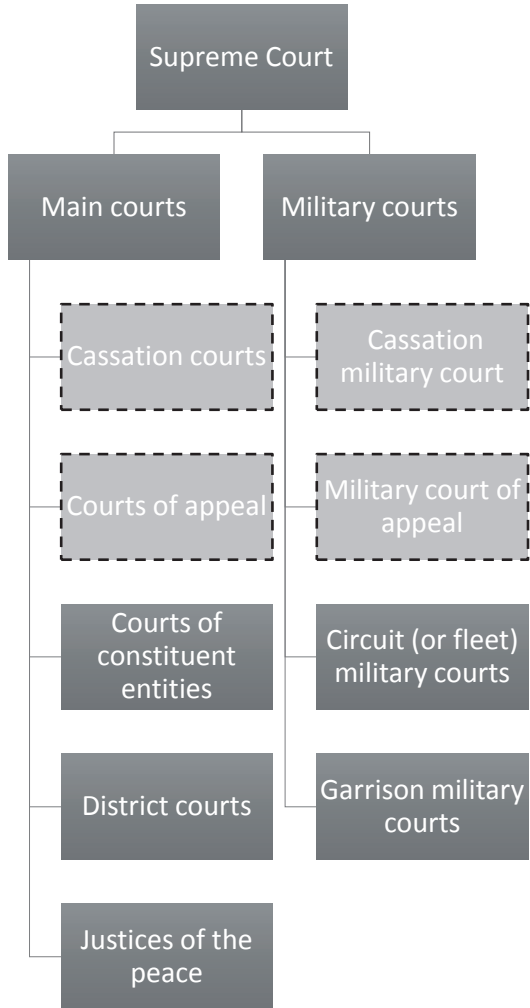
- Courts of appeal. These courts will hear ordinary (first) appeals against judgments in cases that, due to their importance, started in courts of a constituent entity. Currently the Supreme Court handles such appeals because there is no other higher court above courts of a constituent entity. The law contemplates that there will be five main courts of appeal and one military court of appeal.
- Cassation courts. These courts will hear cassation (second) appeals against judgments of justices of the peace, district courts, courts of a constituent entity and newly-created courts of appeal. Currently courts of a constituent entity hear both ordinary and cassation appeals (albeit sitting in different benches), which is considered ineffective. The law contemplates that there will be nine main courts of appeal and one military cassation courts.

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<sup>1</sup> Federal Constitutional Law dated 29.07.2018 No 1-FKZ "On Amendment to the Federal Constitutional Law "On the Judicial System of Russian Federation" and certain Federal Constitutional Laws in connection with the Establishment of Cassation Courts of General Jurisdiction and Courts of Appeal of General Jurisdiction".

The Parliament has not yet made corresponding amendments to the Civil Procedure Code of the RF. It is expected that the new courts will begin to operate in late 2019.

**System of courts of general jurisdiction:**



## 2) Commercial courts

Unlike courts of general jurisdiction, commercial courts only have jurisdiction over disputes between companies and individual traders, or other commercial disputes which the law specifically allocates to their jurisdiction, such as corporate disputes and insolvency disputes.

Prior to 2014, the Supreme Commercial Court of Russia was the head of the system of commercial courts, and was the court of the highest instance. In 2014, the Supreme Commercial Court merged with the Supreme Court. The Supreme Court now heads the system of commercial courts as well. Similar to its role in the system of courts of general jurisdiction, the Supreme Court normally hears only appeals against judgments of lower commercial courts.

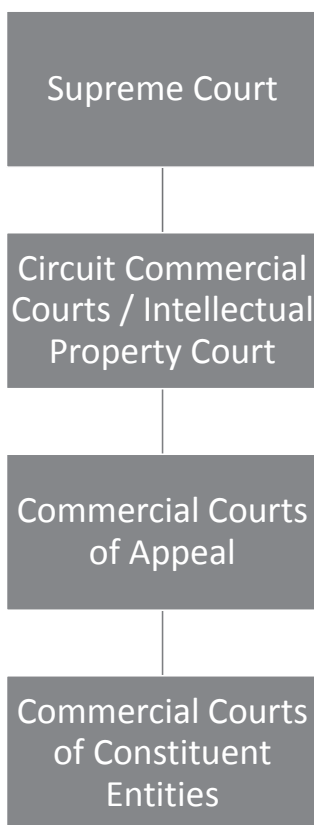
The Supreme Court's quarterly reviews, plenum resolutions, and decisions on specific cases are of the same significance in the system of commercial courts, as in the system of courts of general jurisdiction. Furthermore, plenum resolutions and presidium resolutions of the Supreme Commercial Court remain binding on lower commercial courts, even after its merger with the Supreme Court, unless such resolutions contradict subsequent resolutions of the Supreme Court.

There are three levels of commercial courts in Russia:

- Commercial courts of constituent entities: There are 83 commercial courts of constituent entities in Russia. A commercial court of a constituent entities hears most types of commercial disputes and virtually all commercial disputes start here.
- Commercial courts of appeal: There are 21 commercial courts of appeal in Russia. A commercial court of appeal hears only ordinary appeals against judgments of the commercial courts of constituent entities.
- Circuit commercial courts: There are ten circuit commercial courts and one specialized court (the Intellectual Property Court), which is equivalent to a circuit court. A circuit commer-

cial court normally hears cassation appeals against judgments of commercial courts of constituent entities and commercial courts of appeal. Only a limited number of disputes start in a circuit commercial court. For the most part, such disputes fall within the specific jurisdiction of the Intellectual Property Court.

**System of commercial courts:**



### 3) Constitutional Courts

Apart from courts of general jurisdiction and commercial courts, there are the Constitutional Court of Russia and constitutional (Charter) courts of constituent entities. Unlike other courts, constitutional courts do not form a single court system.

The Constitutional court of Russia does not resolve actual disputes. Instead, it only gives an opinion on whether a federal law or regulation conforms with the Constitution of Russia, or how such a law or regulation should apply in light of the Constitution.

In this way, the Constitutional Court operates similarly to the European Court of Justice. Any party, or even the court itself, may make a request for the Constitutional Court to review and opine on a particular law or regulation that was applicable in their case. If the Constitutional Court decides that the law or regulation does not conform to the Constitution, it declares that law to have no legal effect. The Constitutional Court can also decide that the law or regulation conforms to the Constitution, but only on the condition that it is applied or interpreted in a specific way. If the Constitutional Court chooses to decide on a party's request, the party can then seek to reverse a court judgment which is inconsistent with the opinion of the Constitutional Court. Therefore, some Russian lawyers consider the Constitutional Court as the court of the highest instance, even above the Supreme Court.

In *Dubovets v. Moscow*, a buyer purchased a flat from a seller, who was officially recorded in the state register of real property. Later, it was revealed that the seller forged the inheritance documents, and Moscow City should have obtained the flat *bona vacantia*. The government of Moscow then sued the buyer, and successfully reclaimed the flat. Moscow courts applied article 302 of Civil Code of the RF, and refused to recognize the buyer as a bona-fide purchaser.

The buyer complained to the Constitutional Court, arguing that article 302 does not conform to the Constitution. The Constitutional Court agreed and declared

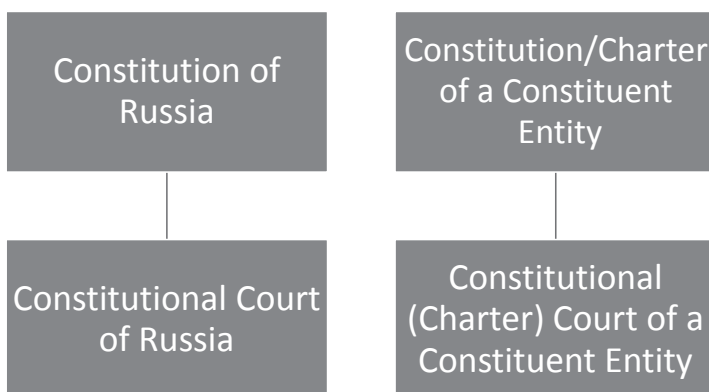


that article 302 is unconstitutional to the extent that it allows the government to reclaim property from a purchaser, who relied in good faith on information officially recorded in the state register of real property. The Constitutional Court then instructed the courts of Moscow to review the case on the merits, based on the new interpretation of article 302.<sup>2</sup>

Since 2016, the Constitutional Court has also heard cases regarding whether the Russian government must enforce a particular judgment of an international court.

Constitutional (Charter) courts of constituent entities operate similarly to the Constitutional Court. They give opinions on whether a regional law or regulation of the constituent entities conforms to the constitution or charter of that constituent entity. Judgments of constitutional courts of constituent entities cannot be appealed to any court, including the Constitutional Court.

Due to their limited jurisdiction, proceedings before constitutional courts of constituent entities are very rare. Thus far, only 16 constituent entities have created such courts.



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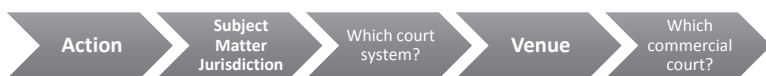
<sup>2</sup> Resolution of Constitutional Court of 22.06.2017, No 16-P.

## **1.2. Jurisdiction and cognizance of lawsuits in commercial courts**

The Commercial Procedure Code of the Russian Federation sets out two factors to determine the court that is competent to hear a dispute: (1) subject matter jurisdiction; and (2) venue. The subject matter jurisdiction of the dispute dictates the court system to which the dispute is allocated: either courts of general jurisdiction or commercial courts. The venue of the dispute dictates the particular court within the court system that can hear a particular dispute.

Therefore, a party who wants to start an action in a commercial court must determine:

- whether the dispute falls within the subject matter jurisdiction of the commercial courts; and
- which particular commercial court is the appropriate venue to commence an action.



### **1) Subject Matter Jurisdiction of Commercial Courts**

Generally, commercial courts have subject matter jurisdiction to hear commercial disputes, and other disputes related to business or other commercial activity.<sup>3</sup> Unlike the rules of venue, parties cannot agree to vary from the rules of subject matter jurisdiction of the commercial courts.

<sup>3</sup> Commercial Procedure Code of the RF, article 27(1).

The Commercial Procedure Code of the RF uses three criteria to determine whether a dispute relates to business or other commercial activity, and thus falls within the subject matter jurisdiction of commercial courts:

### **A. Status of Parties to the Dispute**

If all parties to the dispute are commercial companies or sole traders, then the dispute falls within the subject matter jurisdiction of commercial courts.<sup>4</sup>

### **B. Express Provision of Law**

Even if some of the parties to a dispute are not companies or sole traders, but are merely individuals, commercial courts can still have subject matter jurisdiction to hear the dispute, by way of an express provision of law.

Below are some examples of disputes which the Commercial Procedure Code of the RF expressly allocates to the subject matter jurisdiction of commercial courts:

- insolvency cases;
- corporate disputes;
- disputes related to the state registration of companies;
- disputes related to activity of the depositaries of shares and other securities;
- disputes related to activities of public law companies, state companies, and state corporations;
- certain intellectual property disputes;
- disputes over defamation of trade goodwill.<sup>5</sup>

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<sup>4</sup> Commercial Procedure Code of the RF, article 27(2).

<sup>5</sup> Commercial Procedure Code of the RF, article 27(3).

### **C. Relation to Business or Other Commercial Activity**

With respect to certain special proceedings, the Commercial Procedure Code of the RF states that these proceedings fall within the subject matter jurisdiction of commercial courts, provided that they relate to business or other commercial activity. In such situations, commercial courts have to assess whether the nature of a particular proceeding relates to business or other commercial activity, and such assessments are made on a case-by-case basis.

These proceedings include:

- Administrative review proceedings (to contest an act of a state authority) which affect the applicant's rights and interests in relation to business or other commercial activity;<sup>6</sup>
- Special proceedings to declare legal facts as true, which affect the applicant's rights and interests in relation to business or other commercial activity;<sup>7</sup>
- Proceedings in support of arbitration arising out of business or other commercial activity, including court assistance, annulment, recognition, and enforcement of arbitral awards;<sup>8</sup>
- Proceedings on the recognition and enforcement of foreign judgments and arbitral awards rendered, in disputes that arise out of business or other commercial activity.<sup>9</sup>

### **D. Application of the Rules of Subject Matter Jurisdiction**

A commercial court has to determine whether it has the subject matter jurisdiction to hear the dispute at the time when it admits the action onto its docket. If a particular dispute was within its subject matter jurisdiction at the time when the commercial court admitted the action

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<sup>6</sup> Commercial Procedure Code of the RF, article 29(1).

<sup>7</sup> Commercial Procedure Code of the RF, article 30.

<sup>8</sup> Commercial Procedure Code of the RF, article 31.

<sup>9</sup> Commercial Procedure Code of the RF, article 32.

into its docket, but the dispute subsequently falls outside of its subject matter jurisdiction (for example, the individual terminated his status as a sole trader), the commercial court will nevertheless proceed to hear the dispute on the merits.<sup>10</sup>

If the dispute falls outside of the subject matter jurisdiction of commercial courts, the commercial court can do one of two things:

- if the commercial court has not yet admitted the action into its docket, the court can refuse to admit the action.<sup>11</sup>
- if the commercial court has already admitted the action into its docket, the court can decide to terminate the proceedings.<sup>12</sup> If the commercial court has already made a judgment, a higher commercial court can vacate the judgment and terminate the proceedings on appeal.<sup>13</sup> Unlike in cases of inappropriate venue, the commercial court cannot transfer a case in which it has no subject matter jurisdiction to a court of general jurisdiction.

Both scenarios result in a dismissal of the action without prejudice. A party can re-file the same action with a court of general jurisdiction. However, the time during which the action was pending before the commercial courts (which had no subject matter jurisdiction) will not affect the duration of the statute of limitations period within which to bring a claim.

## 2) Rules of Venue in Commercial Courts

Virtually all cases start in a commercial court of a constituent entity.<sup>14</sup> Rare exceptions include a limited number of intellectual property disputes, which should start in the Intellectual Property Court, and actions

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<sup>10</sup> Commercial Procedure Code of the RF, article 27(4).

<sup>11</sup> Commercial Procedure Code of the RF, article 127(1)(1).

<sup>12</sup> Commercial Procedure Code of the RF, article 150(1)(1).

<sup>13</sup> Commercial Procedure Code of the RF, articles 269(3) & 287(1)(6).

<sup>14</sup> Commercial Procedure Code of the RF, article 34(1).