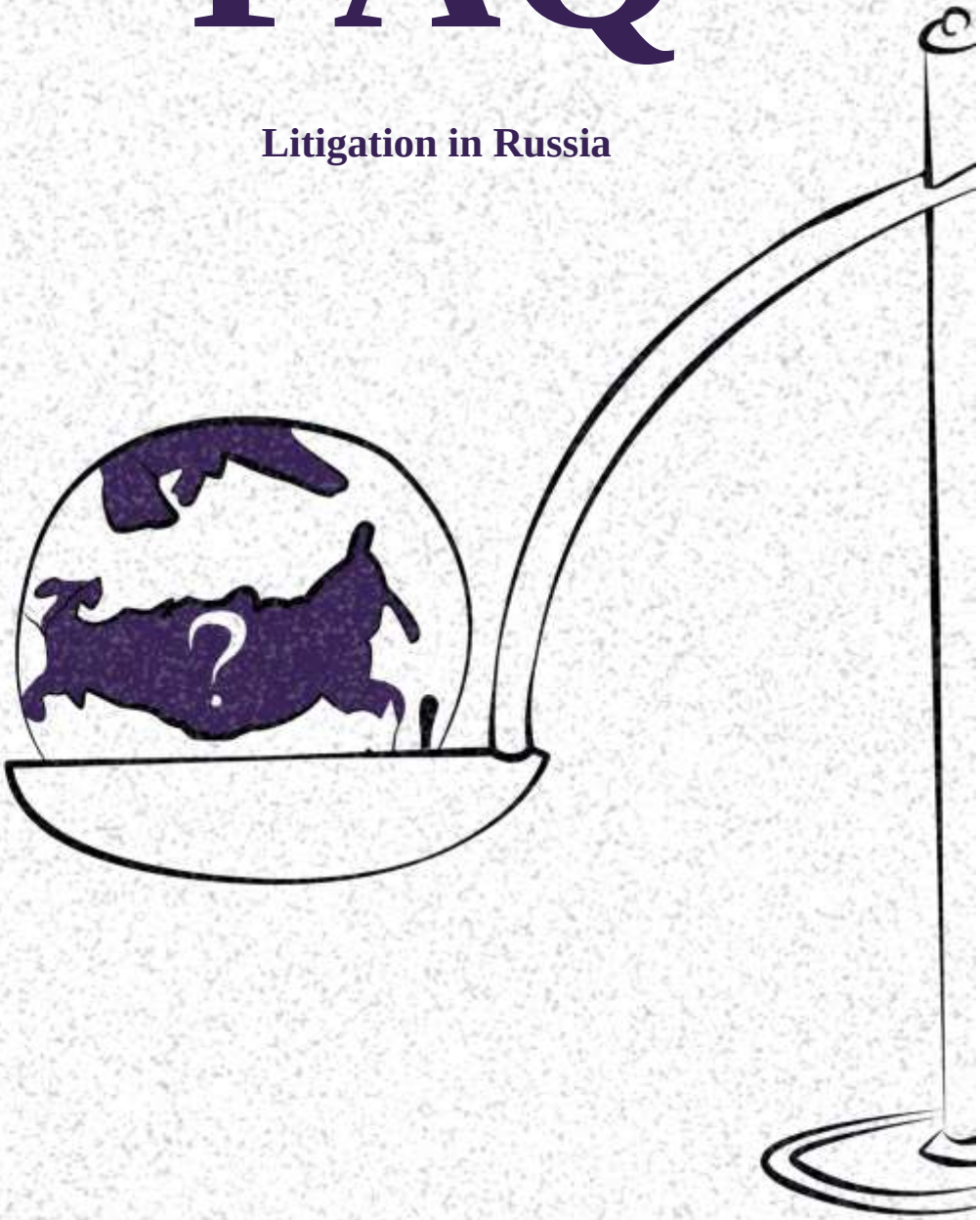
FAQ

Litigation in Russia



1. Are there any special rules for protection of foreign companies' rights in the Russian judicial system?

In terms of judicial protection of rights and legitimate interests, foreign companies hold equal rights with the Russian legal entities. However, in the process of filing documents the Russian courts require document translation, consular legalization, issuing apostille (unless an international treaty between the Russian Federation and the country of incorporation contemplates otherwise).

2. When are we entitled to choose the Russian jurisdiction?

In the Russian Federation civil disputes involving foreign entities are considered in courts of general jurisdiction (mainly, family disputes involving citizens, labor disputes and consumer related disputes involving companies) and state «arbitrazh» (commercial) courts (mainly economic disputes involving businesses).

State «arbitrazh» courts in the Russian Federation handle legal matters involving foreign entities, international organizations, foreign residents, stateless persons, except the cases when the disputing parties establish the competence of a court of another state to consider the dispute or if:

1. the defendant is present or resides on the territory of the Russian Federation, or the defendant's property is located on the territory of the Russian Federation;

2. the managing body, a representative or branch office of the foreign person is located on the territory of the Russian Federation;

3. the dispute arises from a contract, according to which the performance is to take place or took place on the territory of the Russian Federation;

4. the claim arises from the infliction of damage to property by an action or another circumstance, which took place on the territory of the Russian Federation, or if damage occurred on the territory of the Russian Federation;

5. the dispute arises from unjust enrichment, which took place on the territory of the Russian Federation;

6. in a case on the protection of business reputation, the plaintiff is located on the territory of the Russian Federation;

7. the dispute arises from relations concerning the circulation of securities, issued on the territory of the Russian Federation;

8. the applicant in a case on the establishment of a legally significant fact indicates the existence of the fact on the territory of the Russian Federation;

9. the dispute arises from relations concerning the state registration of domain names and other objects, and the rendering of services in the World Wide Web - the Internet - on the territory of the Russian Federation;

10. in other cases, involving close links between the disputed legal relation and the territory of the Russian Federation.

State «arbitrazh» courts in Russia consider cases that are pertained to their competence in accordance with the agreement of the parties (if it does not violate the exclusive jurisdiction of the courts of another country).

Courts of general jurisdiction in the Russian Federation consider cases involving foreign citizens, except the cases when the disputing parties establish the competence of a court of another state to consider the dispute or if:

1. the defendant-organization is present on the territory of the Russian Federation or the defendant person resides on the territory of the Russian Federation;

2. the managing body, a representative or branch office of the foreign person is located on the territory of the Russian Federation;

3. the defendant has property located on the territory of the Russian Federation or the defendant distributes advertisements in the World Wide Web - the Internet - aimed at attracting the attention of consumers located on the territory of the Russian Federation;

4. the defendant is domiciled on the territory of the Russian Federation in the matter of alimony recovery or establishment of paternity;

5. in the case of compensation for harm caused of injury to health, property damage or loss of breadwinner if the harm is caused on the territory of the Russian Federation or the plaintiff is domiciled on the territory of the Russian Federation;

6. in the case of compensation for harm caused to property if the action or other circumstances afforded the presentation of claim are occurred on the territory of the Russian Federation;

7. the plaint is implied by the contract in which its complete or partial performance takes place on the territory of the Russian Federation;

8. the dispute arises from unjust enrichment, which took place on the territory of the Russian Federation;

9. in the case of divorcement the plaintiff is domiciled in the Russian Federation or even one of the spouse has domicile in Russia;

10. in the case of protection of honor, dignity and business reputation the plaintiff is domiciled in the Russian Federation;

11. in the case of protection of the rights of subjects of personal data, including damage claims and compensations for moral harm, the plaintiff is domiciled in the Russian Federation;

12. in the case of termination of links' distribution by the search engine operator the plaintiff is domiciled in the Russian Federation.

3. When are we obliged to choose the Russian jurisdiction?

In **state «arbitrazh» courts in the Russian Federation** disputing party are obliged to submit the following cases:

1. cases concerning state property of the Russian Federation, including disputes concerning the privatization of state property and eminent domain;

2. cases, the subject matter in which is immovable property or the rights to it, if this property is located on the territory of the Russian Federation;

3. cases concerning the registration or issuance of patents, the registration and issuance of certificates to trademarks, industrial designs and utility models, or the registration of other rights to results of intellectual activity, which require the registration or the issuance of a patent or of a certificate in the Russian Federation;

4. cases regarding the invalidation of entries in public registers (books of records, cadastres), made by a competent body of the Russian Federation, keeping such a public register (books of records, cadastres);

5. cases concerning the creation, liquidation or registration of legal entities and individual entrepreneurs on the territory of the Russian Federation, as well as the challenge of decisions of these legal entities' bodies.

Exclusive jurisdiction of the Russian state «arbitrazh» courts includes also proceedings involving foreign entities arising from public legal relationships.

In **courts of general jurisdiction** disputing parties are obliged to submit the following cases:

1. cases concerning the title to real property located on the territory of the Russian Federation;

2. cases arising from contracts of carriage, if the carriers reside on the territory of the Russian Federation;

3. in the case of dissolution of marriage between the Russian citizen and foreign citizen or stateless person (if both spouses are domiciled in Russia);

4. if the claimant of the case of affirmative proceeding is domiciled in Russia, or juridical fact is occurred in Russia;

5. if a citizen-object of proceedings of adoption, restriction of legal capacity, deprivation of legal capacity, emancipation holds the Russian citizenship or is domiciled in the Russian Federation;

6. if a citizen-object of proceedings of deeming to be missing or declaration to be deceased holds the Russian citizenship or his last known permanent place of residence was in Russia (and herewith establishment of right and obligation of the Russian citizens and entities is dependent on settlement of this question);

7. if ownerless property is occurred in the Russian Federation (in cases of declaration of ownership);

8. in cases of invalidation of lost and blocked securities the citizen or legal entity owned these securities hold the Russian citizenship or are domiciled in the Russian Federation.

4. Applicable substantive law in legal cases involving foreign persons and entities.

Non-contractual and proprietary relationships

The right of ownership and other property rights to immovable and movable property shall be determined by the law of the country where the property is located.

Unjust enrichment

Obligations arising from unjust enrichment shall be governed by the legislation of the country where the unjust enrichment occurred.

If unjust enrichment has occurred as a result of an existing or estimated legal relationship in which the property was acquired, we should apply the law of the country to which this legal relationship was or could be subordinated.

For example: a company from Germany (supplier) and a company from Russia (buyer) agreed to settle a supply contract, and the buyer transferred prepayment before signing the contract. Subsequently the parties did not agree the terms of the contract and refused to conclude the contract. The supplier received unjust enrichment on the ground of the estimated legal relationship of the supply contract. The supply contract is governed by the law of the supplier country. Therefore, the BGB is applicable law in this situation.

Tort liability

For obligations arising from tort liability the law of the country, where the action served as the basis for the claim for damages took place, is applicable. Whenever the harmful consequences ensue on the territory of one country, and the action causing these harmful

consequences occurs on the territory of the other country, the law of the country where the action was occurred is applicable.

If the parties to the obligation arising from tort liability have the household registration or principal place of business in the same country, the law of that country shall be applied. If the parties to this obligation have a residence or principal place of business in different countries, but have the citizenship or state affiliation of the same country, the law of that country shall be applied.

If the obligation arising from tort liability correlates to the agreement made between the victim and tortfeasor concerning with conducting a business, applicable to the agreement law shall be applied to the obligation arising as consequence of causing harm.

Corporate relationships

For the regulation of situations such as status of an organization, legal entity form, requirements of a name of a legal entity, incorporation, corporate restructuring, liquidation of a legal entity, legal succession, corporate capacity, procedure of acquisition of legal rights and obligations, internal affairs between founding participants, liability of members on shares, the law of the country of incorporation shall be applied.

Inheritance relationships

Inheritance relationship governs by the law of the country where the testator had the last place of domicile (except as otherwise permitted by applicable law).

Inheritance of immovable property governs by the law of the country where this property is located. Inheritance of immovable property listed in the public registers of the Russian Federation governs by the Russian law.

Contractual legal relationship

In general, if the parties to the contract reach an agreement of the applicable law, the Russian courts will apply exactly the law agreed by the parties. There are some exceptions – super-mandatory

rules (the Russian law is applicable independently of the agreed law by the parties to the contract).

In the absence of an agreement of the parties on the applicable law, the law of the country of the household registration or principal place of business of the party, which executes the contract, shall be applied (or the law of the country with which the contract and its subject have mostly close connection):

Contractual legal relationship	**Applicable law**
Sales (trade)	Law of the seller's country
Gift contracts	Law of the donor's country
Lease	Law of the lessor's country
Contracts of hiring works	Law of the country of the party which executes works
Carriage	Law of the carrier's country
Expedition of freight	Law of the forwarding agent's country
Loan	Law of the lender's country
Bank deposit	Law of the bank's country
Custody	Law of the custodier's country
Insurance contarcts	Law of the insurant's country
Commission agreements	Law of the commissioner's country
Agenting	Law of the agent's country
Providing of service	Law of the service provider's country
Mortgage	Law of the mortgagor's country
Surety	Law of the suretor's country

Constructions, engineering	Law of the country where the results of constructions, engineering are reproduced
Particular partnership	Law of the country where particular partnership conducts activities
Public-private partnership	Law of the country where partnership conducts activities (if partnership conducts activities on the territories of several countries, law of the country of principal place of business is applicable)
Ownership of intellectual property rights	Law of the country where intellectual property rights are exercising (if intellectual property rights are exercising on the territories of several countries, law of the country where possessor of rights has principal place of business/is domiciled is applicable)
Licensing	Law of the country where license is using (if license is using on the territories of several countries, law of the country where licenser has principal place of business/is domiciled is applicable)

5. What is the period of prescription for judicial recourse according to the Russian law?

As a rule, the period of prescription is three years calculated from the moment when the injured party found out or should have

found out about the violation of the rights, unless the law provides for exceptions to this rule.

Most important exceptions:

- the period of prescription for judicial recourse of invalidation of transactions and enforcement of implications of an invalidated transaction is one year;

- the period of prescription for judicial recourse by the statement from a company participant of invalidation of resolution of general meeting of founders is two months from the date when a company participant found out or should have found out about resolution of general meeting of founders and its foundations of invalidation (for founders of joint-stock company – three months);

- the period of prescription for judicial recourse of violations of obligations to carriage contracts is one year;

- the period of prescription for judicial recourse of violations of obligations to shipping/forwarding contracts is one year;

- the period of prescription in cases of disposal of shares of joint-stock company involving violation of preemptive rights is three months from the date when a company participant found out or should have found out about such violation (for founders/participants of LLC – three months).

6. What is the amount of stamp duties for judicial recourse in the Russian courts?

The amount of stamp duties depends on the stated claims and the court which reviews such cases.

Maximum amount of stamp duties for review of damage claims is 60 000 RUB in Courts of general jurisdiction in the Russian

Federation, 200 000 RUB – in State «arbitrazh» courts in the Russian Federation.

Stamp duties for review of non-material claims amount from 300 RUB to 6 000 RUB.

7. Who has a right to represent interests in the Russian courts?

In most cases, persons with a higher legal education or an academic degree in a legal specialty can represent interests of citizens and legal entities in courts.

Authorized bodies of legal entities can also represent their interests in accordance with the law of the country of organizations' incorporation.

8. What is the procedure of enforcement of foreign court decisions in Russia?

To enforce foreign court decisions in the Russian Federation, it is necessary to request assistance of the Russian courts by submitting an appropriate application.

Foreign court decisions may be submitted for enforcement within three years from entry of decision into legal force (the moment of entry into legal force is determined by the law of the country where the decision is made).

The court refuses to recognize and enforce the decision of foreign courts in whole or in part if:

1) the court decision has not entered into legal force under the law of the country where the decision is made;

2) the defeated party to the case was not promptly and properly notified of the time and place of the consideration of the case (or for other reasons involving impossibility to submit its explanations to the court);

3) consideration of the case in accordance with an international treaty of the Russian Federation or federal law falls within the exclusive competence of the court in the Russian Federation;

4) there is a court decision that has entered into legal force in the Russian Federation, adopted on a dispute between the same persons, on the same subject and on the same grounds;

5) the court in the Russian Federation is considering a case on a dispute between the same persons, on the same subject and on the same grounds, and the proceeding was initiated before the initiation of proceeding in a foreign court (or the court in the Russian Federation was the first to accept for its proceedings, a statement on a dispute between the same persons, on the same subject and on the same grounds);

6) the period of prescription of enforcing of the foreign court decision was missed and this period has not been received by the court;

7) the enforcement of a foreign judgment would be contrary to the public order of the Russian Federation. For example: non-observance of guarantees of independence and impartiality of arbitrators, non-application of the substantive law of the country agreed by the parties, suspicions of transfer money across border with the help of foreign court decisions.

The decision may be enforced after ruling on the recognition and enforcement of a foreign court decision and its entry into force.

9. What are the alternative dispute resolution mechanisms in the Russian Federation?

The Russian legal system is represented by such mechanisms of alternative dispute resolution (ADR) as arbitration, mediation, conciliation commissions, proceedings in administrative bodies, etc. At the same time, arbitration tribunals and Federal Antimonopoly Service of the Russian Federation (and its territorial bodies) are the most effective extra-judicial "instances".

9.1. How does ADR by arbitration tribunals works in Russia?

This paragraph contains information about institutional arbitration tribunals permanently operating on the territory of the Russian Federation (not about ad hoc arbitration).

Now there are four arbitration institutions operating on the territory of Russia, to which parties have the a to transfer consideration of a dispute on merits if the parties concluded an arbitration agreement.

Arbitration agreements handle issues of the place of arbitration, its procedure, the language of the proceedings, applicable law, apportionment of court fees, etc.

However, not all disputes can be referred to arbitration tribunals. The exceptions are:

1) bankruptcy proceedings;

2) disputes of denial of state registration of legal entities and individual entrepreneurs;

3) disputes of copyright protection involving organizations providing collective management of copyright and related rights (also cases reserved to the competence of Intellectual Property Rights Court);

4) cases arising from public legal relationships;

5) affirmative proceedings;

6) cases of awarding damages for breach of a right for a trial within a reasonable time or a right for enforcement of a judgment within a reasonable time;

7) class actions;

8) several corporate disputes (except for the cases resulting from agreements between members of legal entities about their managing);

9) disputes arising from legal relationships concerning with selling state-owned assets;

10) disputes arising from legal relationships in the sphere of contracting procurement;

11) disputes arising from legal relationships in the sphere of compensation of environmental damages.

When we have a right to choose the Russian jurisdiction?

Disputes can be resolved by the Russian arbitration tribunals if such possibility is referred to in arbitration agreements.

The substantive law of which country should the arbitration tribunals be guided by?

As a rule, disputes are resolved in accordance with the Russian law. However, the parties to the arbitration agreement may select foreign law as applicable. Also, arbitration tribunals have a right, at its discretion, to apply foreign legislation.

What is the amount of stamp duties for judicial recourse in the Russian arbitration tribunals?

The procedure and the amount of stamp duties for judicial recourse in the Russian arbitration tribunals are established by acts of the arbitration tribunals.

For example: in the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation the amount of stamp duties depends on value of suit and the category of the case under consideration:

- in arbitration of international commercial or corporate disputes, the minimum amount is $ 3 000, the maximum is $ 90 500 + 0,14% of the amount over $ 10 000 000 (excluding the registration fee of $ 1 000 when filing a statement of claim);

- in arbitration of internal or sports disputes, the minimum amount is 10 000 RUB, the maximum is 600 000 RUB (excluding the registration fee of 10 000 RUB when filing a statement of claim).

Mentioned acts of arbitration tribunals also provide grounds for reducing the arbitration fees (in the case of a trial by a sole arbitrator, termination of the proceedings at the first hearing without making a decision, etc.).

Language of the arbitration proceedings.

Language of the arbitration proceedings should be noted in arbitration agreements. In the absence of a clause of language in the arbitration agreement, the proceedings shall be conducted in Russian. In this case, an interpreter or a Russian-speaking representative are required.

Enforcement of decisions of arbitration tribunals in Russia.

The parties to the arbitration agreement assume the obligation to voluntarily execute the decisions of arbitration tribunals, which is binding and shall be complied with immediately.

However, there is also a compulsory mechanism for the execution of decisions of arbitration tribunals – by filing an application for issuance of writs of execution. The list of grounds for refusing issuance of writs of execution is determined by the procedural legislation of the Russian Federation (including the incapacity of one of the parties to the dispute, the lack of proper notification of the proceedings, contradiction with the public order of the Russian Federation, etc.).

9.2. How does ADR by the Federal Antimonopoly Service of the Russian Federation (and its territorial bodies) work in Russia?

The Federal Antimonopoly Service of the Russian Federation is a governmental body, considering cases between the competitions in the context of misbehavior by one of them (suggesting possible violation of competition law).

This administrative body does not resolve civil disputes directly. However, the governmental body decides whether the parties to the dispute do not use their rights in a way that restricts competition and violates the rights of other subjects.

The result of the consideration of the case is the decision and administrative agency rule to stop the unlawful behavior by the guilty party. The obligation to execute the adopted acts is ensured by measures of administrative coercion (rather large fines).

For example: a company from Russia is a competitor to a company from Germany doing business, including on the territory of the Russian Federation. A company from Russia repairs to methods of unfair competition, spreads an advertisement containing false information about the poor quality of goods produced by the company from Germany. This discrediting fact leads to an outflow of the

Russian clients, entails incurring losses for the company from Germany.

In this situation, a company from Germany has a right to apply to the antimonopoly service with a statement about signs of unfair competition in the form of discrediting in the actions of the company from Germany. A positive outcome of the case in the antimonopoly authority will allow:

- firstly, to compel the unscrupulous competitor to stop the violation (remove the defamatory advertisement from circulation),

- secondly, to bring to administrative responsibility (in the form of large fines),

- thirdly, to collect all the necessary evidence base for going to court with a claim for the recovery of losses incurred from the illegal actions of a competitor.

Which categories of cases adjudicated by the antimonopoly service?

The antimonopoly authority resolves cases:

- on the abuse of monopoly and other entities dominating the market by their position in relations with other economic entities (in particular, in the field of the fuel and energy complex, transport, provision of communications services, communal infrastructure, etc.);

- on the facts of the conclusion of agreements and concerted actions that restrict competition in the market (including cartel agreements);

- on issues of unfair competition (discrediting, illegal use of commercial secrets, results of intellectual activity, etc.);

- in the field of contracting procurement (the legality of determining the winner, concluding contracts);

- in the field of advertising, its placement, distribution.

When we have a right to appeal to the antimonopoly service?

Foreign companies have a right to submit a statement (complaint, appeal) to the Federal Antimonopoly Service of Russia or its territorial bodies on an equal basis with the Russian legal entities.

A right to appeal to the antimonopoly authority applies to the facts of violations that occurred on the territory of the Russian Federation or committed by a person domiciled in Russia or the Russian legal entity.

The choice of the territorial body of the service also depends on one of the two mentioned factors.

Who has a right to represent interests in the Federal Antimonopoly Service of the Russian Federation (and its territorial bodies)?

There is no higher qualification (in the form of a higher legal education or an academic degree) for representatives. A person who holds a power of attorney with the appropriate authority to act can be a representative.

The substantive law (with participation of a foreign person or legal entity).

In the process of resolving a case the antimonopoly body is guided by the law of the place where the violation of the antimonopoly law was committed, the law of the location of the violating competitor, that is exclusively by the Russian law.

Period of prescription for recourse according to the Russian law.

The general period of prescription for contacting the antimonopoly service is three years from the date of the violation of the antimonopoly legislation (in the case of a continuing violation, from the date of the end of the violation or its detection).

For some categories of cases, there are special periods of prescription:

Category of the case	**Period of prescription**
Cases in the field of contracting procurement	- 10 days from the date of ending of bidding process.
Administrative sanction cases	- 1 year from the date of wrongdoing.

The amount of the stamp duties.

Filing a statement (complaint, appeal) to the antimonopoly authority does not request to pay any stamp duties.

Enforcement of the decisions of the antimonopoly authorities.

If the outcome of the case is positive, the antimonopoly authority issues a decision and order to terminate the violation. The order is executed automatically within the time period specified in it.

In case of non-fulfillment of the order, the antimonopoly authority:

- firstly, brings the person who was supposed to execute it to administrative responsibility in the form of an administrative fine,

- secondly, has a right to apply to a court with a statement of compulsion to execution of decisions and orders.

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