

Changes to the rules on simplified proceedings in arbitrazh courts in the Russian Federation

Federal Law No. 86-FZ "On Amendment of the Arbitrazh Procedure Code of the RF ("APC RF") to Improve Simplified Proceedings" (the "Law") came into force on 26 September 2012. The Law substantially broadens the scope of provisions of the APC RF relating to simplified proceedings ("SP") and clarifies the rules on consideration of cases through SP.

These procedural innovations are aimed at reducing the time it takes to consider minor disputes (including disputes with the tax authorities and other state agencies). One of the stated objectives of the Law is to lighten the caseload of the courts.

Obviously, the importance of a case is by no means always determined by quantum alone. For example, an action can be pursued for strategic or reputational reasons (e.g. a case may be important due to the need to set a precedent or the fact that it is a test case for a raft of similar cases). For this reason SP will not always be appropriate for all disputes, even if they are quite small in terms of the amount of money involved.

Because the time frames for SP are so short, more attention than usual should be given to monitoring new cases, so that the chance to argue one's case is not missed.

Cases that can be considered through SP

According to the new version of Art. 227 APC RF, the types of case that SP can be used for include:

1. cases in which the claimant seeks to recover no more than RUB 300,000 (approximately USD 10,000) from a legal entity or RUB 100,000 (approximately USD 3,300) from an individual entrepreneur;
2. cases involving the imposition of administrative penalties or challenges to decisions of administrative authorities imposing administrative penalties, provided that the only punishment available for the administrative offence is an administrative fine of no more than RUB 100,000 (approximately USD 3,300); and

3. actions for recovery of mandatory payments and sanctions in which the maximum sum recoverable does not exceed RUB 100,000 (approximately USD 3,300).

Some cases will be considered through SP regardless of the amount sought, including disputes relating to documented debts that have been acknowledged by the defendant.

As it follows from a draft of a decree of the Supreme Arbitrazh Court of the RF "On Certain Questions Related to the Consideration of Cases by Arbitrazh Courts Through Simplified Proceedings", in all of the above scenarios the parties' consent for the case to be considered through SP is not required; the court will determine whether or not the case is to be considered through SP at the same time as it decides whether or not to accept a statement of claim or an application.

The Law also enables other cases to be considered through SP upon application of the claimant with the defendant's

consent or at the initiative of the court with the parties' consent. Exceptions to this rule are corporate disputes and cases where the rights and lawful interests of groups are sought to be upheld. For these, SP may not be used.

In some cases, once the statement of claim has been accepted for consideration through SP, the court may find that the case actually needs to be dealt with according to the general or administrative rules (e.g. if it is necessary to have an expert assessment carried out or to hear witness testimony).

Time frames and other specific features of consideration of cases through SP

Acceptance of statement of claim

Where SP are to be used, the court must post the statement of claim and exhibits to it on its official website with password protection within five days of accepting the statement of claim for consideration. From that point onwards, all documents that are received from the parties in the case will be posted on the same website.

Submission of documents

The court will set a deadline for the defendant to send in evidence and the statement of defence. The deadline must be at least 15 days after the date of acceptance of the statement of claim is announced. The court must also set a deadline for the submission of additional documents setting out the parties' pleadings in support of their positions. This must be at least 30 days after the date the statement of claim is accepted.

Documents that are not submitted within the periods of time established by the court will be returned to the party that submitted them, unless that party can prove that the documents could not have been submitted on time for reasons beyond its control.

Notices

The Law does not envisage any exceptions to the rules on notification of the parties regarding the commencement of proceedings, so the ruling accepting the statement of claim and instituting proceedings in the case through SP will be sent to the parties by post.

Given the serious discrepancies between how long the post is officially supposed to take in the Russian Federation and how long it actually takes for correspondence to be delivered (in Moscow, for example, this difference can be around seven days), it is likely that the defendant will only receive notice that proceedings in the case have been instituted and SP are to be used after a substantial delay, rendering it difficult for the defendant to present its position and submit supporting documents within the time allotted by the court.

Systematically monitoring the cases on the website of the Supreme Arbitrazh Court of the RF (<http://kad.arbitr.ru/>) or subscribing to updates through the Moi Arbitr system (<http://my.arbitr.ru/>) could help solve this problem.

Time frames for SP in court of first instance

The Law has not amended the provisions of Art. 226(2) APC RF, under which judges are to consider cases through SP within a maximum of two months after the day the arbitrazh court receives a statement of claim or an application.

That time frame for SP cannot be extended, except where a foreign party to

the case is located or resides outside the RF and has to be notified in accordance with an international treaty. In that event, according to Art. 253(3) APC RF, the arbitrazh court may extend the time frame for considering the case by the period that the legal assistance treaty establishes for sending requests to the competent authority of the foreign state or, if the treaty does not envisage such a period or if there is no such treaty, by a maximum of six months.

First instance hearings

There will be no preliminary hearings in cases considered through SP. Cases are considered on the merits after the deadlines that the court has set for the parties' submissions, without the parties being called to appear.

Judgments in cases considered through SP are subject to immediate enforcement. They come into force 10 days after the date they are rendered, unless an appeal is lodged.

If an appeal is made but the judgment is not set aside or varied, the judgment will come into force on the day that the appellate court issues its decree.

Appeals against arbitrazh court judgments in cases considered through SP

Appeals against arbitrazh court judgments in cases considered through SP are to be resolved in the appellate court by a single judge, based on the available evidence in the case. The appellate court will not accept additional evidence, except where it is considering the case under the rules applicable to consideration of cases on the merits by a first instance court.

The decree of the appellate court in a case considered through SP may be further appealed to the cassation court only by invoking unconditional grounds for setting the decree aside (e.g. if the case was considered by an unlawfully constituted panel of judges).

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