

New pre-action protocol for the resolution of disputes in the Russian Federation

Today, on 1 June 2016, the Federal Law "On the Incorporation of Amendments to the Arbitrazh Procedure Code of the Russian Federation"¹ enters into force, establishing, among other things, a compulsory pre-action protocol for the resolution of civil disputes.

With effect from 1 June 2016, parties may refer disputes over civil matters to arbitrazh courts (i.e., Russian state commercial courts) for resolution only after 30 days have expired since the original complaint was sent, unless provided otherwise by law or contract.

Exceptions are made for (i) cases on the establishment of facts of legal significance, (ii) cases in which compensation is sought for violation of the right to a trial, (iii) insolvency (bankruptcy) cases, (iv) corporate disputes, (v) class action lawsuits, (vi) cases on early termination of legal protection of trademarks due to non-use, and (vii) cases involving challenges to arbitral awards. In these categories of cases observance of the pre-action protocol is not compulsory. The new procedure also does not affect economic disputes arising out of administrative and public law. In relation to such cases a pre-action protocol must be specially established by law.

If the pre-action protocol is not observed, then the statement of claim will be '*left*

unconsidered' (i.e. dismissed without prejudice) (Article 148(1)(2) of the APC RF), but this does not deprive the claimant of the right file the claim again, provided that the pre-action protocol is followed.

Under the regulation that was in force before 1 June 2016 parties could agree between themselves to establish a compulsory pre-action protocol (in practice quite a rare occurrence) or such protocol could have been specially established by law for certain categories of disputes. The categories of disputes in relation to which a compulsory pre-action protocol was prescribed by law before 1 June 2016 were quite limited in number (for example, Art. 797(1) of the Civil Code of the

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¹ Federal Law No. 47-FZ of 2 March 2016 "On the Incorporation of Amendments to the Arbitrazh Procedure Code of the Russian Federation". The amendments are made to Article 4(5) of the Arbitrazh Procedure Code of the RF (the "APC RF").

Russian Federation establishes a pre-action protocol that must be followed before an action can be brought against a carrier in connection with the transportation of goods).

From 1 June 2016 a compulsory pre-action protocol becomes effective for a considerable share of civil disputes, and without following it parties will not be able to bring an action in state arbitrazh court.

It should be noted that parties may agree between themselves to change the time frame and/or details of the pre-action conduct that is required. Such changes can either ease the requirements (for example, shortening the statutory 30-day period from the time the original complaint is made until the time a claim can be filed in state arbitrazh court) or establish additional requirements (for example, the requirement that a certain number of meetings be held at the management level). Although not expressly provided for by law, it would appear that parties may also agree that no pre-action protocol will apply.

The question of whether the pre-action protocol established by law needs to be amended or excluded should be decided with account for the specifics of the legal relations concerned. When preparing legal cases for proceedings in state arbitrazh courts, in any case it should be determined whether the compulsory pre-action protocol is applicable to the dispute and whether it has been observed when filing the claim in court.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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