

*The Foundation of the International Association of Defense Counsel*  
**SURVEY OF INTERNATIONAL LITIGATION PROCEDURES: A REFERENCE GUIDE**

*This document is a resource tool only. The information was compiled in 2014.  
Please verify all current laws and regulations before proceeding as items could have changed since the time of publication.*

# **RUSSIA**

**Responses submitted by:**

*Name: Maxim A. Zgodko*

*Law Firm/Company: Ackermann Bellmer Law Firm*

*Location: Moscow, Russia*

**1. Would your jurisdiction be described as a common law or civil code jurisdiction?**

Civil code jurisdiction.

**2. What method of adjudication is used (adversarial, inquisitorial, other or hybrid)?**

Hybrid.

**3. What are the qualifications of the adjudicator (judge – elected, appointed; jury; other)?**

Judge – appointed.

The appointment of judges depends on the position held by the judge. Judges of the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation shall be appointed by the Council of Federation of the Federal Assembly of the Russian Federation upon the recommendation of the President of the Russian Federation, which is made with the consideration of the opinion of Chairman of the Supreme Court and the President of the Supreme Arbitration Court of the Russian Federation. Judges of the federal arbitration counties are appointed by the Chairman of the Supreme Arbitration Court. Judges of other courts (federal general jurisdiction and arbitration) are appointed by the President of the Russian Federation on the proposal of Chairman of the Supreme Court and the President of the Supreme Arbitration Court of the Russian Federation, taking into account the views of legislative (representative) body of the territories of the Russian Federation. Note that the appointment of candidates for judges could be done only if there is a positive conclusion of the appropriate qualification board of judges.

Jury – elected. Juries are used only in criminal proceedings. Juries are selected randomly by a computer program. The computer selects potential candidates from the lists prepared previously. The Lists are compiled every four years by the supreme executive body of state power of the Russian Federation.

**4. Are there any procedures available for specialized courts (i.e. commercial court, employment, environmental)?**

The procedure in specialized courts does not differ greatly from the courts of common jurisdiction.

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### **5. Is arbitration an option and when? If so, what rules are typically used?**

Arbitration is an option. Arbitration can be used when parties have contracted to use arbitration as a form of dispute resolution. Parties are bound by the decision of an arbitration.

### **6. Will the Courts enforce an arbitration agreement to preclude other forms of litigation?**

The courts usually enforce an arbitration agreement if it is lawful in order to preclude further litigation.

### **7. For Court proceedings, is mediation mandatory, either before or after filing of a claim or complaint?**

Mediation is a new notion in the Russian legislation. Federal law on mediation came into force in 2010. Mediation is voluntary and based on mutual will of the parties. Mediators are to be professionally qualified and educated. Liability for non-performance of the decision should be stated in mediation agreement. However parties retain the right to defend their rights in court in case of non-performance of the decision.

### **8. What is the process for pre-hearing fact discovery (if any)?**

All the evidence is to be disclosed before the main hearing, at the prehearing stage. In order to provide new evidence a party needs to file a petition.

*(a) Are there provisions for mandatory document disclosures?*

According to the current legislation, the parties have to provide evidence before the hearing. If a party is unable to obtain any document the court can compulsorily demand the documents. For failure to provide documents a person (private or legal) can face administrative sanctions.

*(b) Is there provision for oral examinations of the parties or others?*

Yes, the parties, witnesses and others are to be examined orally. Nobody is examined before the hearing, only during the hearing. But the parties may attach their explanation in writing to the case file. If a witness is unable to appear, they usually provide a notarized statement. There are several exceptions from this rule. If it is not possible to examine a party or others orally, examination can be in writing.

There is distinction between oral examination conducted by investigator and by court. In criminal proceedings, for example, parties and witnesses are examined by investigator and then in court. If testimony differs from the previous version a court decides which one to accept.

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*(c) Are there limits on the length of oral examinations?*

Not applicable.

*(d) Are witness statements or summaries to be provided before the hearing?*

Witness statements are to be provided at the prehearing stage as it is evidence. The court decides at this stage whether to accept this evidence or not.

### **9. What is the process for pre-hearing expert disclosure (if any)?**

The court commissions expert examination and experts provide reports to the court.

*(a) Are expert reports or written summaries required to be exchanged?*

Experts provide reports to the court.

*(b) Are the parties entitled to conduct a pre-hearing oral examination of opposing experts?*

No, they are not.

*(c) Are there provisions requiring experts to meet and narrow issues before the hearing?*

No, this is not required.

### **10. Are there other notable discovery rules?**

No, there are no such.

### **11. Is there a prehearing conference (for trial management, settlement or other purposes)? Who conducts it? How long before the hearing?**

Prehearing conference is conducted by the judge alone. The parties are informed of the date and place of the prehearing conference. The parties are allowed to tender evidence, produce arguments, present petitions.

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**12. Can a prehearing motion for judgment be brought? If so, what is the threshold test for judgment?**

A prehearing motion on dismissal of the judge of the secretary, motion on delay of the hearing, motion on submission of evidence and so on can be brought. If the party proves existence of grounds for the motion, it is granted.

**13. Is there a process for obtaining pre-hearing rulings with respect to evidence admissibility including admissibility of expert testimony? What is the process and when does it occur?**

This process is possible. At the prehearing stage a court can make rulings including admissibility of evidence including expert or witness testimony. This is made in order that parties have time to correct errors.

**14. What is the standard for admissibility of expert evidence?**

The standard for admissibility of expert evidence is adherence to procedural arrangements of assignment and execution of expert examination.

**15. Does the Court have the power to appoint its own experts? Under what circumstances and what type?**

Only the court has the power to appoint experts. The parties can move for appointing particular experts. Final decision belongs to the court.

**16. Does your jurisdiction protect privilege? If so, what privileges are protected from disclosure (attorney client / legal advice; documents prepared in anticipation of litigation; settlement discussions; other)?**

Privilege is protected: attorney client/legal advice, settlement discussions.

**17. If privilege is not protected, are there other protections from disclosure (i.e. privacy) that could prevent disclosure of otherwise privileged information, and what is the basis for those protections?**

A person can also withhold evidence against himself, marriage partner, family members. Under court decision a hearing can be held in private. The parties will have the right to familiarize with materials only if they have access to secret information.

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**18. Who determines privilege disputes, or disputes with respect to other forms of protection described in 17 above?**

The judge or the bench of judges determines the disputes with respect to all forms of protection from disclosure including privilege.

**19. Briefly describe the trial process?**

(a) *Are there opening submissions, in what form and of what length?*

It is a preliminary hearing where the Court clarifies the position of the parties, seeks missing documents and may decide to appoint examination. At the preliminary hearing the defendant has to provide a review to the claim. As a result of the preliminary hearing the court issues a ruling document.

(b) *What is the order of presentation of witnesses?*

The party moves for calling in a witness. This party is the first to ask questions.

(c) *Who conducts examination and in what order?*

The court conducts the examination.

(d) *What is the process for closing submissions?*

At the end of the trial the chief judge asks the parties if they have anything to add. If nothing is to add the judge starting to study the evidences, then the parties may speak in the debate, then the judge goes to the jury room.

**20. Please identify any other notable trial procedures.**

No notable procedures.

**21. Who bears the burden of proof of liability? Causation? Damages? What is the standard of proof for each?**

Burden of proof in civil proceedings lies on the party that makes statements. In criminal proceedings prosecution bears burden of proof.

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**22. What heads of damage are recoverable (compensatory, pre-judgment interest, punitive damages, other)?**

Compensatory damages, punitive damages, suffer damages, loss of profit, penalties.

**23. If punitive damages are available, what is the threshold for recovery, and range of awards?**

Current legislation does not define threshold or any limits for recovery. But it depends on degree of guilt and other factors.

**24. Are there time limits for bringing claims? Responding to claims? Please describe.**

Common time limit for bringing claims is 2 years. The law sets exceptions to some categories of cases.

**25. What are the requirements to establish jurisdiction over a foreign defendant in your court? Can a foreign defendant request that the court decline jurisdiction on the basis that there is a more convenient forum?**

The claims to foreign citizens and companies may be considered by the Russian courts if they live or they are the residents in the territory of the Russian Federation, or if there is their property in Russia.

The presence of a more convenient forum is not the reason for a refusal to consider the claim in the Russian Federation.

**26. Are there procedures for a defendant to bring other potentially responsible parties into the proceeding? Briefly describe.**

A defendant can move for bringing co-defendant into the proceeding. This can also be initiated by the court.

**27. Are legal costs recoverable by either party? If so, under what circumstances, and how is the amount calculated? (i.e. is it a loser pays costs system).**

Commonly a losing party pays all legal costs.

Exceptions:

- A claim is granted in part (legal costs are allocated proportional to legal claims).

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- The complainant is exempted from state duty.
- Parties made an agreement on allocation of costs.

**28. Are contingency fees allowed?**

Yes, they are allowed.

**29. Is third party funding of claims permitted? Under what circumstances?**

Although there is no exact clause in legislation concerning third party funding of claims, it is not forbidden in Russia.

**30. Are class or multi-party actions allowed? Under what circumstances? For what types of claims?**

Allowed if the object of dispute is the same. More often: financial claims, labor claims.

**31. Can claims be commenced by a consumers association or other representative organization? Under what circumstances?**

Consumer association and other representative organizations can commence claims on behalf of the affected party.

**32. On average, how long does it take to get to trial/final hearing, and what factors can affect that?**

It depends on the case. It could take from 1 month to several years. The difficulty of the case affects it. So if any examination or expert testimony are needed or if the witness testimonies are needed the process could take years.

**33. Is an appeal process available (distinguish between final and interlocutory/procedural orders as needed)? Who hears the appeal? How are they appointed? What are their qualifications?**

Appeal is heard at the court of appeal. It is a higher instance. Russian legislation distinguishes appeal and appeal on error. Appeal on error takes place if there is an error in judgment or decision. The difference is that appeal on error does not examine the case again but checks if the juridical process and acts were correct in the court of appeal.

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- 34. Are hearing rooms available for electronic trials or appeals (i.e. where documents and transcripts are presented on computer monitors; witnesses can testify by video conference)?**

Available.

- 35. What is the practice regarding the use of graphics, computer animation, power point and the like, in trials? In appeals?**

There is possibility to use computer animation, graphics and the like in trial.

- 36. Will the lawyer at trial be the same as the one responsible for pre-trial procedures? Is there a solicitor / barrister distinction?**

The same. No distinction.

- 37. What are the contributory negligence laws in your jurisdiction? Is there a comparative fault assessment, joint and several or proportionate liability among tortfeasors? Does a plaintiff's negligence reduce or eliminate liability of defendants named in the litigation?**

Several articles state that certain crimes can be committed by contributory negligence. Negligence can reduce liability for certain crimes as crimes committed by negligence are considered to be less dangerous than intentional crimes.

- 38. Is service of a complaint issued outside your country permitted in your country by "informal" means, or must the Hague Convention be followed?**

Hague Convention must be followed.

- 39. Do your laws prohibit export of relevant documents from your jurisdiction for the purposes of litigation outside your jurisdiction? (Consider privacy rules)**

In order to receive relevant documents a foreign authority has to file an official request through the Ministry of Foreign Affairs. The decision of our authorities depends on many factors including the type of the case. Private persons like attorneys have less chances on satisfaction of such a request.



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- 40. Please point out any litigation Best Practices employed by Courts in your jurisdiction but not yet referenced in the survey.**

We are unaware about the existence of such.

- 41. Are there any significant areas in which you believe the playing field between plaintiff and defendant is not level that you think need to be addressed?**

No, there are no such.

- 42. Are there legislative efforts under way that address any of the litigation practices in your country?**

Yes, there are. The most important changes for foreign companies are in the law of taxation and migration legislation. For example, we have a draft of the Amendments to the Tax Code of the Russian Federation regarding the taxation of profit of “controlled foreign companies” and this law should improve the efficiency of tax administration of foreign organizations.