Main trends in alternative dispute resolution in Russia during quarantine

Due to the novel coronavirus (COVID-19) pandemic, operations of courts in the Russian Federation have been limited for the period from 19 March 2020 to 10 April 2020. In these circumstances, alternative dispute resolution (negotiation, mediation, and arbitration) models become especially relevant.

Deloitte Legal’s Dispute Resolution Group reminds that in autumn of 2019, Russian legislation on alternative dispute resolution was amended.

In particular, changes were introduced into the Code of Commercial Procedure of the Russian Federation, the Code of Civil Procedure of the Russian Federation, the Code of Administrative Procedure of the Russian Federation, the Fundamentals of legislation on notaries public of the Russian Federation, the Law on Status of Judges in the Russian Federation, the Law on Judicial Bodies in the Russian Federation, the Law on Enforcement Proceedings, and the Law on Alternative Dispute Resolution (Mediation) Procedure (the “Mediation Law”).

According to the amendments, the court, before allowing a claim to proceed, must inform the parties to the dispute of the out-of-court settlement opportunities and procedures.

Conciliation procedures can be initiated by the court (subject to the parties’ consent) or based upon request of a party (parties) of the dispute. The court will make a determination to start the relevant procedures and, if necessary, postpone the proceedings.

The main types of conciliation procedures are negotiation and mediation (involving a mediator or a judicial conciliator).

Negotiation

Negotiations is one of the most effective forms of business communication, which is also used to resolve disputes.

The parties will independently determine the conditions for negotiations (for example, the time and the venue, the procedure of negotiations and the method of recording the results, etc.)

In some cases, negotiations will be mandatory, if this requirement is established by law or follows from the agreement of the parties.

Mediation

Mediation is an alternative dispute resolution process, involving a mediator or judicial conciliator.

Mediation is governed mainly by the Mediation Law, while judicial conciliation is governed by the Regulation On Judicial Conciliation approved by the Supreme Court of the Russian Federation.

Retired judges have been allowed to become mediators or judicial conciliators. The Council of Judges of the Russian Federation will maintain a list of judges wishing to serve as mediators. The list of judicial conciliators will be formed and approved by a plenum of the Supreme Court of the Russian Federation based on proposals of appropriate courts.

There are several requirements for judicial conciliators. In particular, a conciliator may not participate in court proceedings or perform any actions that may create, modify, terminate rights or obligations with parties to the dispute or other participants of judicial proceedings.

Currently, there are 342 judicial mediators approved by a plenum of the Supreme Court, from one to five in each region. Most of them served from 17 to 26 years as judges. There are also retired judges whose experience is 40, 47, and even 51 years. Their expertise will help find the most practical solutions.

Please note that courts will control the mediation process by regularly requesting status updates (every two weeks).

At the end of conciliation proceedings, the parties may enter into a settlement agreement, either dismissing the lawsuit or admitting the claim, agree on the circumstances they will not dispute, etc.
Settlement agreement

The scope of settlement agreements has been expanded by abovementioned amendments. In particular, now a settlement agreement can include provisions that are related to the claim, but were not in the scope of legal proceedings. A settlement agreement may also cover the allocation of litigation costs.

At the same time, the court has no right to change the terms of a settlement agreement, it may only recommend amendments required for the settlement agreement to be approved.

If the parties decide to enter into a settlement agreement at the appellate, cassation or supervisory instances, proceedings will be terminated and acts of lower-instance courts – cancelled.

Entering into a settlement agreement at the stage of enforcement proceedings will cause termination of enforcement.

Status of third parties

The third parties that have independent claims are entitled to participate in a settlement agreement. If they have no independent claims, they can be a party to a settlement agreement only where they acquire rights or incur obligations under the terms of such agreement.

Conciliation procedures in public law

The Mediation Law will apply to disputes arising from the administrative and other public legal relations.

This includes both commercial disputes arising from public legal relations and disputes where legal acts, decisions, or actions (inaction) of public bodies are challenged.

The possible results of conciliation in public disputes are somewhat different from the above: the parties may also agree on the classification of a transaction entered into by a party to the case, on the status or nature of such party’s activities.

Mediation agreement as enforcement document

A mediation agreement is defined as an agreement reached by the parties during mediation procedure.

According to the amended Federal Law “On Enforcement Proceedings”, mediation agreements entered into at a pre-court stage can be notarized and become enforcement documents – in contrast to the previous set-up, when only the post-filing mediation agreements approved by the court as settlement agreements were binding on the parties.

This gives conciliation procedures in Russia a good start, promoting the development of business relations, harmonization of other social relations, and, most importantly, reducing the workload of the judicial system.

Arbitration

Another dispute resolution alternative is arbitration.

Arbitration is resolving a dispute by a sole arbitrator or a panel of arbitrators. It is regulated by federal laws “On Arbitration” and “On International Commercial Arbitration”.

Currently, only the holders of a permanent arbitration institution status granted by the Ministry of Justice may administer arbitration.

They are:

- The Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation
- The International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation
- Russian Arbitration Centre at the Russian Institute of Modern Arbitration
- Arbitration Centre at The Russian Union of Industrialists and Entrepreneurs
- The National Centre for Sports Arbitration at the autonomous non-profit organisation Sports Arbitration Chamber
- Hong Kong International Arbitration Centre (HKIAC)
- Vienna International Arbitral Centre (VIAC).
Plenum of the Supreme Court of the Russian Federation No. 53 on arbitration

At its plenum, the Supreme Court adopted a resolution on arbitration and the interaction of state courts and arbitration institutions.

It explained the differences in the jurisdiction of disputes over enforcement, depending on the subject matter of the dispute in arbitration; established the procedure for courts and arbitration institutions in appointing and challenging arbitrators, taking interim measures, and obtaining evidence; clarified the types of arbitration agreements, their interpretation and scope; explained what an alternative dispute resolution agreement and unilateral (one-sided) arbitration clause are.

The resolution also explained what invalid and pathological arbitration clauses are and commented on the public nature of dispute as a reason to annul or deny enforcement of an arbitration award.

Online arbitration

Online arbitration can become especially popular due to the quarantine measures.

It can serve to facilitate the independent, impartial, and efficient resolution of commercial disputes arising out of contractual and non-contractual relations.

The main idea of online arbitration is to enable the parties perform all actions necessary to obtain a final award via their online accounts:

• file a statement of claim and related evidence
• receive response to the statement of claim with all exhibits
• add a new legal representative by uploading a power of attorney to the system
• invite co-claimants, co-defendants, third parties and other parties to arbitration
• participate in an online hearing or have the dispute resolved based on the documents and explanations of the parties
• receive the arbitral award in an electronic form (a hard copy can be executed later on).

Besides, the electronic systems ensure that the information provided by the parties remains confidential.

Online arbitration is currently supported by:

• Russian Arbitration Centre at the Russian Institute of Modern Arbitration
• Russian Arbitration Association (RAA). Note: not a permanent arbitration institution.

Deloitte Legal’s Dispute Resolution Group is ready to provide you with assistance during judicial and arbitration proceedings, including online arbitration, ensuring effective interaction with the mediator (judicial conciliator) and negotiations with the opponent to resolve the dispute without judicial intervention.

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We hope this information has been interesting and useful. Please feel welcome to contact us with any questions.

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