



## PRE-TRIAL SETTLEMENT OF DISPUTES IN RUSSIA: RECENT CHANGES



On 12 July 2017 amendments to the Arbitration Procedural Code of the Russian Federation (hereinafter - the 'APC') and the Civil Code of the Russian Federation (hereinafter - the 'Civil Code') introduced by the Federal Law No. 147-FZ dated 1 July 2017 regarding the pre-trial procedure of dispute settlement come into force.

The pre-trial settlement became obligatory from 1 June 2016 in respect of all disputes arising from civil law relations, which are not included in the list of exceptions (Article 5 of the APC).

This list is supplemented with the following case categories, which do not require compliance with the pre-trial procedure prior to applying to an arbitration (state commercial) court:

- writ proceedings cases;
- cases on the recognition and enforcement of foreign courts and arbitration awards;
- cases related to the performance by arbitration courts of the functions of assistance and control in relation to arbitral tribunals.

The pre-trial settlement also remains not compulsory with respect to corporate disputes and the following categories of cases:

- for establishment of legally important facts;
- for awarding compensation for violation of reasonable time limits of legal proceedings or enforcement of judicial acts;
- bankruptcy cases;
- for protection of the rights and interests of a group of persons.

Thus, according to the amendments, the pre-trial procedure for civil disputes shall be complied with in the following cases:

- recovery of monetary amounts on claims arising from contracts and other transactions due to unjust enrichment;
- early termination of legal protection of a trademark due to its non-use;
- if the pre-trial procedure is specially established by a federal law or treaty.

In case of failure to comply with the pre-trial procedure, the claim shall be returned by the court, and when the claim is accepted, it shall be left undecided.

The Civil Code is supplemented with provisions that the right holder shall not be obliged to file a claim before bringing a legal action for recognition of the exclusive right, for termination of illegal actions or the ones creating a threat of such a violation, for seizure of a tangible media, for publication of a court decision on an infringement with indication of the actual right holder, as well as for the seizure and destruction of devices, equipment or other means used or intended to infringe on exclusive rights. At the same time, the pre-trial procedure shall be mandatory before filing a claim with an arbitration court for damages or compensation, if the right holder and the violator of the exclusive right are legal entities and/or individual businessmen.

The Civil Code is also amended to the effect that the pre-trial procedure that should be observed prior to filing a claim with a court for early termination of legal protection of a trademark as a result of non-use thereof. In particular, it is specified that an interested party, who believes that the right holder does not use a trademark in respect of all or a part of the goods for which it was registered, shall send the right holder a proposal to apply to Rospatent for waiver of the right to the trademark,

or to conclude an agreement on assignment of the exclusive right to the trademark with the interested party in respect of all or a parts of the goods for which it was registered. Upon expiry of two months after sending such a proposal, the interested part may apply to an arbitration court with a claim for early termination of the legal protection of the trademark, if during this period the right holder neither files an application for a waiver of the right to the trademark nor enters into the said agreement with the interested party.

Besides, the APC is supplemented with clarifications regarding the procedure for adoption by an arbitration court of provisional measures, if the claim, under which an application was submitted for taking such measures, requires complying with a pre-trial procedure of settlement of the dispute in accordance with law. It is established, in particular, that the arbitration court which issued the ruling on provisional measures shall cancels the ruling if the applicant fails to submit to the court the evidence that a pre-trial claim was filed within the time specified in the relevant ruling.

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Best Regards,

GRATA International Law Firm (Moscow)

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What we do:

- advising on protection of trademarks and other intellectual property;
- legal support of the inclusion of trademarks and other intellectual property objects into the Unified Register of Intellectual Property Objects;
- pre-trial settlement of disputes with counter-parties and consumer complaints;
- development and review of various civil law contracts and other legally binding documents and taking part in negotiations of the terms thereof with counter-parties;
- development/review of the procedure for selection of counter-parties, commercial/trade policies, in view of the requirements of antitrust and tax authorities for due care in selecting counter-parties.

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