Commercial Procedure Code of the Russian Federation

Translated by George Borisov, consultant of the International Law and Cooperation Department of the Supreme Commercial Court of the Russian Federation

DISCLAIMER:
Please note that this publication is for information only and therefore does not constitute the official text of the statute. In order to consult the authoritative version of this statute, please turn to the original text of the Commercial Procedure Code of the Russian Federation.

Commercial Procedure Code of the Russian Federation

Adopted by the State Duma on June 14th, 2002
Approved by the Federation Council on July 10th, 2002

List of Amendments
Federal law No. 80, July 28th, 2004
Federal law No. 127, November 2nd, 2004
Federal law No. 25, March 31st, 2005
Federal law No. 197, December 27th, 2005
Federal law No. 225, October 2nd, 2007
Federal law No. 58, April 29th, 2008
Federal law No. 85, June 11th, 2008
Federal law No. 138, July 22nd, 2008
Federal law No. 229, December 3rd, 2008
Federal law No. 124, June 28th, 2009
Federal law No. 205, July 19th, 2009
Federal law No. 20, March 9th, 2010
Federal law No. 69, April 30th, 2010
Federal law No. 194, July 27th, 2010
Federal law No. 228, July 27th, 2010
Federal law No. 379, December 23rd, 2010
Federal law No. 65, April 6th, 2011
Federal law No. 200, July 7th, 2011
Federal law No. 210, July 12th, 2011
Federal law No. 389, December 3rd, 2011
Federal law No. 422, December 8th, 2011
Federal law No. 86, June 25th, 2012
Federal law No. 317, December 30th, 2012
Federal law No. 61, April 22nd, 2013
Federal law No. 126, June 7th, 2013
Federal law No. 166, July 2nd, 2013
Federal law No. 186, July 2nd, 2013
Federal law No. 187, July 2nd, 2013
Federal law No. 294, November 11th, 2013

Clarifications on application
Judgement of the Constitutional Court of the Russian Federation No. 11, November 17th, 2005
Judgement of the Constitutional Court of the Russian Federation No. 6, March 25th, 2008

Section I. General Provisions

Chapter 1. Basic Provisions

Article 1. Administration of Justice by Commercial Courts

Justice in the sphere of entrepreneurial and other economic activities is administered in the Russian Federation by commercial courts, formed in compliance with the Constitution of the Russian Federation and federal constitutional laws (hereinafter referred to as "commercial courts") through the settlement of economic disputes and consideration of other cases falling under their competence in

accordance with the Commercial Procedure Code of the Russian Federation and other federal laws, by the rules set forth in the legislation regulating the proceedings in commercial courts.

Article 2. Tasks of Proceedings in Commercial Courts

The tasks of proceedings in commercial courts are:

1) to protect the violated or disputed rights and legitimate interests of persons performing entrepreneurial and other economic activities, as well as the rights and legitimate interests of the Russian Federation, of the constituent units of the Russian Federation, of municipal entities in the sphere of entrepreneurial and other economic activities, public authorities of the Russian Federation, public authorities of the constituent units of the Russian Federation, local government bodies, other bodies and state officials in that sphere;

2) to ensure the accessibility of justice in the sphere of entrepreneurial and other economic activities;

3) to provide a fair and public hearing within a reasonable time, by an independent and impartial court;

4) to consolidate the rule of law and prevent offences in the sphere of entrepreneurial and other economic activities;

5) to form respect for the law and the court;

6) to assist the establishment and development of business relations and the formation of customs of trade and business ethics.

Article 3. Legislation Regulating the Proceedings in Commercial Courts

1. In compliance with the Constitution of the Russian Federation, the legislation regulating the proceedings in commercial courts is under the jurisdiction of the Russian Federation.

2. The manner of proceedings in commercial courts is determined by the Constitution of the Russian Federation, the Federal Constitutional Law "On the Judicial System of the Russian Federation" and the Federal Constitutional Law "On Commercial Courts in the Russian Federation", the Commercial Procedure Code of the Russian Federation (hereinafter referred to as "the Code") and other federal laws adopted in compliance with them.

3. Should an international treaty, to which the Russian Federation is a party, establish other rules of proceedings than those provided by the legislation of the Russian Federation regulating the proceedings in commercial courts, the rules of the international treaty are to be applied.

4. Proceedings in commercial courts are carried out in compliance with federal laws, effective at the time of settlement of the dispute and the consideration of the case (hereinafter - "the consideration of the case"), of performance of an individual procedural action or execution of a judicial act.

Article 4. The Right to Apply to the Commercial Court

1. A person concerned may apply to the commercial court for the protection of its violated or disputed rights or legitimate interests, including compensation claims for the violation of right to a fair trial within a reasonable time, or of right to enforcement of a judicial act within a reasonable time in the manner established by this Code.

2. Other persons are also entitled to apply to the commercial court in cases provided by this Code.

3. Waiver of right to apply to court is null and void.

4. A person may apply to the commercial court in the form of:

a statement of claim - with regard to economic disputes and other cases arising from civil relations;

an application - with regard to cases arising from administrative and other public relations, to

cases on insolvency (bankruptcy), to cases of special proceedings, in the case of appeal for the supervisory review of judicial acts and in any other cases provided by this Code;

an appeal - in the event of application to an appellate or cassational commercial court, as well as in other cases provided by this Code and other federal laws;

an address - should the Prosecutor General of the Russian Federation or the deputies thereof request the supervisory review of judicial acts.

5. Where federal laws establish a claim procedure or any other alternative dispute resolution procedure for a certain category of disputes, or such is provided by an agreement, the dispute is referred for resolution to the commercial court after such a procedure has been carried out.

6. By agreement of the parties, a dispute within the scope of competence of a commercial court, which arises from civil relations, may be referred by the parties to an arbitration tribunal prior to the delivery of a judicial act finalising the consideration of the case on its merits by a commercial court of the first instance, unless otherwise established by federal law.

Article 5. Independence of Judges of Commercial Courts

1. When administering justice, judges of commercial courts are independent and solely subordinate to the Constitution of the Russian Federation and federal laws.

2. Any external influence on judges of commercial courts, interference with their activities by public authorities, local government bodies, other bodies, organisations, state officials or individuals is forbidden and entails liability envisaged by law.

2.1. Information regarding non-procedural addresses of state bodies, local government bodies, other bodies, organisations, officials or citizens that the judges of commercial courts received in connection with cases before them or that the president or vice-president of a commercial court, a head of a panel of judges received in connection with cases before the court, are to be made public and brought to the knowledge of participants of the judicial proceedings through the placement of said information on the official website of the commercial court. Such information does not constitute grounds for the performance of procedural actions or the adoption of procedural decisions.

3. Independence of judges of commercial courts is guaranteed by the Constitution of the Russian Federation and by federal law.

Article 6. The Rule of Law in the Consideration of Cases by Commercial Courts

The rule of law in the consideration of cases by commercial courts is ensured by the correct application of laws and other normative legal acts, as well as by the abidance of all judges of commercial courts by the rules, established in the legislation regulating the proceedings in commercial courts.

Article 6[1]. Reasonable Time for Proceedings in Commercial Courts and for the Enforcement of a Judicial Act

1. Proceedings in commercial courts and the enforcement of judicial acts are carried out within a reasonable time.

2. Cases are considered by commercial courts within the terms established by this Code. It is allowed to extend these terms in the cases and in the **manner** established by this Code. In any case, proceedings in commercial courts are to be carried out within a reasonable time.

3. When a reasonable time for proceedings in commercial courts, including the time from the day on which the commercial court of the first instance receives a statement of claim or an application to the date of delivery of the final judicial act in the case is estimated, such circumstances as the legal and factual complexity of the case, the behaviour of the participants of proceedings, the sufficiency and efficiency of the court's actions, directed at the consideration of the case in due time, as well as the total duration of judicial proceedings are taken into account.

4. Circumstances related to the organisation of a court's functioning, including those provided by **Item 2, Part 3 of Article 18** of this Code and requiring the replacement of a judge, as well as the consideration of the case by various instances can not be regarded as grounds for the exceeding of reasonable time terms for proceedings in a case.

5. The rules for the estimation of a reasonable time for proceedings, provided by Parts 3 and 4 of this Article are also applied when a reasonable time for the enforcement of judicial acts is estimated.

6. If after the commercial court accepts a statement of claim or an application, a case is not considered for a long time and proceedings are protracted, the persons concerned are entitled to file an application to the president of the commercial court to speed up the consideration of the case.

7. An application to speed up the consideration of the case is considered by the president of the commercial court within five days since its receipt by the commercial court. After the consideration of the application, the president of the commercial court issues a reasoned ruling which may fix the time for holding a court session on the case and (or) may indicate actions which are to be performed to speed up the consideration of the case.

Article 7. Equality of All before the Law and the Court

1. Justice is administered in commercial courts on the basis of equality of all before the law and the court, regardless of sex, race, nationality, language, origin, property status or official capacity, place of residence, attitude to religion, convictions, affiliation to public associations or other circumstances; equality of all organisations before the law and the court, regardless of their organisational and legal form, form of property, subordination, location or other circumstances.

2. The commercial court ensures equal judicial protection of rights and legitimate interests of all persons participating in the case.

Article 8. Equality of the Parties

1. Proceedings in commercial courts are carried out on the basis of equality of the parties.

2. The parties enjoy equal rights regarding recusals and motions, introduction of evidence, participation in the examination of evidence and in pleadings, presentation of their arguments and explanations to the commercial court, as well as exercise of other procedural rights and duties provided by this Code.

3. The commercial court is not entitled to give privileges to any of the parties or to derogate the rights of one of the parties with its actions.

Article 9. Adversarial Proceedings

1. The proceedings in commercial courts are adversarial in nature.

2. Persons participating in the case are entitled to know each other's arguments prior to the institution of judicial proceedings. Each person participating in the case is guaranteed the right to present evidence to the commercial court and to the other party in the case; the rights to file motions, to express arguments and considerations, to give explanations in respect of all matters arising in the course of the consideration of the case which are related to the presentation of evidence are ensured. Persons participating in the case bear the risk of the onset of consequences caused by their performance of procedural actions or failure to do so.

3. The commercial court, while staying independent, unbiased and impartial, manages the proceedings, explains to persons participating in the case their rights and duties, warns of the effects of their performance of procedural actions or failure to do so, assists in the exercise of their rights, creates conditions for a comprehensive and full examination of evidence, the establishment of facts and the correct application of laws and other normative legal acts during the consideration of the case.

Article 10. Direct Examination of Evidence

1. When considering the case, the commercial court is obliged to examine all evidence, relevant to the case, directly.

2. Pieces of evidence, which have not been subject to examination in court session, may not be used by the commercial court as a basis for a judicial act.

Article 11. Public Nature of Judicial Proceedings

1. Proceedings in commercial courts are open.

2. Cases may be considered in camera if their consideration in open session may lead to the divulgence of a state secret, in other instances provided by federal laws, as well as in the event of satisfaction of a motion of a person participating in the case, which refers to the necessity of keeping commercial, official or other secrets protected by law.

3. Divulgence of information constituting a state, commercial, official or another secret, protected by law, is punishable in accordance with the federal law.

4. A ruling is issued if the case is to be considered in camera. The ruling is issued in respect of proceedings as a whole or in respect of a part of the proceedings.

5. Present during in camera proceedings are parties to the case, their representatives, and, if necessary, and in the manner established by this Code, experts, specialists, witnesses and interpreters.

6. In camera sessions are conducted in observance of the rules of procedure for commercial courts. The use of videoconferencing systems in camera is not permitted.

7. Persons present in open session enjoy the right to make notes in the course of the session and to make sound records of it by means of sound-recording equipment. Filming, photography and videotape recording, as well as radio and television broadcasting of a commercial court session is allowed by permission of the judge presiding over the court session.

8. Judicial acts are publicly pronounced by commercial courts.

Article 12. Language of Proceedings

1. Proceedings in commercial courts are carried out in Russian - the official language of the Russian Federation.

2. To persons participating in the case, who do not have command of the Russian language, the commercial court explains and ensures the right to access the case materials, to participate in judicial actions, and to speak in court in their native language or in the language of their choice and to use the services of an interpreter.

Article 13. Normative Legal Acts Applied during the Consideration of Cases

1. Commercial courts consider cases on the basis of the Constitution of the Russian Federation, international treaties of the Russian Federation, federal constitutional laws, federal laws, normative legal acts of the President of the Russian Federation and normative legal acts of the Government of the Russian Federation, normative legal acts of federal executive bodies, constitutions (statutes), laws and other normative legal acts of constituent units of the Russian Federation, as well as acts of local government bodies.

In cases, provided by federal law, commercial courts apply customs of trade.

2. Should the commercial court, when considering a case, establish the incompliance of a normative legal act with a normative legal act of greater legal force, including the issue thereof ultra vires, it delivers a judicial act in compliance with the normative legal act of greater legal force.

3. Should the commercial court when considering a specific case come to the conclusion that the law applied or to be applied in the case under consideration does not comply with the Constitution of the Russian Federation, it requests the Constitutional Court of the Russian Federation to verify the constitutionality of the said law.

4. If an international treaty of the Russian Federation establishes rules other than those provided by law, the commercial court applies the rules of the international treaty.

5. The commercial court applies norms of foreign law in compliance with an international treaty of the Russian Federation, the federal law, an agreement of the parties concluded in conformity with them. This rule does not concern the peremptory norms in the legislation of the Russian Federation, the application of which is regulated by Section VI of the Civil Code of the Russian Federation.

6. If disputable relations are not directly regulated by federal laws and other normative legal acts or an agreement of the parties, and no custom of trade is applicable to them, commercial courts apply to such relations, if it does not contradict their essence, the rules of law regulating similar relations (analogy of statute *or analogia legis*), and in the absence of such norms consider cases on the basis of the general principles and meaning of federal laws and other normative legal acts (analogy of law *or analogia juris*).

Article 14. Application of Foreign Law

1. When applying foreign law, the commercial court establishes its content in compliance with its official interpretation, practice of application and the legal doctrine of the corresponding foreign state.

2. For the purpose of establishing the content of foreign law, a court may in the established manner apply for assistance and clarification to the Ministry of Justice of the Russian Federation or to other competent authorities or organisations in the Russian Federation or abroad, or draw experts.

Persons participating in the case may submit documents confirming the content of the foreign law which they refer to in substantiation of their claims and objections and may assist the court in establishing such content in any other way.

As for claims concerning the exercise of entrepreneurial and other economic activities by the parties, the burden of proving the content of foreign law may be placed by the court on the parties.

3. If the content of foreign law, despite the measures taken in compliance with this Article, is not established within a reasonable time, the commercial court applies the corresponding norms of Russian law.

Article 15. Judicial Acts of the Commercial Court

1. Commercial courts deliver judicial acts in the form of a decision, a judgement and a ruling.

2. A judicial act delivered by a commercial court of the first instance, after the consideration of a case on its merits, is called a decision.

Judicial acts, delivered by commercial courts of the appellate and cassational instances after the consideration of appeals and cassational appeals, as well as judicial acts delivered by the Presidium of the Supreme Commercial Court of the Russian Federation as a result of supervisory review of judicial acts are called judgements.

All other judicial acts of commercial courts delivered in the course of proceedings are called rulings.

3. Decisions, judgements and rulings delivered by commercial courts must be lawful, well-substantiated and reasoned.

Article 16. Mandatory Nature of Judicial Acts

1. Effective judicial acts of commercial courts are mandatory for public authorities, local government bodies, other bodies, organisations, state officials and individuals, and are subject to execution on the whole territory of the Russian Federation.

Orders of a commercial court to present evidence, information and other materials, to give explanations, clarifications and expert opinions, as well as other orders regarding the case under

consideration are likewise mandatory and subject to execution for bodies, organisations and persons, to which they are addressed.

1[1]. In order to receive clarifications, consultations or to learn the professional opinions of scholars, specialists and other persons having theoretical or practical knowledge regarding the dispute before the specialised commercial court, the specialised commercial court may also send requests.

Requests to provide clarifications, consultations or to state professional opinions regarding the cases before the specialised commercial court are obligatory for all bodies, organisations and persons, to whom they are addressed.

A request must be examined and a response with the results of such an examination must be forwarded to the specialised commercial court within a month since the receipt of the request, unless a different term is specified by the specialised commercial court.

2. Failure to execute judicial acts, as well as failure to satisfy the demands of commercial courts entails liability established by this Code and other federal laws.

3. The mandatory nature of judicial acts does not deprive the persons who did not participate in the case of the opportunity to apply to the commercial court for the protection of their rights and legitimate interests, violated by these acts, by appealing against them.

4. The recognition and mandatory nature of enforcement on the territory of the Russian Federation of foreign judicial acts and foreign arbitration awards is determined by international treaties of the Russian Federation and federal laws.

Chapter 2. Composition of the Commercial Court

Article 17. Individual and Collective Consideration of Cases

1. Cases in a commercial court of the first instance are considered by a single judge, unless the consideration of the case in panel is not stipulated in this Article. If the case is to be considered in panel by a commercial court of the first instance, the consideration is carried out by a panel of three judges or by a judge and two commercial court assessors.

2. A commercial court of the first instance considers in panel:

1) cases within the jurisdiction of the Supreme Commercial Court of the Russian Federation;

2) cases of challenge of normative legal acts;

3) *abrogated*;

4) cases forwarded to the commercial court of the first instance for a new consideration with a direction to consider them in panel.

5) cases which the head of a judicial chamber decides to consider in panel, due to their particular complexity and based on a reasoned application of a judge;

6) cases within the jurisdiction of the Intellectual Property Rights Court.

3. A commercial court of the first instance composed of a judge and two commercial court assessors considers economic disputes and other cases arising from civil and other legal relations, if any of the parties files a motion to consider the case with the participation of commercial court assessors.

Cases mentioned in **Part 2** of this Article, as well as cases arising from administrative and other public relations, and cases of special proceedings are not subject to consideration with the participation of commercial court assessors.

4. Cases in commercial courts of appellate and cassational instances, as well as under supervisory review, are considered by a panel of three or of another odd number of judges, unless otherwise established by this Code.

During the consideration in panel, one of the judges is presiding over the court session.

5. If this Code empowers a judge to consider cases and settle certain procedural matters individually, the judge acts on behalf of the commercial court.

Article 18. Formation of the Court

1. The composition of the court for the consideration of a particular case, including consideration with the participation of commercial court assessors, is formed with regard to the judges' workload and specialisation, in a manner that excludes an impact on its formation by persons interested in the outcome of the judicial proceedings, including the use of an automated information system.

2. A case, the consideration of which was started by a certain judge or by a certain court composition, is to be considered by the same judge or court composition.

3. Replacement of a judge or of a commercial court assessor or of one of the judges or commercial court assessors is possible in case of:

1) a recusal or self-recusal of a judge or a commercial court assessor, declared and satisfied in the manner established by this Code;

2) a long absence of a judge or of a commercial court assessor due to illness, vacation, being on a study course or a business trip.

4. A judge or a commercial court assessor may also be replaced if their powers have been terminated or suspended on the grounds established by federal law.

5. If a judge or a commercial court assessor is replaced in the course of the case consideration, judicial proceedings are to begin de novo. The performance of procedural actions in urgent cases, including the acceptance of a claim or of an application and the institution of proceedings, the consideration of an application for provisional measures and for the postponement of judicial proceedings by a judge instead of another judge in the manner of interchangeability is not regarded as replacement of a judge.

Article 19. Drawing of Commercial Court Assessors to the Consideration of Cases

1. Commercial court assessors may be drawn to the consideration of cases in commercial courts of the first instance in conformity with this Code and with other federal laws by a party's motion in connection with the particular complexity of the case and (or) with the need to apply special knowledge in the sphere of economics, finance and management.

2. The motion for the consideration of a case with the participation of commercial court assessors must contain the substantiation of the case's particular complexity and (or) of the need to apply special knowledge, and may be submitted by a party no later than one month before the institution of judicial proceedings, including every new consideration of the case.

The court is obliged to explain to the parties their right to file such a motion in a ruling on the acceptance of the statement of claim for proceedings and during the preparation of the case for judicial proceedings.

3. The motion for the consideration of a case with the participation of commercial court assessors is resolved by the commercial court in the manner, established by **Article 159** of this Code.

If the motion for the consideration of the case with the participation of commercial court assessors is satisfied, the candidates for commercial court assessors are picked out of the list of commercial court assessors, approved in the manner laid down in federal laws, taking into account their specialisation, by way of random selection with the use of an automated information system or by a different method, used in the commercial court for the formation of the court composition.

4. Instances envisaged in parts **Part 3** and **Part 4 of Article 18** of this Code are grounds for the replacement of a commercial court assessor. In such cases another candidate for a commercial court assessor is selected in the manner, established in Part 3 of this Article.

If after one or several commercial court assessors are rejected, it is impossible to form the composition of the court for the consideration of the case with participation of commercial court assessors, the case is considered by a single judge.

If one or two commercial court assessors fail to appear in the court session, the case may be considered by a single judge, if the parties or their representatives are present in the given court session and do not object to the consideration of the case by a single judge.

If at least one party objects to the consideration of the case by a single judge, the court announces a break in the court session or postpones the judicial proceedings. If a new court session cannot be held because one or two commercial court assessors fail to attend, the court has the right, upon the motion of one of the parties, to deliver a ruling on the consideration of the case by a single judge and to open a court session in the first instance.

5. During the consideration of a case, commercial court assessors enjoy the rights and carry out the duties of judges.

6. During the consideration of the case, the resolution of all issues arising from it and the delivery of judicial acts the judge and the commercial court assessor enjoy equal procedural rights.

7. A commercial court assessor cannot be the presiding judge in a court session.

Article 20. Resolution of Issues by the Court in Panel. The Separate Opinion of a Judge

1. Matters arising during the consideration of a case in panel are resolved by judges by the majority of votes. None of the judges may abstain from voting. The judge presiding over the court session is the last to vote.

2. The judge who does not agree with the opinion of the majority of judges who vote for the delivery of a judicial act is obliged to sign the act and may express a separate (dissenting) opinion in the written form.

The judge who votes for the delivered judicial act on the merits of the issue under the court's consideration, but is left in minority after a vote on any other issue or on the motivation of the delivered judicial act, may also express a separate (concurring) opinion in the written form.

When rendering the separate opinion, the judge may not provide anyone with information regarding the contents of the discussion during the delivery of the judicial act, the position of certain judges of the court composition, or in any other way divulge the secret of the judges' conference.

The judge's separate opinion must be formulated within five days from the day of delivery of the decision on the case. The judge's separate opinion is attached to the case materials, but is not pronounced.

Chapter 3. Recusals

Article 21. Recusal of a Judge

1. A judge may not participate in the consideration of a case, if he/she:

1) took part in the previous consideration of the given case in the capacity of a judge and a repeated participation in the consideration of the case is inadmissible, according to the requirements of this Code;

2) took part in the previous consideration of the given case in the capacity of a prosecutor, assistant of a judge, court session secretary, representative, expert, specialist, interpreter or witness;

3) took part in the previous consideration of the given case in the capacity of a judge of a foreign court, an arbitration tribunal or a court of arbitration;

4) is a relative of a person participating in the case or of its representative;

5) is personally, directly or indirectly interested in the outcome of the case, or if there are other circumstances which may raise doubts as to the judge's impartiality;

6) is or previously was officially or in any other way dependent on a person participating in the case, or on its representative;

7) made public statements or stated opinions on the merits of the case under consideration.

1.1. Information regarding the receipt by the court of a non-procedural address regarding a case before the judge of a commercial court cannot by itself be regarded as a reason for the judge's recusal.

2. Persons who are relatives may not be members of a composition of a commercial court considering the case.

3. Commercial court assessors are likewise recused for reasons stated in Part 1 of this Article.