



# **RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION**

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## **On Consideration by Commercial Courts of Economic Disputes Involving Cross-Border Relations**

The right to judicial protection is recognized and guaranteed in the Russian Federation to everyone, including the participants of international economic activities, by the Constitution of the Russian Federation (Articles 15, 17, 19, 34, 35, 44, 46), the universal principles and norms of international law and international treaties of the Russian Federation.

It is the obligation of the state and a necessary condition of fair justice that access to justice is secured for participants of international economic activities, that there is legal certainty in the choice of the competent court and that disputes involving cross-border relations are resolved in a timely and effective manner.

In order to ensure the correct and uniform application of provisions of norms of the Commercial Procedure Code of the Russian Federation, regulating the manner of consideration by commercial courts of economic disputes and of other cases pertaining engagement in entrepreneurial and other economic activities involving cross-border relations, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations:

## *General Issues*

1. Commercial courts consider cases on economic disputes and other cases pertaining to engagement in entrepreneurial and other economic activities (hereinafter – economic disputes) with participation of foreign organizations, international organizations, foreign persons, stateless persons, engaged in entrepreneurial and other economic activities, of foreign states (hereinafter – foreign persons) or arising from other cross-border relations, within the powers stipulated in Chapter 4 of the Commercial Procedure Code of the Russian Federation (hereinafter – ComPC RF, the Code).

Legal regulation of adjudication of the aforementioned cases by commercial courts is performed in accordance with the Constitution of the Russian Federation, the universal principles and norms of international law and international treaties of the Russian Federation, which, in accordance with Part 4 of Article 15 of the Constitution of the Russian Federation, are part of its legal system, by the ComPC RF, by other legislation on judicial procedure in commercial courts of the Russian Federation.

Economic disputes involving cross-border relations are cases: with participation of foreign persons; on disputes, the subject matter of which is property, another object located on the territory of a foreign state (*e.g.* the right to property in a foreign state that a Russian organization has, right to results of intellectual activity or means of individualization located or registered in a foreign state); on disputes pertaining to a legal fact that took place on the territory of a foreign state, in particular a dispute arising from obligations due to damages that occurred in a foreign state.

The aforementioned disputes are considered by commercial courts in accordance with the rules and within the powers stipulated by the ComPC RF with due regard to the features stipulated in Section V of the ComPC RF (“Proceedings in Cases with Participation of Foreign Persons”), unless an international treaty of the Russian Federation stipulates otherwise (Part 3 of Article 4, Part 1 of Article 253, 256<sup>1</sup> of the ComPC RF).

2. If an international treaty of the Russian Federation stipulates other rules than those stipulated in the legislation of the Russian Federation on judicial procedure in commercial courts of the Russian Federation, the rules of the international treaty apply (Part 3 of Article 3 of the ComPC RF, Part 4 of Article 13 of the ComPC RF).

When applying the rules of judicial procedure stipulated in the norms of international treaties, the commercial court determines the effect of these rules in time and space in accordance with Section 2 of Part III of the Vienna Convention on the Law of Treaties, concluded on 23 May 1969 (hereinafter – the Vienna Convention).

If there are several international treaties of the Russian Federation with the foreign state regarding the rules of judicial procedure in economic disputes involving cross-border relations, the commercial court determines the international treaty subject to application based on the norms of the Vienna Convention, of Federal Law No. 101 of 15 July 1995 “On International Treaties of the Russian Federation” and on the norms of the international treaty, the issue of whose application is resolved by the court.

A special international treaty has priority in application, independent from the list of its participants and time of its adoption, unless the norms of international treaties stipulate otherwise.

### ***Competence of Commercial Courts of the Russian Federation in Economic Disputes Involving Cross-Border Relations***

3. The grounds for the determining the competence of commercial courts of the Russian Federation over economic disputes involving cross-border relations are stipulated in the ComPC RF (Chapter 32).

When resolving the issue of competence of commercial courts of the Russian Federation in economic disputes involving cross-border relations, commercial courts should be guided by the general rules stipulated in Article 247 of the ComPC RF, the rules on exclusive competence and choice of the competent court (Articles 248, 249 of the ComPC RF), as well as by the rules of competence of commercial courts in application of provisional measures in economic disputes involving cross-border relations, stipulated in Article 250 of the ComPC RF.

If a commercial court of the Russian Federation concludes that it is competent to resolve a certain dispute, the court jurisdiction within the state is determined using the rules of paragraphs 1 and 2 of Chapter 4 of the ComPC RF. However, if paragraphs 1 and 2 of Chapter 4 of the ComPC RF do not contain applicable rules, the provisions on competence should simultaneously be interpreted as stipulating the rules on court jurisdiction within the state. For example, if the claim arose from property damage caused by an action or another circumstance that occurred on the territory of the Russian Federation, or if damage occurred on the territory of the Russian Federation (Item 4 of Part 1 of Article 247 of the ComPC RF), the plaintiff may file a claim to the commercial court of the constituent entity of the Russian Federation, on the territory of which the action or another circumstance resulting in damage occurred, or to the commercial court of the constituent entity of the Russian Federation on the territory of which the damage occurred.

4. When resolving the issue of accepting (returning) the statement of claim, application in an economic dispute involving cross-border relations, as well as

when persons participating in the case motion for the statement of claim to be left without consideration or for the proceedings in the case to be terminated, as the commercial court of the Russian Federation lacks competence, if there is an agreement of the parties to transfer the dispute to a court of another state, or if there is an effective foreign court decision, the commercial court checks whether the consideration of such a dispute is within the exclusive competence of commercial courts of the Russian Federation.

Violation of exclusive competence of commercial courts of the Russian Federation constitutes grounds for refusal to recognize and enforce a foreign court decision (Item 3 of Part 1 of Article 244 of the ComPC RF).

5. Exclusive competence of commercial courts in the Russian Federation in economic disputes involving cross-border relations includes the following disputes: 1) in regard of property that belongs to the state property of the Russian Federation, including disputes regarding the privatization of state property and eminent domain; 2) the subject matter of which is real property, if such property is located on the territory of the Russian Federation, or the right to such property; 3) concerning the registration or issue of patents, registration and issue of certificates on trademarks, industrial designs and utility models, or registration of other rights to the results of intellectual activity which require registration or issue of a patent or certificate in the Russian Federation; 4) on invalidation of records in state registers (books of records, cadastres), performed by the competent body in the Russian Federation that maintains such a register (book of records, cadastre); 5) concerning the creation, liquidation or registration on the territory of the Russian Federation of legal persons and individual entrepreneurs, and the challenge of decisions of bodies of these legal persons (Part 1 of Article 248 of the ComPC RF).

The norm of Item 1 of Part 1 of Article 248 of the ComPC RF is subject to application when the competence of commercial courts of the Russian Federation is established in regard of property that belongs to the property of municipal entities in the Russian Federation, including disputes regarding the privatization of such municipal property (Part 5 of Article 3 of the ComPC RF).

Disputes, subject matter of which is real property located on the territory of the Russian Federation or the rights to such property, include claims on vindication of property from unlawful ownership of another person, on elimination of violation of rights not pertaining to deprivation of ownership, on establishment of easement, on separation of property in joint ownership, on acknowledgement of right, on establishment of land plot borders, on release of seized property, as well as other cases, in which the satisfaction of the stated claim and its enforcement will entail the need of state registration of emergence, limitation (encumbrance), transfer, termination of rights to real property or making of an entry into the Unified State Register of Property Rights and Transactions or another state register of the Russian Federation, unless such disputes are within the jurisdiction of courts of

general jurisdiction. Herewith, for purposes of application of the norm of Item 2 of Part 1 of Article 248 of the ComPC RF, aircraft and marine vessels, as well as inland navigation vessels are regarded as located on the territory of the Russian Federation, if the property right or other rights to them are registered in a state register of the Russian Federation (Article 1207 of the Civil Code of the Russian Federation (hereinafter – CC RF), Part 5 of Article 3 of the ComPC RF).

6. Participants of international economic relations and of other relations pertaining to economic activities may conclude a choice of court agreement regarding the consideration of disputes in a commercial court of the Russian Federation (competence by choice of court agreement). A choice of court agreement is an agreement of the parties to transfer to a commercial court of the Russian Federation all or certain disputes arising or which may arise between them in regard of a certain legal relation, independent whether such a legal relation is of contract nature. In such a situation, the commercial court of the Russian Federation will have exclusive competence to consider the dispute, unless such an agreement changes the exclusive competence of a foreign court (Article 249 of the ComPC RF).

Provisions of Article 249 of the ComPC RF stipulate in particular that a choice of court agreement (agreement to select a commercial court of the Russian Federation to consider disputes that arose or may arise) may be concluded between two foreign persons.

The choice of court agreement is regarded as concluded in written form, as required by Part 2 of Article 249 of the ComPC RF, in particular if it is drawn up as a separate agreement, as a reservation in a contract, or if such an agreement is reached through the exchange of letters, telegrams, telex messages, fax messages and other documents, including electronic documents transmitted through communication channels, which allow to reliably ascertain that the document is coming from the other party.

Taking into account the provisions of Article 9 of the ComPC RF, the choice of court agreement is regarded as concluded in written form, if it is made through the exchange of procedural documents (including the statement of claim and the statement of defence), in which one of the parties refers to the existence of a choice of court agreement, and the other makes no objection in this regard.

If a contract refers to a document containing the choice of court agreement, this reference is regarded as a choice of court agreement concluded in written form, if that reference allows to consider such an agreement to be part of the contract.

A choice of court agreement cannot change the rules on court jurisdiction within the state as regards the distribution of cases between the courts of general jurisdiction and the commercial courts of the Russian Federation.

7. In accordance with Part 5 of Article 3, Articles 248, 249 of the ComPC RF, the exclusive competence of a commercial court of the Russian Federation cannot be changed by an agreement to transfer the dispute to a competent foreign court (a choice of court agreement) or by an agreement to exclude the competence of commercial courts of the Russian Federation (derogation of competence).

8. If it follows from the choice of court agreement concluded by the parties that their will is directed at resolution of the economic dispute in a commercial court of the Russian Federation, but no exact commercial court of the Russian Federation is indicated, norms of the ComPC RF are applied in determining the court competent to consider the case and whether a commercial court has jurisdiction to consider it (paragraphs 1 and 2 of Chapter 4).

If norms of Paragraph 2 of Chapter 4 of the ComPC RF do not allow to determine the court competent within the state to resolve the economic dispute, the dispute is subject to consideration by the Commercial Court of Moscow Region (Part 5 of Article 3, Part 7 of Article 38 of the ComPC RF).

By implication of Part 1 of Article 249 of the ComPC RF, if the choice of court agreement stipulates that disputes arising from the legal relations of the parties must be considered in the court of the country of the party that will act as the plaintiff (or the defendant), the commercial court regards such an agreement as concluded and enforceable.

Herewith, an enforceable choice of court agreement is such an agreement, based on which the real intention (actual will) of the parties regarding the competence of the commercial court of the Russian Federation may be established.

After proceedings in the case regarding the initial claim are initiated in accordance with the norms on competence, the counterclaim (with regard to Part 10 of Article 38 of the ComPC RF) is filed to the commercial court at the place of consideration of the initial claim, independent of which court is competent to consider it, except when the consideration of the dispute arising from the counterclaim is within the court jurisdiction of a court of general jurisdiction or within the exclusive competence of a foreign court.

9. Article 249 of the ComPC RF does not make the validity of a choice of court agreement dependent on the absence of changes in the composition of its participants. In this regard, when a person is replaced in an obligation, in regard of which the choice of court agreement was concluded, the right to protection of interests in the exact court selected by the initial parties is also transferred to the legal successor. Therefore, the earlier concluded choice of court agreement acts in regard of both the initial and the new creditor, and, equally, in regard of both the initial and the new debtor, unless the parties make a different provision in their

agreement, and also if the dispute stays within the jurisdiction of the commercial court, and the exclusive competence of a foreign court is not violated by this.

10. Based on the autonomous nature of the agreement on the manner of resolution of disputes, the fact that the main contract is invalid and (or) not concluded does not by itself entail invalidity or unenforceability of the choice of court agreement.

If the main contract expires, the choice of court agreement stays in force.

Unless the parties make other provisions, the choice of court agreement in regard of a dispute arising from the contract or in regard of the contract also applies to any actions of the parties to the choice of court agreement, aimed at performance, amendment or termination of the aforementioned contract.

A choice of court agreement contained in a contract also applies to any disputes pertaining to the conclusion of the contract, its entry into force, amendment, termination, validity, in particular to the restitution by the parties of everything performed in accordance with a contract recognised as invalid or unconcluded, unless otherwise follows from the choice of court agreement itself.

11. By implication of Article 252 of the ComPC RF, when there is a choice of court agreement to transfer the dispute to a competent foreign court, the commercial court of the Russian Federation leaves the statement of claim, application without consideration if any of the parties states objections on these grounds against the consideration of the case in the commercial court of the Russian Federation no later than on the day of presentation of its first statement on the merits of the dispute in a commercial court of first instance. This rule does not apply if the commercial court establishes that the choice of court agreement is invalid, lost force, is unenforceable or does not stipulate the exclusion of competence of commercial courts of the Russian Federation (Part 5 of Article 3, Item 5 of Part 1 of Article 148 of the ComPC RF). The aforementioned rules are applied independent of whether a foreign court is considering a dispute between the parties of the choice of court agreement.

If proceedings are initiated in a case in courts of several states between the same parties, in regard of the same subject matter and on the same grounds, the commercial court, with regard to Articles 148, 252 of the ComPC RF, leaves the statement of claim, application without consideration if proceedings were initiated in the commercial court of the Russian Federation later, and the consideration of the case is not within the exclusive competence of the commercial court in the Russian Federation in accordance with Articles 248, 249 of the ComPC RF.

12. The general rules of establishment of competence of commercial courts of the Russian Federation are based on the principle of close affinity between the legal relation in dispute and the territory of the Russian Federation, this is why norms of

Part 1 of Article 247 of the ComPC RF should be interpreted with due regard to this principle.

The list of grounds, on which competence of commercial courts of the Russian Federation is established, stipulated in Part 1 of Article 247 of the ComPC RF, is not exhaustive.

13. As a general rule, the competence of commercial courts of the Russian Federation includes cases with participation of foreign organizations engaged in entrepreneurial activities through their branch offices or representation offices created on the territory of the Russian Federation, not their branch or representation offices created in a foreign jurisdiction, whose activities do not have close affinity with the territory of the Russian Federation (Item 2 of Part 1 of Article 247 of the ComPC RF). This is why when a claim is filed against such a branch or representative office of a foreign organization, the commercial court may, upon the motion or with consent of the plaintiff, allow to replace the improper defendant with the proper one – the foreign organization (Part 1 of Article 47 of the ComPC RF).

If the plaintiff does not agree to the replacement of the aforementioned branch office or representation office of the foreign organization with the foreign organization itself, proceedings in the case are subject to termination (Item 1 of part 1 of Article 150 of the ComPC RF).

14. When Item 9 of Part 1 of Article 247 of the ComPC RF is applied, disputes arising from relations pertaining to state registration of names and other objects and rendering of Internet services on the territory of the Russian Federation should be regarded to include disputes pertaining to protection of rights to results of intellectual activity and means of individualization of legal persons engaged in entrepreneurial and other economic activity, of goods, works, services and enterprises, used in registration of domain names in the Russian domain zone (national first-level domains and second-level domain zones, oriented at Russian users or including websites in Cyrillic alphabet), and if registration was performed on the territory of the Russian Federation (the registrar is a Russian person) – in other domain zones as well.

15. In accordance with Item 10 of Part 1 of Article 247 of the ComPC RF, the commercial court establishes whether there is a close affinity between the legal relation in dispute and the territory of the Russian Federation in each case individually, taking into account all the facts of the case.

The existence of a close affinity between the legal relation in dispute and the territory of the Russian Federation may be proved, in particular, by the following facts: the territory of the Russian Federation is the place where a significant part of obligations proceeding from the relations of the parties must be fulfilled; the

subject matter of the dispute is most closely related to the territory of the Russian Federation; the main evidence in the case is located on the territory of the Russian Federation; the law of the Russian Federation is the law applicable to the contract; the natural person performing the functions of the management body of a foreign company on the territory of the Russian Federation is registered as such at her/his place of residence on the territory of the Russian Federation; the website with a domain name, in regard of which the dispute arose (excluding domain names in the Russian domain zone) is primarily oriented at Russian users, the commercial activity is oriented at persons within the jurisdiction of the Russian Federation.

16. For the purposes of application of Item 2 of Part 1 of Article 247 of the ComPC RF and in correlation with Item 10 of Part 1 of Article 247 of the ComPC RF, the location of the representative office of a legal person on the territory of the Russian Federation may be recognized to be at the constant place of activities, where such a person fully or partially engages in its activities on the territory of the Russian Federation, independent whether it has formal registration or accreditation in the manner stipulated in law.

This fact may be established, in particular, based on the facts of the case confirming that the foreign person had for a prolonged period of time a permanent place of activities on the territory of the Russian Federation, where it engaged in commercial activities on the Russian market; the information about the activities of the foreign person is presented on a website in Russian language, registered in the Russian domain zone (*e.g.* “.ru”, “.su”, “.рф”); the location of the foreign person’s permanent representative office for purposes of taxation on the territory of the Russian Federation is established by the court in another case.

If the norms of Paragraph 2 of Chapter 4 of the ComPC RF do not allow to determine the court competent within the state to resolve the economic dispute, the dispute is subject to consideration by the Commercial Court of Moscow Region (Part 5 of Article 3, Part 7 of Article 38 of the ComPC RF).

17. Commercial courts should take into account that bilateral and multilateral international treaties of the Russian Federation may contain other rules determining the competence of commercial courts in cases with participation of foreign persons, different from those stipulated in the ComPC RF. In such a situation, the norms of the international treaty stipulating the provisions on court jurisdiction will have priority in determination of the competent court by virtue of Part 3 of Article 3, Part 4 of Article 13 of the ComPC RF.

For example, Article 4 of the Agreement on the Manner of Resolution of Disputes regarding Economic Activity (concluded on 20 March 1992) (hereinafter – the 1992 Agreement), which is a special international treaty regulating the cooperation of states in the sphere of resolution of disputes regarding engagement in economic

activity, stipulates the grounds for the competence of commercial courts of the Russian Federation in disputes listed in Article 1 of the 1992 Agreement.

Unless otherwise stipulated in the rules on exclusive competence, where there exist a choice of court agreement and an international treaty stipulating the rules of competence, the provisions of the agreement apply.

For example, a claim in a dispute regarding carriage performed in accordance with the Convention on the Contract for the International Carriage of Goods by Road (Geneva, 19 May 1956) (hereinafter – the 1956 Geneva Convention) may be filed to a competent court in a Member State to the 1956 Geneva Convention, designated by the choice of court agreement of the parties. Where no such agreement was made, the competent court is determined at the plaintiff's discretion in accordance with the 1956 Geneva Convention (paragraph 1 of Article 31).

Where there are no regulations provided by norms of an international treaty, the commercial court competent to resolve a dispute involving cross-border relations is determined by application of the corresponding norms of the ComPC RF.

18. With regard to Part 1 of Article 148 of the ComPC RF, if a foreign person participates in a trial and makes no objections in regard of the competence of the commercial court of the Russian Federation prior to making the first statement on the merits of the dispute, this confirms that person's will for the dispute to be considered by the aforementioned court and waives the right to refer to the lack of competence of the court (rule of estoppel) (Part 5 of Article 3 of the ComPC RF). Such procedural behaviour of the defendant in a court of first instance does not constitute grounds for termination of proceedings in the case in accordance with Item 1 of Part 1 of Article 150 of the ComPC RF.

The aforementioned rule is not subject to application, if the dispute is within the exclusive competence of a foreign court, or if the dispute falls within the jurisdiction of a court of general jurisdiction.

An international treaty may stipulate another moment for the expiration of term for acceptance of such objections regarding the competence of the court (*e.g.* Item 2 of Article 4 of the 1992 Agreement).

### ***Establishing the Legal Status of a Foreign Person Participating in the Commercial Procedure***

19. The commercial court takes measures to establish the legal status of foreign persons participating in the case and their right to engage in entrepreneurial and other economic activities (Article 254 of the ComPC RF).

For the purpose of application of provisions of Section V of the ComPC RF, the legal status of a foreign person participating in the case should be understood as the volume of passive legal capacity and of legal capacity of the foreign person, established in accordance with its personal law.

The legal status of a foreign organization is established based on the law of the country in which the legal person or the organization that is not a legal person in accordance with foreign law was incorporated, unless otherwise stipulated in the norms of federal law (Articles 1202, 1203 of the CC RF).

The legal status of a foreign citizen engaged in entrepreneurial activities without forming a legal person is established in accordance with the law of the country in which he/she is registered as an individual entrepreneur or of the country that is the principal place of entrepreneurial activities (Article 1201 of the CC RF).

The legal status of a participant of proceedings and its right to engage in entrepreneurial and other economic activities, as well as the powers of its representative are subject to establishment because it is necessary to establish the passive legal capacity and the legal capacity of the corresponding subject based on the norms of substantive law.

As a rule, the legal status of a legal person is confirmed by an excerpt from the official trade register of the country of origin. The legal status of foreign persons may also be confirmed by other equivalent evidence of legal status, recognised as such by the legislation of the country of incorporation, registration, principal place of entrepreneurial activities, citizenship or residence of the foreign person.

When establishing the legal status of the foreign person, the court may also take into consideration information that is publicly available on the Internet and placed on official websites of foreign bodies authorized to register legal persons and containing data about the registration of legal persons.

20. When checking the powers of representatives of foreign persons in commercial proceedings, courts need to take into account that persons who have the power to act in the name of the legal person without a power of attorney and who have the right to sign a power of attorney in the name of the legal person are determined in accordance with the personal law of the foreign legal person (sub-Item 6 of Item 2 of Article 1202 of the CC RF).

Taking into account that the law of the country, in which the trial takes place, is applied to the powers of a representative of a foreign person for purposes of conducting the case in a state court (by virtue of Item 4 of Article 1217<sup>1</sup> of the CC RF), the volume of powers of a representative to conduct a case in a commercial court of the Russian Federation is determined on the basis of

Article 62 of the ComPC RF (proceeding from sub-Item 1 of Item 5 of Article 1217<sup>1</sup> of the CC RF).

The form of the power of attorney, issued for participation of a representative of a foreign person in a commercial court of the Russian Federation, is subject to the law of the country applicable to the power of attorney itself (Item 1 of Article 1209 of the CC RF), *i.e.* to the law of the Russian Federation (Item 4 of Article 1217<sup>1</sup> of the CC RF). However, a power of attorney cannot be recognized as invalid due to non-compliance with the form, if the requirements stipulated in the country of issue of the power of attorney and of Article 61 of the ComPC RF are not violated (Item 1 of Article 1209 of the CC RF).

21. From the interrelated provisions of Item 9 of Part 1 of Article 126, Part 1 of Article 253, Part 3 of Article 254 of the ComPC RF it follows, that when a plaintiff or a defendant is a foreign person, the statement of claim should be accompanied by a document confirming that that person is under the jurisdiction of a foreign state, confirming its organizational and legal form, passive legal capacity and containing information on who has the powers to acquire civil rights and fulfil civil obligations in the name of the legal person. Such a document is determined based on the personal law of the foreign person (*e.g.* an excerpt from the trade register of the country of origin).

Failure to provide evidence confirming the legal status and the right of the foreign person to engage in entrepreneurial and other economic activities constitutes grounds for leaving the statement of claim without action in accordance with Part 1 of Article 128 of the ComPC RF.

22. Based on Part 1 of Article 286 of the ComPC RF in interrelation with Part 3 of Article 254 of the ComPC RF, a court of cassation checks, whether the conclusions of the court of first instance and court of appeal regarding the application of the law norm correspond to the facts established by them in the case and to the available evidence, confirming the legal status of the foreign person and its right to engage in entrepreneurial and other economic activities.

Taking into account that the court takes measures to establish the status of the foreign person and to determine, whether it has the right to engage in entrepreneurial and other economic activities, if the case materials do not contain relevant, sufficient and reliable evidence confirming the aforementioned facts, and (or) if such facts were not established, this constitutes grounds for the court of cassation to reverse the judicial acts of the courts of first instance and (or) appeal and to remand the case for a new consideration (Item 3 of Part 1 of Article 287, Part 1 of Article 288 of the ComPC RF).

23. Taking into account that the documents on registration of a foreign legal person and documents confirming its tax residency, issued by virtue of international

double taxation avoidance agreements, are not always identical, when establishing the legal status of a foreign organization the commercial court takes into account that evidence confirming the permanent location of the organization for taxation purposes is not sufficient to establish its personal law and procedural legal capacity.

24. As a general rule, documents confirming the legal status of a foreign person and the right to engage in entrepreneurial and other economic activities must be acquired no earlier than thirty days before the plaintiff applies to the commercial court (Item 9 of Part 1 of Article 126 of the ComPC RF), except when such documents require consular legalisation or affixation of an apostille.

If consular legalisation or affixation of apostille is required for the documents, such legalisation must be performed or the apostille must be affixed no earlier than thirty days before the plaintiff applies to the commercial court, and the documents must be acquired within a reasonable time prior to consular legalisation or affixation of the apostille.

25. When establishing the legal status of a foreign person, the commercial court should take into account that the name of one and the same legal person may be written in different ways: in the state language of the country of its personal law, in transliteration, in translation.

In accordance with Items 1 and 2 of Article 1202 of the CC RF, requirements to the name of a legal person are determined by its personal law. The fact that there may be different ways to write the name of a legal person registered in a state, where the state language does not use the Latin alphabet as the official alphabet, should not hinder the legal person in pursuing effective court protection of its rights and lawful interests, if they are violated by unlawful actions of its counterparts.

Rules of Part 1 of Article 12 of the ComPC RF do not presume that the names of foreign persons should be indicated in judicial acts in translation into the Russian language.

Names of foreign persons are indicated in the texts of judicial acts in the way they exist in accordance with the personal law of the foreign legal persons and natural persons engaged in entrepreneurial activities without forming legal persons. The names of persons that exist neither in Cyrillic nor in Latin alphabet are indicated in transliteration into Cyrillic or Latin alphabet (the transliteration provided by the foreign person itself is used for these purposes, if available).

## *Consideration of Economic Disputes Arising from Cross-Border Relations*

26. Cases with participation of foreign persons are considered by commercial courts in accordance with the Code with due regard to the features stipulated in Chapters 33, 33<sup>1</sup>, unless an international treaty of the Russian Federation stipulates otherwise (Part 1 of Article 253, Article 256<sup>1</sup> of the ComPC RF).

27. Commercial courts may address foreign courts or the competent bodies of foreign countries with requests for performance of certain procedural actions (to serve court notifications and other documents, provide evidence, receive written evidence, inspect evidence at its location, conduct an expert examination, etc.).

The commercial court of the Russian Federation issues a decree in regard of sending a request to a foreign court or a competent body of a foreign state (Part 5 of Article 3, Article 73 of the ComPC RF).

When a letter of request is sent to a competent foreign body, in particular regarding court notification of a foreign person located (residing) outside of the Russian Federation and participating in the case or regarding the performance of a certain procedural action, this is done in the manner stipulated in international treaties of the Russian Federation, in Articles 121, 253, Part 4 of Article 256 of the ComPC RF.

Depending on the requirements of international treaties and (or) of the commercial procedure legislation, documents may be forwarded, in particular:

- through direct service of court documents, sent by post, upon a trial participant (Item “a”) of Article 10 of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague, 15 November 1965) (hereinafter – the 1965 Hague Convention);
- directly to the competent court of the requested state (Article 5 of the 1992 Agreement);
- directly to the central authority of the state addressed (Article 2 of the 1965 Hague Convention, Article 3 of the Treaty between the Russian Federation and Mongolia on legal assistance and legal relations in civil and criminal cases (Ulaanbaatar, 20 April 1999));
- through the territorial bodies of the Ministry of Justice of the Russian Federation and the Ministry of Foreign Affairs of the Russian Federation to the competent body of the requested state;
- through the central, territorial and other bodies of institutions of justice to the competent court (body) of the requested state (Article 5 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (Minsk, 22 January 1993) (hereinafter – the 1993 Convention).

If there is no international treaty, the request is sent through the territorial bodies of the Ministry of Justice of the Russian Federation and the Ministry of Foreign Affairs of the Russian Federation by virtue of comity.

If the requirements of international treaties on legal assistance are complied with, simultaneous forwarding of court documents by post to the interested persons abroad, service of such documents upon the proper representatives of foreign persons in Russia, etc. is possible.

28. The manner of forwarding of notifications regarding the trial and of other judicial documents to a foreign person located (residing) outside of the Russian Federation may be regulated depending on what country that foreign person is located (resides) in; in particular, it may be regulated by bilateral international legal assistance treaties of the Russian Federation with foreign states, by the 1965 Hague Convention, the 1992 Agreement, the 1993 Convention, the Convention on Civil Procedure (the Hague, 1 March 1954) (hereinafter – the 1954 Hague Convention).

When rendering international legal assistance, the commercial court should apply the international treaty stipulating the mechanism of cooperation between the competent bodies of states that ensures the faster and less formalized cooperation of such bodies, as the treaty aimed at the faster restoration of violated (disputed) rights.

For example, Article 5 of the 1992 Agreement stipulates the following manner of execution of requests sent to States Parties to the Agreement: requests of Russian commercial courts are forwarded to such states by post, without translation, directly to the courts competent to resolve economic disputes on the territories of those states.

When applying the 1965 Hague Convention, commercial courts should take into account Item VIII of Declarations of the Russian Federation to the Convention, that collection of taxes or costs for the services rendered by the State addressed (with the exception of those provided for by subparagraphs a) and b) of the second paragraph of Article 12) by any Contracting State shall be viewed by the Russian Federation as refusal to uphold the Convention in relation to the Russian Federation, and, consequently, the Russian Federation shall not apply the Convention in relation to this Contracting State. In such a case, the notification about the trial and other judicial documents are forwarded to the foreign person on the basis of a bilateral international legal assistance treaty, and where no such treaty exists – in accordance with Chapter 12 of the ComPC RF.

29. Due to execution of a letter of request in a foreign state, the commercial court prolongs the term of consideration of the case in the manner stipulated in Part 2 of

Article 152, Part 3 of Article 253 of the ComPC RF, postpones the trial in the manner stipulated in Article 158 of the ComPC RF.

Participation of foreign persons in the case does not by itself mean that the case is an especially complicated one and does not result in prolongation of consideration of the case for up to six months by virtue of Part 2 of Article 152 of the ComPC RF. Prolongation of the term of trial by virtue of the aforementioned norm may be caused by the need to duly notify a person located in a foreign state about the trial.

In accordance with Part 3 of Article 253 of the ComPC RF, if a treaty on legal assistance does not stipulate a term for forwarding requests to an institution of justice or another competent body in a foreign state, or if no such treaty exists, the term of consideration of the case may be prolonged for no more than six months.

When applying Part 3 of Article 253 of the ComPC RF, commercial courts should note, that if the consideration of the case is prolonged for a term stipulated in a legal assistance treaty for the forwarding of requests to an institution of justice or another competent body in a foreign state (or if no such term is stipulated in the treaty, or if the treaty does not exist – for no more than six months), this does not exclude prolongation of consideration of the case in the manner and on the grounds stipulated in Part 2 of Article 152 of the ComPC RF. Where such grounds exist, the aforementioned terms of prolongation may be summed up; a concrete term, for which the consideration of the case is prolonged, is indicated in the court decree.

In accordance with Part 2 of Article 253 of the ComPC RF, cases with participation of foreign persons, if these persons or their management bodies, branch offices, representative offices or their representatives authorized to conduct the case are located or reside on the territory of the Russian Federation, are considered within the terms stipulated in the Code.

30. Where in rendering legal assistance the Ministry of Justice of the Russian Federation cooperates with the competent bodies of foreign states through diplomatic channels (through bodies of the Ministry of Foreign Affairs of the Russian Federation), commercial courts forward requests (including those for the service of documents summoning before the court) to these states no later than nine months prior to the day of consideration of the case, unless otherwise stipulated in an international treaty.

Where in rendering legal assistance the Ministry of Justice of the Russian Federation directly cooperates with the central authorities of justice in foreign states, commercial courts forward requests to these states no later than six months prior to the day of consideration of the case, unless otherwise stipulated in an international treaty.

31. By implication of Item 6 of Part 1 of Article 135 of the ComPC RF, within the framework of performance of other actions aimed at ensuring the correct and timely consideration of the case, if circumstances arise that preclude the consideration of the case on the initially appointed date, the commercial court may appoint a reserve date for holding the court session.

A decree to accept the statement of claim, application for proceedings may appoint both the date of the preliminary court session and the possible date of the main court session, should the court find the case prepared in the preliminary court session.

Herewith, if a court notification indicates that the trial is postponed to the reserve date due to a certain circumstance, this does not mean that there are obstacles to postponing the trial and considering the case on the reserve date, should other circumstances arise, which constitute grounds for postponing the trial.

If the condition on which the reserve date is to be used, indicated in the court notification, does not arise, and the court notification is not received in due time, but the trial is postponed, it is not necessary to forward to the foreign person a new court notification regarding the consideration of the case on the reserve date indicated in the initial notification.

32. By implication of Part 2 of Article 253 of the ComPC RF, Item 3 of Article 54 of the CC RF, if a representative of a foreign person, authorized to receive notifications about the trial and other judicial documents, is located on the territory of the Russian Federation, these documents are forwarded to the address of such a representative in the general manner stipulated in Articles 121, 123 of the ComPC RF.

In this situation it is not necessary to forward judicial documents to the address of a party in a foreign state.

33. If there is no reliable information about the location of a foreign person participating in the case, the forwarding of a notification to the last known location or place of residence of the defendant (third person) is regarded as due notification (Part 5 of Article 123, Item 3 of Part 2 of Article 125 of the ComPC RF, Part 1 of Article 253 of the ComPC RF).

If there is no such information, or if the court doubts its reliability, forwarding of notifications to the addresses known to the court is regarded as due notification.

Herewith, the court may suggest it to the plaintiff to present information from the trade registers of countries, with indication of location of the foreign persons participating in the case and (or) may perform a separate procedural action – inspection of open information available on the Internet and placed on the official

websites of the authorized foreign bodies tasked with registration of legal persons and containing data about the registration of legal persons, with consequent printout of those data and their translation into the Russian language.

34. In accordance with the principle of the language of proceedings (Article 12 of the ComPC RF) requests of commercial courts are submitted to the bodies of the Ministry of Justice of the Russian Federation and of the Ministry of Foreign Affairs of the Russian Federation in the Russian language.

Parties to the dispute may submit to the commercial court certified translations of documents subject to service abroad.

35. The letter of request and documents attached thereto may be forwarded by the commercial court for translation into a foreign language to a translator, drawn to participation for administration of justice in the manner stipulated in the ComPC RF, or to a specialized institution that translates judicial documents into foreign languages (a translation bureau, the chamber of commerce and industry of a constituent entity of the Russian Federation, etc.).

The legislation of the Russian Federation does not exclude the possibility of drawing a translator to participation for translation of judicial documents into a foreign language, with consent of the participants of commercial proceedings.

Where so stipulated by an international treaty, the signature of the translator, made on the translation of judicial documents into a foreign language, must be certified by a notary.

The distribution of costs incurred by translation of judicial documents into a foreign language is performed in the manner stipulated in the ComPC RF.

36. Taking into account that persons participating in the case must use all their procedural rights in good faith (Part 2 of Article 41 of the ComPC RF), the absence of evidence of receipt of court notifications forwarded in the manner stipulated in the corresponding international treaty or federal law cannot by itself serve as grounds for unconditional reversal of the judicial act, if the court session was attended by an authorized representative of the foreign person, and (or) if the court received from the foreign person the statement of defence, evidence, motions, or if there is other evidence that the foreign person knew about the trial.

37. For the purposes of Part 6 of Article 121 of the ComPC RF, if there is evidence in the materials of the case that a copy of the first judicial act in the case under consideration was served upon the foreign person in the manner stipulated in Part 3 of Article 253 of the ComPC RF, such a person is regarded as duly notified during the consideration of the case by courts of appeal, cassation, supervision, during the consideration of an application regarding court costs by a court of first instance, if

the court considering the case fulfils its obligations to place information about the time and place of court sessions, performance of separate procedural actions on its official website in accordance with the requirements of the second paragraph of Part 1 of Article 121 of the ComPC RF.

In this situation, foreign persons, as well as Russian organizations and citizens of the Russian Federation engaged in entrepreneurial activities, participating in the case, take measures of their own to acquire information about the progress of the case, using any sources of such information and any communication means.

38. Commercial courts execute letters of request for the performance of separate procedural actions in the manner stipulated in the international treaties with participation of the Russian Federation, in Parts 1-3 of Article 256 of the ComPC RF.

Commercial courts of the Russian Federation execute requests of foreign courts, forwarded to them in the stipulated manner, in accordance with the norms of the ComPC RF, unless another manner is stipulated in an international treaty of the Russian Federation (Part 3 of Article 256 of the ComPC RF).

The court decides in a court session whether to execute or refuse to execute a foreign court request; a decree is issued after consideration of that issue (Article 74 of the ComPC RF).

### ***Requirements to Documents of Foreign Origin***

39. Commercial courts accept as evidence official documents from another state, if they are legalised by consular institutions of the Russian Federation and consular sections of diplomatic representations of the Russian Federation, unless otherwise stipulated in the norms of an international treaty.

Consular officials of the Russian Federation legalise foreign documents, submitted to official bodies on the territory of the Russian Federation in the manner stipulated in Article 27 of the Consular Regulations of the Russian Federation (Federal Law No. 154 of 5 July 2010 “The Consular Regulations of the Russian Federation”).

The legalisation of a foreign document is necessary to confirm the source of origin of a piece of evidence in commercial proceedings, but does not exclude court verification in order to establish the substantial correctness of information contained in it.

Where so stipulated in international treaties of the Russian Federation on legal assistance, commercial courts may accept foreign official documents without consular legalisation.

Commercial courts accept official documents without legalisation thereof, where so stipulated in the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (the Hague, 5 October 1961).

In accordance with this Convention, a special certificate (apostille) is placed on documents produced by competent bodies of one state and intended for use on the territory of another state.

The commercial court may check the information regarding the status of this Convention and the list of the Contracting States, as well as reservations made by them, on the official website of the Hague Conference on Private International Law (<https://www.hcch.net/russian>).

40. If a legalisation inscription is made or an apostille is affixed to the notary's inscription, certifying the authenticity of the signature and seal of the official on the official document confirming the legal status of a foreign person, this meets the requirements of Article 255 of the ComPC RF.

41. A power of attorney issued in the name of a foreign person on the territory of a foreign state is not an official document, and, as a general rule, does not require obligatory certification in the form of consular legalisation or affixation of apostille, unless it contains notes made by official bodies of a foreign state.

Herewith, if the court has doubts regarding the authenticity of the signature, the status of the person that signed the power of attorney, it may request additional evidence confirming the powers of the person participating in the case. Such evidence may include a power of attorney, issued by the foreign person to its representative and certified by a notary, with an affixed apostille or a legalisation inscription of a consular official.

***Establishing the Contents of Foreign Law Norms, Applicable by the Commercial Court in Economic Disputes Arising from Cross-Border Relations***

42. When considering economic disputes arising from cross-border relations, the commercial court applies the norms of foreign law in compliance with the conditions stipulated in Part 5 of Article 13 of the ComPC RF and the rules of application of foreign law norms stipulated in Article 14 of the ComPC RF.

If an international treaty of the Russian Federation stipulates conflict-of-laws rules for determining the applicable law, the commercial court is guided by the norms of the international treaty.

43. If the parties to a contract choose a commercial court in the Russian Federation as the legal venue, this does not automatically mean that their contractual relations are subject to Russian substantive law. If the parties do not express their will in regard of the applicable law, it means that this issue is resolved by the competent court, guided by the applicable conflict-of-laws rules stipulated in international treaties or federal laws.

44. Proceeding from Part 2 of Article 14 of the ComPC RF and Item 2 of Article 1191 of the CC RF, the commercial court may oblige the parties to present information about the contents of foreign law norms; a corresponding decree is issued in this regard.

The parties cannot be regarded as automatically obliged to present information about the contents of foreign law norms. If such an obligation is imposed upon the parties, this does not free the court from the obligation to establish the contents of foreign law norms.

Such information on the contents of foreign law norms may include: texts of foreign legal acts, references to sources of publication of foreign legal acts, conclusions regarding the contents of foreign law norms prepared by persons who have special knowledge in this sphere.

Herewith, by implication of Articles 55, 82, 83, 86 of the ComPC RF, a conclusion regarding the contents of foreign law norms, prepared by a person that has special knowledge in the sphere, is not an expert conclusion, and rules on appointment of expert examination do not apply to such conclusions regarding the contents of foreign law norms.

A party that failed to fulfil its obligation to present information regarding the contents of foreign law norms, imposed upon it by the court, consequently has no right to refer to the fact that the commercial court did not establish the contents of foreign law norms, if the commercial court took sufficient measures to do so.

A commercial court of the Russian Federation may regard the contents of foreign law norms as established, if a conclusion regarding the contents of foreign law norms submitted by one of the parties contains necessary and sufficient information and is not refuted by the other party, which presents information confirming that the foreign law norms have different contents.

45. Taking into consideration Part 2 of Article 14 of the ComPC RF, the commercial court may for the purposes of establishing the contents of foreign law norms apply (in the stipulated manner) for support and clarifications to the competent bodies or organizations, draw an expert or a specialist to participation (Articles 55 and 55<sup>1</sup> of the ComPC RF, Item 2 of Article 1191 of the CC RF).

Taking into account Part 1 of Article 55 of the ComPC RF, the commercial court in the Russian Federation may entrust expert examination in the sphere of foreign law to a Russian or foreign citizen, who has special knowledge in the sphere of foreign law, which may be confirmed by her/his scientific research in the sphere of foreign law or her/his activities in this sphere. The expert's special knowledge must be confirmed by corresponding evidence (education and further training certificates (diplomas), documents confirming a scientific degree, scientific publications, documents confirming working experience in the sphere of foreign law, etc.). The expert examination may also be entrusted to a teaching, scientific or educational institution of the Russian Federation, in which there are structural divisions involved in foreign law studies.

Herewith, the expert may be asked questions regarding the contents of foreign law norms, not regarding the legal assessment of the parties' relations and evidence presented, *e.g.* regarding the validity of a disputed contract.

46. An expert conclusion on issues of contents of foreign law norms is a piece of evidence in the case (Article 75 of the ComPC RF). The court evaluates this piece of evidence in accordance with the rules of Chapter 7 of the ComPC RF.

When evaluating an expert conclusion, the court takes into account whether it contains references to foreign law norms, to the practice of their official interpretation and application, including clarifications of judicial bodies, examples of resolution of similar conflict situations, citations of the legal doctrine.

An expert conclusion is not regarded as a relevant and admissible piece of evidence, if it is in fact an analysis of the relations of the parties and of the evidence presented in the case (Articles 67, 68 of the ComPC RF).

After evaluating the expert conclusion, the court concludes whether it is possible to establish the contents of foreign law norms subject to application in adjudication of the case.

### ***Provisional Measures in Economic Disputes Arising from Cross-Border Relations***

47. When commercial courts apply preliminary provisional measures (Parts 1, 2 of Article 99 of the ComPC RF), aimed at ensuring the property interests of the applicants in disputes with participation of foreign persons, norms of international treaties and the rules of competence stipulated in Articles 247, 248, 249 of the ComPC RF should be taken into account.

48. In accordance with provisions of Section V of the ComPC RF, commercial courts take preliminary provisional measures in cases with participation of foreign

persons (Article 250 of the ComPC RF) regarding economic disputes and other cases pertaining to entrepreneurial and other economic activities (Part 1 of Article 247 of the ComPC RF), if the criteria of jurisdiction stipulated in Part 3 of Article 99 of the ComPC RF are met, and if there are grounds for application of such measures, indicated in Part 2 of Article 90 of the ComPC RF.

49. Provisional measures may be adopted by a commercial court of the Russian Federation in regard of a claim considered on its merits in a foreign court, if the commercial court has effective jurisdiction, namely: at the location of the applicant; at the location of the monetary funds or of other property, in regard of which the applicant motions for measures to be taken to ensure property interests; at the place of violation of the applicant's rights.

Herewith, jurisdiction is regarded as effective, if within it provisional measures may be taken in a due and fast manner. In this regard, jurisdiction to take provisional measures may not coincide with jurisdiction to consider the dispute on its merits.

If the commercial court is not competent to consider the main dispute, this does not prevent it from taking provisional measures to secure a claim considered on its merits by a foreign court.

When taking such provisional measures, the commercial court is obliged to check whether the foreign court is competent to consider the case on the merits of the dispute, and whether the exclusive competence of commercial courts in the Russian Federation is not violated by consideration of the case in a foreign court.

50. The commercial court refuses to perform the provisional measures request of a foreign court, if it is forwarded in the manner of rendering of legal assistance.

Taking of provisional measures (as well as initiation of action proceedings upon the application of a foreign court in favour of any private person) does not pertain to mutual legal assistance and cannot be performed in the manner of rendering of legal assistance by a court of one state based on a request of a court of another state.

For example, by virtue of the 1992 Agreement, competent courts and other bodies of the states – members of the Commonwealth of Independent States are obliged to render mutual legal assistance. Herewith, mutual rendering of legal assistance includes service and transfer of documents and performance of other procedural actions, in particular conduct of expert examinations, hearing of statements of the parties, witnesses, experts and other persons. However, in accordance with Article 5 of the 1992 Agreement, mutual legal assistance does not include the taking of provisional measures or initiation of other proceedings upon the application of a foreign court.

51. Provisional measures in a dispute within the competence of a foreign international commercial arbitration institution may be taken by the commercial court at the location or place of residence of the debtor or at the location of the debtor's property (Part 3 of Article 90 of the ComPC RF).

52. Provisional measures in the form of prohibition to participate in the consideration of a dispute in the courts of the Russian Federation, taken by a foreign court, do not prevent the commercial court from considering the aforementioned dispute, if by law that dispute is within the competence of the commercial court.

### *Closing Provisions*

53. Due to the adoption of this Ruling, the following are regarded as no more subject to application:

- first paragraph of Item 1, first paragraph of Item 3, Items 5-7, 16-32 of the Ruling of the Plenary Session of the Supreme Commercial Court of the Russian Federation No. 8 of 11 June 1999 “On Effect of International Treaties of the Russian Federation in Regard of Issues of Commercial Procedure”;
- Item 32 of the Ruling of the Plenary Session of the Supreme Commercial Court of the Russian Federation No. 55 of 12 October 2006 “On Taking of Provisional Measures by Commercial Courts”;
- ninth paragraph of Item 3 of the Ruling of the Plenary Session of the Supreme Commercial Court of the Russian Federation No. 12 of 17 February 2011 “On Certain Issues of Application of the Commercial Procedure Code of the Russian Federation, as Amended by Federal Law No. 228 of 27 July 2010 “On Amendments to the Commercial Procedure Code of the Russian Federation”;
- Item 24 of the Ruling of the Plenary Session of the Supreme Commercial Court of the Russian Federation No. 99 of 25 December 2013 “On Procedural Terms”.

Chief Justice of the Supreme Court of  
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of  
the Supreme Court of the Russian Federation

V.V. Momotov