

A. The Arbitrazh Courts

The arbitrazh courts are presently governed by the Federal Constitutional Law of the Russian Federation “On Arbitrazh Courts in the Russian Federation” (hereinafter the Law “On Arbitrazh Courts”) and by the Arbitrazh Procedure Code (also referred to below as the “APC”) of the Russian Federation, both passed in April 1995.¹ The Law “On Arbitrazh Courts” has as its primary purpose the general establishment of the courts and the definition of their structure. It does not define the jurisdiction of the arbitrazh courts with specificity, stating only that the arbitrazh courts are to resolve economic disputes and consider other cases which are assigned to their competence by the Constitution, the Law “On Arbitrazh Courts,” the Arbitrazh Procedure Code or other federal laws.² In considering such cases, the tasks of the arbitrazh courts are defined as:

“protection of the violated or disputed rights and legal interests of enterprises, institutions, organizations (hereinafter—organizations) and citizens in the sphere of entrepreneurial and other economic activities;

facilitation of the strengthening of legality and the prevention of violations of law in the sphere of entrepreneurial and other economic activities.”³

A more detailed definition of the competence of the arbitrazh courts is provided by Article 22 of the Arbitrazh Procedure Code (APC):

¹ Federal Constitutional Law of the Russian Federation No. 1-FKZ “On Arbitrazh Courts in the Russian Federation,” *Sobranie Zakonodatel'stva RF*, 1995, No. 18, Item 1589; Arbitrazh Procedure Code of the Russian Federation, *Sobranie Zakonodatel'stva RF*, 1995, No. 19, Item 1709. A full English translation of both can be found in the journal *STATUTES & DECISIONS: THE LAWS OF THE USSR AND ITS SUCCESSOR STATES*, Volume 32, No.4 (July-August 1996) (S.J. Reynolds, ed.).

² The general statement appears in Article 4 of the Law “On Arbitrazh Courts in the Russian Federation.”

³ The quoted language appears in Article 5 of the law “On the Arbitrazh Courts.”

Article 22. Jurisdiction

1. Cases concerning economic disputes arising from civil, administrative, or other legal relationships shall be subject to the jurisdiction of an arbitrazh court [if they are]:

- (1) between legal persons (hereinafter-organizations) and citizens engaging in entrepreneurial activity without the formation of a legal persons and having the status of an individual entrepreneur acquired according to the procedure established by law (hereinafter - citizens);
- (2) between the Russian Federation and subjects of the Russian Federation and among subjects of the Russian Federation.

2. Economic disputes resolved by an arbitrazh court shall, in particular, include disputes concerning:

- disagreements concerning a contract the conclusion of which is envisioned by law, or [concerning which] the transfer of disagreements to the arbitrazh court for resolution has been agreed upon by the parties;
- a change in the conditions of or the abrogation of contracts;
- the failure to execute or the improper execution of obligations;
- recognition of the right of ownership;
- a demand by an owner or other legal possessor [for the return of] property from the illegal possession of another;
- violation of the rights of an owner or other legal possessor not connected with the loss of possession;
- compensation for losses;
- recognition as void (in full or in part) of non-normative acts of state bodies, bodies of local self-government, and other bodies that are not in accord with laws and other normative legal acts, and that violate the rights and legal interests of organizations and citizens;
- the defense of honor, dignity and business reputation;
- recognition of an execution or other document, with respect to which recovery is being carried out in an uncontested (nonacceptance) procedure, as not being subject to execution;
- the appeal of a refusal of state registration or an evasion of state registration within the established period of an organization or a citizen, and in other instances when such registration is envisioned by law;
- the recovery from organizations and citizens of fines by state bodies, bodies of local self-government, and other bodies exercising oversight functions, if their recovery in an uncontested (nonacceptance) procedure is not envisioned by federal law;

- a refund from the budget of monies exacted by bodies exercising oversight functions in an uncontested procedure in violation of the requirements of the law or another normative legal act.
3. An arbitrazh court shall consider other cases, including:
- concerning the establishment of facts having significance for the emergence, change, or termination of the rights of organizations or citizens in the sphere of entrepreneurial and other economic activity (hereinafter - concerning the establishment of facts having legal significance);
 - concerning the insolvency (bankruptcy) of organizations and citizens.
4. In the instances established by the present Code and other federal laws, cases concerning economic disputes and other cases with the participation of formations that are not legal persons (hereinafter-organizations), and citizens who do not have the status of an individual entrepreneur shall be subject to the jurisdiction of an arbitrazh court.
5. Other cases also may be referred to the jurisdiction of an arbitrazh court by federal law.
6. An arbitrazh court shall consider cases subject to its jurisdiction in which participate organizations and citizens of the Russian Federation, as well as foreign organizations, organizations with foreign investments, international organizations, foreign citizens, and persons without citizenship engaging in entrepreneurial activity, unless otherwise envisioned by an international treaty of the Russian Federation.

This definition is a bit complex, especially at first glance. It is helpful to separate several different aspects of the analysis.

1. Jurisdiction by Specific Assignment vs Jurisdiction Under General Principles

According to the definition contained in Article 22, cases may fall within the jurisdiction of the arbitrazh courts in one of two ways: (1) They may be within the court's jurisdiction because the characteristics of the case correspond to the general elements defining the types of cases assigned to the court. These are given in points 1-3 and point 6 of Article 22. (2) They may also be within the jurisdiction of the arbitrazh courts because they are specifically assigned to the arbitrazh courts by the APC or a federal law, in accordance with points 4 and 5.

For most types of commercial disputes—contract disputes, claims for damages, and so forth—the general jurisdictional rules will apply to determine whether the arbitrazh court has jurisdiction over the case. These rules, in turn, depend upon two general criteria concerning the status of the parties and the nature of the dispute (discussed further

below). In order for a case to come within the arbitrazh court's jurisdiction on these grounds, it must meet both criteria. If it does not, it will be rejected by the arbitrazh court and will, in the majority of cases, be subject to the jurisdiction of the general courts.

Cases that fall within the jurisdiction of the arbitrazh court due to direct assignment by legislation are a special category. If a case is assigned by legislation to the jurisdiction of the arbitrazh courts, the case does not also have to meet the general jurisdictional requirements. For example, the consideration of all bankruptcy cases is assigned by the Law "On Insolvency (Bankruptcy)" to the arbitrazh courts. Cases concerning the bankruptcy of individuals will be considered by the arbitrazh courts despite the fact that they do not meet the general criteria concerning the status of the parties. The APC does not place any limitations on the ability of federal legislation to assign additional cases to the arbitrazh courts.

2. Jurisdiction Under the General Principles

The general principles defining cases which are within the jurisdiction of the arbitrazh courts require that two criteria be met. The parties to the case must meet certain status requirements, and the dispute must be an "economic dispute."

a) Status of the Parties

With respect to the legal status of the parties, the arbitrazh courts have general jurisdiction over disputes between and among legal entities and citizens registered and doing business as individual entrepreneurs, and also disputes between and among the Russian Federation and subjects of the Russian Federation. Although the language of point 1 of Article 22 is not entirely clear on the issue, the arbitrazh courts also have jurisdiction over disputes between legal entities and entrepreneurs and state bodies of various kinds. Cases involving an individual citizen who is not registered as an entrepreneur do not fall within the general jurisdiction of the arbitrazh courts, even where the legal nature of the dispute is otherwise identical to those that would be considered by the arbitrazh court. For example, a business seeking a remedy for damage to its business reputation caused by distribution of false information about it by an individual may file suit in the arbitrazh court if the individual is registered as an individual entrepreneur, but must file suit in the courts of general jurisdiction if he is not so registered. Likewise, an individual entrepreneur wishing to obtain damages due to defects in the products sold to him by an enterprise for his use in his business must file suit in the arbitrazh court, while an individual citizen sold the same defective goods as a consumer must pursue such a claim in the courts of general jurisdiction.

The status requirement applies to all of the parties in the relevant case, including third parties, if their participation is required for the proper resolution of the case. It also applies to all parties in cases in which multiple claims are combined. If even one of the parties to the case is an individual not registered as an entrepreneur, the case may not be considered by the arbitrazh court. The court has no discretion in this matter. Unlike the courts of general jurisdiction, the arbitrazh courts are considered to be specialized courts

with a restricted jurisdiction, and as such their authority is strictly limited by the language of the law(s) which grants it. Consideration of a case that did not meet the legislated requirements by an arbitrazh court would be viewed as consideration by an improper or illegal court, and the decision would be subject to reversal.

b) Nature of the Dispute

An “economic dispute” for the purposes of arbitrazh court jurisdiction is not actually “defined” in the statute, in the sense of a set of criteria that may be applied to a specific dispute to determine whether it is “economic” in nature. Instead, point 2 of Article 22 provides a list of types of dispute that will fall within this category. The list is quite broad, and includes most of the types of disputes likely to arise between business entities — contracts and other obligations (including those arising in tort), property disputes of all types, protection of business reputation, and so forth. It also encompasses most of the types of disputes likely to arise between businesses and government bodies — such as the imposition and appeal of fines and penalties, appeals of registration and licensing refusals, and appeals of other state actions taken in regard to a specific business or entrepreneur.

The list of specific types of “economic disputes” in the law, although long, is not exhaustive. Other disputes between parties meeting the status requirements may also fit within the definition. However, because neither the Law “On Arbitrazh Courts” nor the APC specifies criteria for determining when a type of dispute not listed is an “economic dispute,” such a determination will be a matter for the courts to decide. A dispute between entities which are subject to the general jurisdiction of the arbitrazh courts by their status but which is not an “economic dispute” would fall within the jurisdiction of the general courts.

3. Specific Exceptions to the General Principles

The general rules which define arbitrazh court jurisdiction are subject to a number of exceptions. Two of these exceptions are stated in point 3 of Article 22. By point 3, the arbitrazh court is specifically given additional jurisdiction over all cases of insolvency (bankruptcy) of both individuals and legal entities. This provision codifies the assignment of such cases that was made by the bankruptcy legislation. Point 3 also gives the arbitrazh courts jurisdiction over cases involving the establishment of legal facts having significance for economic activity, although some of such cases would not fall within the general rules.

The third exception is not as obvious from the text of the Article, but is quite important in practice. Within point 2’s list of “economic disputes” subject to arbitrazh court jurisdiction are included disputes concerning the voidance by the court of a “non-normative” act of a state body which is not consistent with law or with other normative legal acts. “Non-normative” acts of state bodies include acts and actions which concern a single individual or entity — for example, the application of the tax laws to a single enterprise — and which do not establish a general rule or principle (a “norm”) to be

followed by or applied to other individuals or entities. Although the subpoint is formulated to state positively what is within the arbitrazh courts' jurisdiction, the inclusion of only non-normative acts in the list means that the arbitrazh courts do not review cases concerning the legality of regulations, instructions or other general rules. Thus, the arbitrazh courts will take jurisdiction over claims requesting that an action of a state body be held void because it is in violation of the applicable legal rules, but will not take jurisdiction over a claim requesting that the general regulation or legal rule be held void because it is in violation of higher or controlling law.

In considering this exception, an important distinction must be made between cases in which the party filing the case is requesting that the normative act itself be held void — that is, be recognized as not having legal force in relation to anyone at all — and cases in which the party filing the case only requests that a particular normative act not be applied to it, due to its inconsistency with higher law. In the first case, the arbitrazh court will not take jurisdiction over the claim. In the second, the arbitrazh court may take jurisdiction over the dispute, and will apply to the individual case the rule which has the higher legal force. Thus, in a dispute in which a party claims that a normative act applied to it is not consistent with controlling law and requests that the court compel the body which applied the normative act to apply instead the rule contained in the law, the arbitrazh court has jurisdiction. It may consider the dispute and if it finds that the normative act is inconsistent with the controlling law, it will apply the rule contained in the law. If, in the same circumstances, the party requests that the normative act itself be held to be generally void, the arbitrazh court will not take jurisdiction. In practice, the distinction may come down to the way in which the party filing suit expresses its claim.

For the reasons discussed, complaints concerning the recognition of rules, regulations, instructions and other acts as generally void — even where the challenged acts are applicable only to business entities and are designed specifically to regulate their economic activities — must, in general, be made before the courts of general jurisdiction. Several recent pieces of legislation, however, have specifically assigned cases concerning normative acts in a particular sphere to the arbitrazh courts (a particularly important example is Part I of the recently enacted Tax Code). It is quite likely that this trend will continue as legislators find it more desirable to concentrate in a single court system the interpretation and enforcement of an interconnected body of laws and regulations designed to regulate a particular sphere of the economy. Any individual dispute concerning a normative act of a state body must be evaluated carefully at the time of filing to determine whether it falls within the jurisdiction of the arbitrazh courts or the courts of general jurisdiction.

4. Jurisdiction Over Foreign Parties

The general jurisdictional rules of the arbitrazh courts do not distinguish between parties on the basis of the foreign or domestic nature of legal entities or the citizenship of individual entrepreneurs. Point 6 of Article 22 of the APC provides that the arbitrazh court will have jurisdiction over foreign legal entities, international organizations, legal entities with foreign investment, and individuals carrying out entrepreneurial activities

who are not citizens of Russia, unless it is otherwise provided in an international agreement of the Russian Federation. This rule was established by the 1995 Arbitrazh Procedure Code, and those whose businesses were originally established prior to 1995 should take special note of this change. Prior to 1995, enterprises with foreign investment were subject to the jurisdiction of the arbitrazh court only if an international agreement specifically provided for such jurisdiction or if the parties agreed to submit the dispute to the arbitrazh court. Under current law, the arbitrazh court has jurisdiction over all cases falling within the general definition of its authority, without reference to the domestic or foreign status of the parties, and the parties may not move the case from one court system to the other by agreement.

Although point 6 of Article 22 provides that the general rules for arbitrazh jurisdiction apply to foreign entities and individuals equally with Russian entities and individuals, unless an international agreement of the Russian Federation provides otherwise, the general rules are supplemented by some additional specifics. These specific rules applicable to cases concerning foreign parties are contained in Article 212 of the APC. According to these rules, the arbitrazh courts have jurisdiction in cases in which:

- ✓ a foreign person is present or resides in the Russian Federation;
- ✓ a foreign entity has a representation or subsidiary in the Russian Federation;
- ✓ a respondent has property in the Russian Federation;
- ✓ the case concerns a contract, the execution of which did take place or was to have taken place on the territory of the Russian Federation;
- ✓ the case concerns actions or other circumstances which occurred in the Russian Federation and caused damage to property;
- ✓ the case concerns unjust enrichment which took place in the Russian Federation;
- ✓ the case concerns damage to honor, dignity or reputation and the plaintiff is in the Russian Federation;
- ✓ there is an agreement on such jurisdiction between a foreign person or entity and a citizen or organization of the Russian Federation.

Three exceptions limit these general rules. The first applies to cases concerning immovable property, which are to be heard at the place of location of the property. Thus, cases concerning rights in immovable property located outside the Russian Federation will not be heard, regardless of whether one of the other criteria for jurisdiction is present, while cases concerning immovable property located in the Russian Federation will be considered at the location of the property. The second provides that suits concerning a contract for transport are to be heard at the place of location of the transportation agency. The third is the general exception for international agreements. If an international agreement of the Russian Federation contains provisions altering the rules, the provisions of the international agreement will be applied.

5. Coordination of Jurisdictional Issues Between the Arbitrazh Courts and the Courts of General Jurisdiction

While there are certainly issues of jurisdiction on which the two court systems or individual courts may disagree, the courts do make a particular effort to coordinate their approaches to questions of jurisdiction. In some cases, courts of one system may be willing to hear a case that is “close to the line” on jurisdiction, even if they are not certain that it is properly theirs, when the courts of the other system have already rejected the case on jurisdictional grounds. This ensures that parties are not left without a forum for the resolution of disputes or protection of rights. For this reason, it is important for a party in this position to make clear to the courts of the second system that the courts in the first have refused the case on the grounds that it is not within their competence.

JURISDICTION OF THE GENERAL COURTS (Provisions of the Civil Procedure Code)

Article 3. Right to make recourse to the court for judicial protection

All interested persons shall have the right to make recourse to the court, in the procedure established by law, for the protection of violated or disputed rights and legally protected interests.

Article 25. Jurisdiction of the courts over civil cases

[The following] are subject to the jurisdiction of the courts:

- cases concerning disputes arising from civil, family, labor and collective-farm legal relationships, if even one of the parties to the dispute is an individual citizen, with the exception of instances where the resolution of such disputes is assigned by law to the jurisdiction of administrative or other bodies;
- cases concerning disputes arising from contracts for the transport of freight in direct international rail transport and air freight transport between state enterprises,
- institutions, and organizations, cooperative organizations and their associations, or other social organizations, on the one hand, and bodies of rail transport or air transport on the other, arising out of the corresponding international contracts;
- cases arising from administrative-law relationships listed in Article 231 of the present Code;
- cases concerning special proceedings, listed in Article 245 of the present Code.

Other cases shall also be within the jurisdiction of the courts [when] assigned by law to their competence.

The courts shall also consider cases in which foreign citizens, persons without citizenship, foreign enterprises and organizations participate, if it is not otherwise envisioned by inter-state agreements, international treaties or the agreement of the parties.