

Russian Supreme Court summarises court practices on rules for pre-trial dispute settlement

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On 22 June 2021, the Plenum of the Supreme Court of the Russian Federation approved a [Resolution](#)* on certain issues of pre-trial settlement of disputes in civil and commercial proceedings.

The Supreme Court issued an official clarification of the rules on pre-trial dispute settlement to ensure courts consistently apply the provisions of the law and consolidate long-standing court practices. The Resolution does not provide for fundamentally new changes, but reflects current court practices taking into account usual business practices. For example, the Supreme Court has allowed filing claim letters via email, social networks or messenger services, submitting screenshots as proof that a claim letter has been sent, opting for mediation instead of a pre-trial procedure and much more.

How can a claim letter be sent to a defendant?

The Supreme Court has expressly stated that the claim letter can be sent not only by Russian post but also by courier delivery services. The claim can equally be sent by email, via social networks and messengers when this procedure is established in the agreement or this method of communication is the common practice of the parties.

What alternative forms of pre-trial dispute resolution can be used?

The Supreme Court has indicated that the pre-trial procedure can be implemented in various forms: through a procedure performed by the parties to a dispute on their own (e.g. negotiations, pre-trial procedure) or with the involvement of third parties (e.g. mediators, the financial ombudsman for consumers of financial services), as well as by applying to public agencies in an administrative procedure.

The compulsory pre-trial procedure under which a claim letter is sent may be replaced by another procedure, including negotiation or mediation, even if the parties had not agreed on such a procedure before the dispute arose.

Who must prove compliance with the pre-trial procedure and in what form?

The Supreme Court has issued a reminder that the claimant bears the burden of proof that a claim letter has been sent, but the defendant can prove that the claimant sent him other documentation.

That a claim letter was sent via the internet can be proven by, among other things, using screenshots containing the address of the internet page from which the printout was made and the exact time of its receipt. Confirmation of conciliation in the form of negotiations and mediation can be made by providing the court with a protocol of disagreement, a declaration of refusal to continue mediation or by other means.

If the statement of claim is not accompanied by supporting documents, it must be returned. The statement of claim will also be returned if the deadline for pre-trial settlement has not expired before the day of filing the statement of claim and there is no response from the defendant to the claim letter.

Which persons involved in the case must comply with the pre-trial procedure?

If there is more than one claimant and/or defendant involved in the dispute:

- the claim letter must be sent to each defendant; and
- each claimant whose claim may be considered separately from those of the other claimants must comply with the pre-trial procedure.

Third parties with independent claims in relation to the subject matter of the dispute are exempt from the obligation to observe the pre-trial procedure; as is the defendant when filing a counterclaim against the claimant. If a pre-trial procedure has been observed by or in relation to a predecessor, it is not necessary to observe the pre-trial procedure again in the same dispute.

Is it possible to make mistakes when stating the amount of the claim in the claim letter?

If the claimant indicated a specific dispute in the claim letter, but the amounts of the principal, penalty and interest do not coincide with the amounts indicated in the subsequent statement of claim, the pre-trial procedure will be deemed complied with. If the claim letter only states the amount of the principal debt, but the claim is for both the debt and the penalty, the pre-trial procedure will also be deemed complied with.

However, if the claim letter and the statement of claim only demand the principal debt and no penalty is claimed in court, the claimant will have to comply with the pre-trial procedure before going to court to recover the penalty in a separate lawsuit. Similar rules apply also for the recovery of interest under Articles 317 and 395 of the Russian Civil Code.

When should a defendant plead non-compliance with the pre-trial procedure?

A defendant may apply to the court to leave an action without consideration due to the claimant's non-compliance with the mandatory pre-trial procedure no later than the day on which the defendant submits its first objections on the merits of the dispute.

The defendant's petition will be granted if it is filed during the hearing in first instance and:

- the claimant has not complied with the pre-trial procedure for settling the dispute as prescribed by law or the contract;
- the defendant has expressed its intention to settle the dispute; or
- the statutory or contractual deadline for pre-trial settlement has not expired and there is no response to the claim letter or any other document confirming compliance with such settlement at the time of filing the petition.

Comments

The Supreme Court, taking into account many years of court practices, trends and the specifics of modern digital communication in the business environment, has provided parties to a dispute with the opportunity to use new ways of resolving conflicts peacefully outside the courtroom.

In doing so, the Supreme Court's findings play an important role in shaping a uniform approach of judges when resolving issues related to compliance with the pre-trial procedure, especially regarding evidentiary aspects.

The above should be taken into account when developing litigation strategies for dispute resolution.

For more information on this eAlert, please contact CMS Russia experts [Sergey Yuryev](#), [Tatiana Sviridova](#), [Anastasia Entyakova](#) or your regular contact at CMS Russia.

** In Russian*

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