Rules of evidence (including cross-border evidence) in civil proceedings Q&A: Russian Federation

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This Q&A provides an overview of the rules of evidence in civil proceedings, including rules on the disclosure obligations of the parties, admissibility of evidence, witness evidence, the standard of proof, as well as issues that arise in gathering cross-border evidence.

This is part of *Cross-border dispute resolution*.

Part 1- Rules of evidence in domestic proceedings

1. What are the main sources of the rules of evidence that regulate civil proceedings in your jurisdiction?

Rules of evidence are generally set in the Commercial Procedural Code of the Russian Federation (*Chapter 7*), which governs the procedure for resolving commercial disputes between legal entities, and in the Civil Procedural Code of the Russian Federation (*Chapter 6*), which governs the resolution of general civil disputes involving individuals.

Particular details and requirements are provided in the guidelines of the Supreme Court, Supreme Commercial Court (dissolved) (note that while the court has been dissolved, the guidelines remain in force). For instance, the Commercial Procedural Code establishes basic rules on appointing expert witness and presenting expert opinion, but specific requirements for an expert opinion on the content of foreign law are elaborated in the Ruling of the Plenum of the Supreme Court of the Russian Federation dated 27.06.2017: "On Commercial Courts Determining Commercial Disputes Arising from Relationship Involving Foreign Element."

2. What are the discovery/disclosure obligations, if any, of the parties in relation to civil proceedings? What is the role of the courts in the evidence-taking process in your jurisdiction? Are there any other procedures in place for obtaining evidence from an adverse party and third parties?

Disclosure/discovery obligations

Russian procedural law provides that all parties to proceedings have the right to examine evidence submitted by other parties before the trial starts (*Article 41(1), Commercial Procedural Code and Article 35(1), Civil Procedural Code*).

The Commercial Procedural Code specifically states that each party to proceedings must disclose the evidence to which they refer in support of their claims or objections to any other parties before the trial starts or within time limits as set out by a court (*Article 65(3), Commercial Procedural Code*). A party may only refer to evidence that has been examined by other parties in advance (*Article 65(4), Commercial Procedural Code*).

However, in practice it is not uncommon for a party to submit new written evidence to the court and the other party long after the trial has started, with no good reason for the delay. In such cases, the courts proceed from the assumption that they may not refuse to admit such evidence. Where parties to proceedings fail to disclose any evidence before the trial starts but submit it in the course of the evidence examination stage, such evidence must be examined by the commercial court of first instance irrespective of the reasons behind the infringement of the evidence disclosure procedure (*Clause 35, Information Letter of the Presidium of the Supreme Commercial Court of the Russian Federation No. 82 dated 13.08.2004: "On Certain Issues Arising in the Course of Application of the Commercial Procedural Code of the Russian Federation"*).

The reasons for a failure to disclose evidence in advance may be considered by the commercial court when allocating court costs (*Article 111(2), Commercial Procedural Code*). As such, the only penalty for late submission of evidence is that a person who breached the rules of evidence may be ordered to pay court costs irrespective of the outcome of the proceedings (*Article 65(5), Commercial Procedural Code*).

Role of the courts in evidence-taking process

In view of the adversarial nature of proceedings as provided for by the Commercial Procedural Code of the Russian Federation, it is the responsibility of the parties to collect and submit evidence to support their case (*Ruling of the Presidium of the Supreme Commercial Court of the Russian Federation No. 6616/11 dated 04.10.2011, case number A31-4210/2010-1741*). It is not for the commercial court to collect evidence.

However, Russian law provides for some rules stipulating the court's right (not its obligation) to be closely involved both in determining circumstances of proof and in collecting evidence:

- A commercial court must determine the relevant circumstances based on the claims and objections of parties to proceedings according to the applicable substantive rules (*Article 65(4), Commercial Procedural Code*).
- A commercial court may, at its own initiative, call a witness who was previously involved in preparing a document presented as written evidence examined by the court, or in the creation or modification of an item presented as material evidence examined by the court (*Article 88(2), Commercial Procedural Code*).
- A commercial court may, at its own initiative, appoint expert examination if:
    - required by law or a contract;
    - necessary to verify an application for false evidence; or
    - there is additional or repeated examination required.

- A commercial court may suggest that parties to proceedings submit additional evidence that is required to identify relevant circumstances by issuing a lawful and valid court order before the trial starts, or within the time limits set by a court (*Article 66(2), Commercial Procedural Code*).
- A commercial court may appoint expert examination at its own initiative to determine issues in a bankruptcy case requiring special expertise (*Article 50(3), Federal Law No. 127-ФЗ dated 26.10.2002 (as updated on 23.04.2018) "On Insolvency (Bankruptcy)"*).

Where a party to proceedings is unable to obtain necessary evidence from a person who has it, they may ask a commercial court to take the evidence (*Article 66(4), Commercial Procedural Code and Article 57(2), Civil Procedural Code*). Such an application must specify the following details:

- The evidence to be taken.
- The location of the evidence.
- The relevant circumstances to be identified through the evidence.
- The impediments to the party obtaining the evidence (for example, the possessor's written refusal to transfer evidence to the party voluntarily).

After it has reviewed the application and heard the party's submissions, the court will issue a ruling granting or dismissing the application. If a person fails to submit any evidence ordered to be disclosed for no good reason, the court may impose a monetary fine on them.

According to existing practice, the courts do not consider it possible to order that evidence be obtained from parties to a dispute. The courts may only suggest that the parties submit the necessary evidence or information. Where a party to a dispute disregards such a request, the court will have the right to draw adverse inferences.

Where a party to proceedings has reasons to believe that it will be impossible or difficult to submit the necessary evidence to the commercial court, they may file an application to preserve such evidence (*Article 72(1), Commercial Procedural Code and Article 65(1), Civil Procedural Code*). Measures preserving evidence may include:

- Transfer of evidence into the plaintiff's or another person's possession.
- Prohibition on the plaintiff or other persons from taking any action in respect of the evidence.
- Requiring a defendant to take specific actions to avoid damage to, or deterioration of, the evidence.

Other mechanisms to obtain disclosure from an adverse party and third-parties

Evidence may be obtained from third parties through an attorney's request (*Article 6.1, Federal Law "On Advocacy and the Bar in the Russian Federation"*).

A person to whom such a request is addressed must respond in writing within 30 days following receipt.

A person can refuse to give the requested information to the attorney in the following cases:

- They do not have the evidence.
- There is a defect in the form or procedure for execution and sending of an attorney's request as established by law.

- The requested information is regarded as sensitive information as established by law.

As there are no significant penalties for the failure to comply with an attorney's request, these requests are often disregarded by the recipients. In such a case, an attorney who failed to receive the necessary evidence may apply for a court order to disclose the same.

3. What are the rules of evidence regarding the burden or standard of proof in civil proceedings in your jurisdiction? Can the court draw any adverse inferences from failure to give evidence at trial?

Burden or standard of proof in civil proceedings

Each party to proceedings must prove the circumstances to which they refer in support of their claims and objections (*Article 65(1), Commercial Procedural Code and Article 56(1), Civil Procedural Code*). There is no clearly defined standard of proof in Russian civil proceedings.

In some cases this approach may be adjusted, and it will be sufficient for a person referring to a specific circumstance to mention it or submit prima facie evidence in support of it, with the burden of rebutting it placed on the adverse party, if that party is in a better position to defend their case.

In the Ruling of the Intellectual Property Court No. C01-533/2016 dated 08.07.2016, case No. A40-168039/2015, it was held that:

- The party's burden of proof to support their claims and objections must be potentially realistic based on reasonable opportunity to collect evidence, considering the nature of the relationship and such person's position in this relationship, and also honest exercise of their procedural rights.
- It is inadmissible to allocate burden of proof to a party where they are unable to obtain evidence held by the other party to a dispute who does not disclose such evidence acting in bad faith. In such cases, in support of their claims or objections, a party to proceedings may submit some evidence that may be considered by a court as sufficient minimum to prove circumstances referred to by such a party unless rebutted by the other party to a dispute (prima facie evidence).
- Where the other party does not wish to submit evidence to prove their objections and to rebut the first party's arguments who submitted evidence, it may only be considered as such party's refusal to rebut the circumstance referred to by the adverse party in a well-argued manner, with reference to specific documents.

Subject to this rule, where a supplier issues legal proceedings against the buyer for failure to pay for supplied goods, it may simply refer to the fact that the non-payment for goods occurred, and this will be assumed to be true, until and unless the buyer submits express evidence of payment for the goods.

In circumstances where a person challenges a sale agreement involving abuse of rights, and submits good arguments that both the seller and the purchaser acted in bad faith intending to prejudice the plaintiff's rights, it is the defendant who must prove that the agreement was entered into in the interests of the parties to the agreement and at a fair price, and not to prejudice the creditor's rights (*Ruling of the Supreme Court of the Russian Federation No. 309-ЭС14-923 dated 15.12.2014, case No. A07-12937/2012*).

Likewise, in legal entity's CEO liability cases (that is, cases of a director's liability for actions or omissions constituting breach of a duty to exercise reasonable care, skill and diligence), plaintiffs may refer to damages caused by the CEO's actions and submit prima facie evidence that their actions were in bad faith or unreasonable, while the CEO must give proper explanations of their actions or omissions, state reasons for the damages (such as poor market conditions, bad faith of a partner, employee or representative, unlawful actions by third parties, incidents, natural disasters, other events and so on) and submit evidence in support.

If the CEO refuses to testify, or where their explanations are obviously incomplete, the court may allocate the burden of proof to the CEO, who must then prove that there was no breach of their obligation to act reasonably and in good faith and in the interests of the legal entity (*Clause 1, Ruling of the Plenum of the Supreme Commercial Court of the Russian Federation No. 62 dated 30.07.2013: "On Certain Issues of Damages Reimbursement by Persons Forming Part of Entity's Bodies"*).

Adverse inferences for failure to give evidence at trial

Commercial proceedings are adversarial in nature (*Article 9(1), Commercial Procedural Code of the Russian Federation*). Accordingly, where a party does not wish to submit evidence, this will be regarded as that party's refusal to rebut the circumstance referred to by the adverse party in a well-argued manner, with reference to specific documents. A party to proceedings failing to take any procedural action will incur the risk of the consequences of their behavior (*Ruling of the Presidium of the Supreme Commercial Court of the Russian Federation No. 12505/11 dated 06.03.2012*).

> 4. Can challenges be made to the admissibility of evidence in courts? On what grounds? At what stage of the proceedings, can such challenges be made? Are there any exclusionary rules that permit parties to refuse to disclose a document or that prevents them from using certain types of evidence?

Applications to challenge the admissibility of evidence

Grounds

Procedural law provides that no evidence may be used if it was obtained in a manner contrary to federal laws (*Article 64(3), Commercial Procedural Code and Article 55(2), Civil Procedural Code*). This rule is elaborated on in case law, which provides that evidence obtained in an unlawful manner includes evidence where the human and civil rights guaranteed by the Russian Constitution were prejudiced in the course of evidence collection and preservation, or where evidence collection and preservation was effected by an improper person or body, or as a result of actions not provided for by procedural rules (*Ruling of the Supreme Commercial Court of the Russian Federation No. BAC-5280/10 dated 30.04.2010, case No. N A40-109225/09-67-777*).

Any evidence obtained through a breach of the rules applicable to the state, business, banking, journalism, commercial secrets, physician-patient or attorney-client privilege or any other secrets protected by law may be held to be inadmissable. For example, the Leningrad Region Court did not admit as evidence results of psychiatric examination of a person where a party referring to it could not explain the legal mechanism through which the examination was obtained (*Ruling of the Leningrad Region Court No. 33-2021/2014 dated 28.05.2014*).

There are contradictory court rulings as to whether video or audio recordings made without consent of the parties participating in relevant discussions are admissible. For example, there was a case where the court concluded that the video recording of a conversation did not breach privacy law, as the conversation related to the contractual relationship in dispute and the other party did not challenge the accuracy of the recording (*Ruling of the Supreme Court of the Russian Federation No. 33-КГ15-6 dated 14.04.2015; and similarly Ruling of the Supreme Court of the Russian Federation No. 35-КГ16-18 dated 06.12.2016*).

However, there have been other cases where the audio recording of a conversation was held inadmissible as "there was no evidence submitted to the court that the audio recording had been obtained in a lawful manner" (*Appellate Ruling of the Saint Petersburg City Court No. 33-17534/2017 dated 19.09.2017, case No. 2-937/2017 and Appellate Ruling of the Moscow City Court No. 33-25838/2016 dated 06.07.2016*).

When to apply

At any stage of the trial, parties to proceedings may raise their objections regarding the admissibility of evidence which they claim has been obtained in breach of the law. According to existing case law, even if there are objections against evidence, the court will admit it into the case and then assess its admissibility in a final court order issued on the merits.

Exclusionary rules of evidence
An attorney may not be called and interviewed as a witness regarding circumstances they became aware of because of being instructed by their client or in the course of providing relevant legal advice to their client. Attorney-client privilege covers any information relating to the attorney's provision of legal advice to their client (*Federal Law No. 63-ФЗ dated 31.05.2002* (*as updated on 29.07.2017) "On Advocacy and Bar in the Russian Federation"*).

5. Do the courts in your jurisdiction have any discretion to exclude the admission of a document that is otherwise admissible?

Discretion of court to exclude evidence
Neither Russian procedural law, nor court practice, provide for excluding the admission of a document that is otherwise admissible.

6. Do witnesses of fact give oral evidence or can they submit written evidence, for example, a witness statement or an affidavit made under oath? What are the requirements for presenting written evidence? Do courts permit a witness to be cross-examined and re-examined by the lawyers?

Witness evidence – Oral and written

A witness gives their evidence orally in the course of a hearing. Such oral evidence will be recorded in court hearing minutes. A witness will be warned by the court that they may be subject to criminal prosecution if they give false evidence or refuse to give evidence for reasons that are not provided for by federal laws (*Article 88(3), Commercial Procedural Code and Article 70(1), Civil Procedural Code*).

Requirements for the content of written evidence (witness statement or affidavit)

A witness may only give evidence in writing if it was first presented to the court orally in the course of a hearing and after the witness has acknowledged in writing that they have been warned of the risk of criminal prosecution. Witness statements in writing are rarely submitted, and ordinarily they serve the purpose of giving the statement consistency and proper structure.

The procedural law does not provide for witness statements to be obtained by parties to proceedings without such a witness appearing in court (*Appellate Ruling of the Sverdlovsk Region Court dated 02.05.2017, case No. 33-7135/2017 and Ruling of the Commercial Court for the Far East District No. Ф03-786/2018 dated 23.03.2018, case No. A51-20417/2015*).

Evidentiary value of witness evidence

No evidence has a predetermined value to the court. Each piece of evidence will be assessed by a commercial court alongside the other evidence (*Article 71(1), Commercial Procedural Code and Article 67(1), Civil Procedural Code*).

Nevertheless, state courts commonly consider contemporaneous documentary evidence to be of a higher evidentiary value than witness evidence.

Cross-examination and re-examination

Procedural rules provide for the basic right of parties to the dispute to pose questions to other participants in commercial proceedings (*Article 41(1), Commercial Procedural Code and Article 35(1), Civil Procedural Code*), and in particular to experts and witnesses summoned to appear in a hearing. The person on whose motion experts and witnesses were summoned will be the first person to put questions to them (*Article 162(4), Commercial Procedural Code and Article 177(3), Civil Procedural Code*).

Unlike in commercial proceedings, the Civil Procedural Code establishes additional specific procedures for questioning a witness (*Article 177, Civil Procedural Code*). Each witness will be questioned separately. The presiding judge will find out the witness's relationship with the parties to the dispute, and ask the witness to tell the court everything they know about the circumstances of the case. After this, the witness may be asked questions.

Questions are asked first by the party at whose request the witness was summoned and the counsel for this party, and then by any other parties to a dispute and their counsel. The judges have the right to ask questions at any moment during the questioning of the witness. If necessary, the court may question the witness once again in the same or in the next court session, and one more time to identify contradictions in their evidence. After the interview, a witness must stay in the court-room until the end of the hearing, unless the court permits them to leave earlier.

7. Are witnesses immune from being sued for anything they say or do in their capacity as a witness? Can a witness be paid for giving evidence (for example, for their time and travel expenses)?

Witness immunity
A witness is not immune for what they say or do in their capacity as a witness.

Expenses
A witness is entitled to the reimbursement of expenses caused by their summoning, and to monetary compensation for their time (*Article 56(7), Commercial Procedural Code and Article 70(3), Civil Procedural Code*).

8. Do parties need to take any steps to certify the authenticity of documents before it can be admitted as evidence in court?

Documentary evidence - Certification of documents
According to existing practice, parties to a dispute (or their counsel authorised to do so) must submit written evidence as copies duly certified by a notary. As a rule, original documents will only be presented to the court in the course of a hearing to verify copies against the originals and make relevant marks.

Original documents must be submitted to the court where one party to the dispute challenges the existence of a document the copy of which was submitted to the case file, or where copies of an original document submitted by each party to the dispute are not identical to each other (*Ruling of the Supreme Court of the Russian Federation No. 308-ЭС16-18177 dated 30.12.2016, case No. A15-4513/2015 and Appellate Ruling of the Moscow City Court dated 18.12.2017, case No. 33-51431/2017*).

9. What measures can be employed under the rules of civil procedure in your jurisdiction to compel a witness who is not willing to give evidence in support of legal proceedings in your jurisdiction or abroad?

Unwilling witness

A monetary fine may be imposed on a witness who fails to appear in court for no good reason (*Article 157(2), Commercial Procedural Code*). Alternatively, a witness may be subject to compulsory attendance through bailiff's service (*Article 168(2), Civil Procedural Code*).

10.Can courts in your jurisdiction appoint expert witnesses and, if so, what are the rules in this regard? Are parties allowed to appoint expert witnesses to present evidence in support of their case? How is expert evidence presented in the court?

Appointment of expert witnesses

Court experts

A court may appoint expert examination to clarify issues arising in the course of proceedings that require special expertise (*Article 82(1), Commercial Procedural Code and Article 79(1), Civil Procedural Code*).

The list and content of questions for expert examination will be determined by the commercial court. Parties to proceedings may submit questions to a commercial court to be answered in the course of expert examination. Where a court declines to accept questions raised by parties, it must give a reason for this.

Parties to a dispute may request that specific persons be engaged as experts, that expert examination be conducted by a specific expert institution, or that additional questions to an expert be included in a ruling appointing expert examination.

Examinations will be conducted by governmental experts or employees at governmental expert institutions, or any other experts having special expertise.

An expert opinion does not have a predetermined evidentiary value for a court. It will be assessed together with any other evidence, including opinions prepared by party hired experts (*Article 71(4)-(5), Commercial Procedural Code of the Russian Federation and Clause 12, Ruling of the Plenum of the Supreme Commercial Court of the Russian Federation No. 23 dated 04.04.2014: "On Certain Issues Relating to Commercial Courts Applying Expert Examination Laws"*).

Party hired experts

Parties to proceedings may submit written evidence to the court, including opinions by experts hired by them.

An expert opinion prepared by a party hired expert will not be regarded an expert opinion in terms of Article 82 (1) of the Commercial Procedural Code (*Article 79(1), Civil Procedural Code and Clause 13, Ruling of the Plenum of the Supreme Commercial Court of the Russian Federation No. 23 dated 04.04.2014: "On Certain Issues Relating to Commercial Courts Applying Expert Examination Laws"*). It will be regarded as a piece of written evidence to be assessed together with any other evidence.

Where an opinion prepared by a court appointed expert differs from that prepared by a party hired expert, all other things being equal, and where there are no obvious infringements of applicable practices, approaches and methods, the courts tend to attach more value to court appointed examination, not least because court appointed experts incur greater liability. Only a court appointed expert may be prosecuted for giving false expert opinion (*Article 307, Criminal Code of the Russian Federation*).

Fees of a court appointed expert
A party requesting expert examination in commercial proceedings (which are conducted according to the Commercial Procedural Code) must transfer sums payable to an expert to the commercial court's deposit account in advance. In the event that a sum payable to an expert has not been transferred to the commercial court's deposit account within the time limits set by the commercial court, the court may dismiss the application for expert examination, if the case may be heard and determined based on other evidence submitted by the parties (*Article 108 (2), Commercial Procedural Code*).

However, according to the Civil Procedural Code, expert examination is not subject to a sum payable to an expert previously deposited with a special account. The party responsible for paying for expert examination will be named in the court order determining the examination.

Money paid to court appointed experts will form part of the court costs to be allocated between the parties based on the outcome of proceedings.

Role of party-appointed and court-appointed experts
See party hired experts above.

Presentation of expert evidence- oral or written
An expert opinion must always be in writing (*Article 86(1), Commercial Procedural Code, Article 86, Civil Procedural Code and Article 25, Federal Law No. 73-FZ dated 31 May 2001 "On Governmental Expert Examination in the Russian Federation"*).

On a party's application or the commercial court's initiative, an expert may be ordered to appear in court. After their opinion has been read, an expert may give any necessary explanation of their opinion and must answer any additional questions posed by parties and the court. Their answers will be recorded in the court hearing minutes (*Article 86(3), Commercial Procedural Code and Article 187(1), Civil Procedural Code*).

Part 2- Overseas evidence in domestic proceedings

11.What are the requirements for an application to obtain witness or documentary evidence abroad? Are there any rules relating to the admissibility of evidence obtained from outside the jurisdiction (for example, issues of hearsay in relation to witness evidence, and certification/authentication of documentary evidence)?

General requirements

Russian courts may send letters of request to foreign courts or other competent authorities to take certain procedural actions, such as service of process and other documents, preservation of evidence, obtaining of written evidence, on-site inspection, expert examination and so on (*Article 256(4), Commercial Procedural Code and Article 407(4), Civil Procedural Code*).

The procedure to send a letter of request (whether to a competent authority or to the central authorities of the foreign state) will be determined by the applicable international treaty. Where there is no international treaty, a letter of request will be sent through local agencies of the Ministry of Justice of the Russian Federation and the Ministry of Foreign Affairs of the Russian Federation under rules of international courtesy (*Clause 27, Ruling of the Plenum of the Supreme Court of the Russian Federation No. 23 dated 27.06.2017: "On Commercial Courts Considering Commercial Cases Arising from Relationship Involving Foreign Element."*)

Any document needed for court proceedings may be obtained from the competent authorities of the foreign state through consular officials on the application of Russian or foreign citizens or stateless persons, or if requested by Russian entities and organisations (*Article 2, Federal Law No. 154-ФЗ dated 05.07.2010 "Consular Regulations of the Russian Federation"*). Such a procedure may be used to obtain documents "relating to rights and interests of applicants" (such as copies of applicants' personal documents and so on).

Form/Application along with the documents

It is recommended to state the following details in an application to obtain evidence abroad (commonly called "application to send a letter of request"):

- Subject matter of a letter of request.
- Relevant circumstances that may be proved as a result of execution of the letter of request.
- Reasons preventing the applicant from obtaining evidence directly.
- The court or another competent authority that will be addressed with the letter of request.
- Details to be stated in the letter of request according to the applicable international treaty.

It would be advisable to attach a draft letter of request to the application, with a translation.

Notice requirements

There is no requirement to serve the application for the request to the other parties to proceedings before filing such an application. The application will be resolved under a general procedure provided for by procedural law, after hearing the representations of the parties.

Grounds

An application for sending a letter of request may be granted if a relevant circumstance may be proved as a result of its execution, and the applicant has managed to prove that it is unable to obtain the evidence directly.

Application and procedure irrespective of the applicable international instruments (if any)

The application and procedure set out above applies whether or not an international convention applies.

Admissibility of overseas evidence

A document obtained from a foreign state will be admitted by a court as written evidence if its authenticity is not rebutted, and it has undergone consular legalisation/authentication. Foreign official documents will be admitted by a court as written evidence without being legalised if this is provided for by an international treaty to which the Russian Federation is a party (*Article 75, Commercial Procedural Code and Article 72, Civil Procedural Code*).

Evidence that is written wholly or partially in a foreign language must be accompanied with a duly certified Russian translation. As a rule, notaries are in charge of certifying the accuracy of translation.

12. How can evidence be obtained from a witness who is willing to give evidence in support of legal proceedings in your jurisdiction, but is unable to (or not required to) attend trial? Do local laws in your jurisdiction permit evidence to be given by video-link, videoconference or depositions?

Willing witness (unable to travel)

A witness who is unable to come from a foreign state to give oral testimony in a Russian court may prepare a written witness statement. The signature on a witness statement may be authenticated by a consular official (*Article 26 (1), Federal Law No. 154-ФЗ dated 05.07.2010 (as updated on 29.12.2017) "Consular Regulations of the Russian Federation"*).

Witness statements must state that the witness acknowledges that they are aware that they may be subject to criminal prosecution for giving false evidence.

Where these requirements have been complied with, the court may admit witness statements as written evidence. However, there is still a risk that such evidence will be held to be inadmissible, since the court and parties in the proceedings are unable to interview the witness in the manner prescribed by law.

Where the outcome of proceedings may directly or indirectly affect their rights or obligations, a witness may apply to join as an intervenor (that is, a party who does not have their own claims in respect of the subject matter of the proceedings) (*Article 53, Commercial Procedural Code and Article 43, Civil Procedural Code*). In such a case, their written explanations regarding the circumstances of the case which are given as an intervenor will be in full compliance with the procedural, law, as the requirement of oral evidence only applies to a witness and not to an intervenor.

Video-link, teleconference or depositions

Where a court has the relevant facilities, parties to a dispute and their counsel, as well as witnesses, experts, translators and other professionals, may attend a court hearing by video-link. Video conferencing systems can be used at the place of residence, place of stay or registered office of the relevant person.

A person giving testimony or explanations must be physically present in a Russian court. Therefore, video conferencing may not be used to interview a witness or an expert located abroad.

Part 3- Evidence (within local jurisdiction) for use in foreign proceedings

13. Are there any national rules or laws, either in support of an international instrument or otherwise, that regulate the collection of evidence within your jurisdiction in support of foreign litigation? Can these be directly relied on to obtain evidence on the application of any interested person (without recourse to any diplomatic channels)?

National rules on collection of evidence in support of foreign litigation
Russian courts will execute letters of requests received from foreign court or foreign competent authorities for specific procedural actions (service of process and other documents, obtaining of written evidence, expert examination, on-site inspection and so on) if required by an international convention to which the Russian Federation is a party or by federal law (*Article 256(1), Commercial Procedural Code and Article 407(1), Civil Procedural Code*).

Direct application
Russian procedural law does not provide any procedure for Russian courts to collect evidence in support of foreign litigation, other than that established in Article 256(1) of the Commercial Procedural Code, Article 407(1) of the Civil Procedural Code and international treaties of the Russian Federation.

14. What is the procedure to enforce a request from a foreign court for witness/documentary evidence in your jurisdiction? Where no international instrument applies, what factors will the local courts consider in executing a request for evidence from another country?

Procedure to enforce a request for witness evidence in support of foreign litigation
A court will determine in a hearing whether to execute or refuse to execute a request from a foreign court. Persons who may be involved in the execution of the request (that is, persons from whom evidence would be taken or witnesses giving testimony) must be notified of the date, time and place of a hearing.

Following the execution of the request, the court will make a ruling that will immediately be served to the issuing court, together with all materials collected in the course of execution. Where a request may not be executed for

reasons beyond the control of the court (for example, in view of the witness' failure to appear in court) the ruling must state this.

Grounds

A foreign court's or competent authority's request will be executed unless:

- The execution of the request would contravene the fundamental principles of Russian law or is otherwise contrary to the public policy of the Russian Federation.
- A Russian commercial court is not competent to execute the request.
- The document requesting specific procedural actions to be taken has not been authenticated.

Timeframe

If persons involved in the execution of a request comply with a Russian court's summons by appearing in a hearing and comply with other court orders, the request will usually be executed within one or two months of the date of its receipt by the court. If they fail to appear, then the court will make a ruling rendering it impossible to execute the request within three to six months of the date of its receipt.

Part 4 – Legal framework governing cross-border evidence

15. Is your jurisdiction a party to:

- The Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (The Taking of Evidence Regulation)?; and/or
- The Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the Hague Evidence Convention)?; and/or
- Any other international instruments or treaties on evidence?

The Taking of Evidence Regulation
The Russian Federation is not a party to The Taking of Evidence Regulation.

The Hague Evidence Convention
The Russian Federation is a party to the Hague Evidence Convention.

Any other international instrument(s)

The Russian Federation is a party to the CIS Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters signed in Minsk, the CIS Convention of 20 March 1992 on Settling Disputes Related to Commercial Activities signed in Kiev and several bilateral legal assistance treaties.

The Hague Evidence Convention

16. What are the reservations, declarations and notifications made by your jurisdiction under the convention?

Reservations, declarations and notifications
For a complete list of reservations, declarations and notifications made by the Russian Federation in relation to:

- Language of letter of request (*Article 4*).
- Execution of letter of request in the presence of judicial personnel (*Article 8*).
- Evidence by diplomatic officers, consular agents and commissioners (*Article 15-17*).
- Pre-trial discovery (*Article 23*).

See *Status table, Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*.

17. Please identify the following:

- (a) the Central Authority designated to receive letters of request (*Article 2*);
- (b) the appropriate authority designated to receive requests for permission to take evidence by diplomatic offers, consular agents or commissioners (where applicable) (*Article 15-17*),
- (c) appropriate authority designated to give appropriate assistance to diplomatic offers, consular agents or commissioners to obtain evidence by compulsion (where applicable) (*Article 18*),
- (d) any other authority designated to receive letters of request (*Article 24*)?

Central Authority
For contact details of the designated Central Authority and the additional authorities, see *Authorities, Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters*.

18. What is the general time-frame within which a letter of request is normally executed within your jurisdiction?

Timeframe
If persons involved in the execution of a request comply with a Russian court's summons by appearing in a hearing and comply with other court orders, the request will usually be executed within one or two months of the date of its receipt by the court. If they fail to appear, then the court will make a ruling rendering it impossible to execute the request within three to six months of the date of its receipt.

19. Is prior authorisation of the Central Authority required for judicial officers (of the requesting court) to be present at the execution of the letters of request in your jurisdiction (provided that your jurisdiction has made the declaration under Article 8)? What is the procedure to obtain such authorisation?

Judicial personnel at the execution of letters of request
The Russian Federation has not made any declarations in relation to Article 8 of the Hague Evidence Convention.

20. Apart from the procedure mentioned under *Question 14*, are there any other key methods and procedures followed under the laws of your jurisdiction to execute a letter of request under the convention (*Article 9*)?

Russian procedural law does not provide additional methods to execute a letter of request, other than the procedure as established in Article 256 of the Commercial Procedural Code and Article 407 of the Civil Procedural Code.

The Taking of Evidence Regulation

21. Please identify the Central body (*Article 3*), requested court(s), and competent authority(ies) under the Regulation?

Competent body, court(s) and authority(ies)
For a complete list of Central body, requested court(s), and competent authority(ies) under the Regulation, see *Germany*, *Spain*, *France*, *Italy*, *UK (England and Wales)*.

22. What is the general timeframe for a request to be executed under the Regulation?

The Russian Federation is not a party to The Taking of Evidence Regulation.

23. Do the laws in your jurisdiction permit the parties and, if any, their representatives, to be present at, or to participate in, the performance of the taking of evidence by the requested court (*Article 11*)?

The Russian Federation is not a party to The Taking of Evidence Regulation.

24. Do the laws in your jurisdiction permit representatives of the requesting court (designated judicial personnel), to be present at, or to participate in, the performance of the taking of evidence by the requested court (*Article 12*)?

The Russian Federation is not a party to The Taking of Evidence Regulation.

25. Where a request is made to the Central Body in your jurisdiction under Article 17 for the requesting court to take evidence directly, what conditions (if any) are imposed by the laws in your jurisdiction (*Articles 17(4) and (6)*)?

The Russian Federation is not a party to The Taking of Evidence Regulation.

26. Which party is responsible for the fees and costs for experts, interpreters, the use of special procedure and communications technology (*Article 18*)?

The Russian Federation is not a party to The Taking of Evidence Regulation.

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