The Legal 500 Country Comparative Guides

Armenia: Litigation

This country-specific Q&A provides an overview to litigation laws and regulations that may occur in Armenia.

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1. **What are the main methods of resolving commercial disputes?**

   Traditionally the primary methods are negotiations, litigation and arbitration. Recently the Government is undertaking actions to make mediation more used as well. The RA jurisdiction doesn't envisage any court of specialised jurisdiction competent to resolve commercial disputes. Thus commercial claims are heard before the court of general jurisdiction. In what concern arbitration and mediation, those methods are of choice of the parties to a dispute. Moreover, the fact that a litigation process has started doesn't result in the impossibility to refer the dispute either to an arbitrator or mediator.

2. **What are the main procedural rules governing commercial litigation?**

   The main procedural rules governing commercial litigation are contained in the RA Civil Procedure Code. Mediation is governed both by the Civil Procedure Code and the Judicial Code and the law on Commercial Arbitration, international treaties as well as specific chapter in the Civil Procedure Code govern the process of Arbitration.

3. **What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?**

   Armenia is considered to have established a 3-level judicial system: including First Instance Courts, Court of Appeal and Court of Cassation. The commercial claims are respectively dealt by the First Instance Court of General Jurisdiction, Civil Court of Appeal and Civil and Administrative Chamber of the Court of Cassation, even though the latter is competent to hear only the claims regarding the substantial questions of law, not those of fact.

4. **How long does it typically take from commencing proceedings to get to trial?**

   According to the data available on www.doingbusiness.org, the average length of judicial procedures concerning contract enforcement makes up to 570 days, although taking into account our practice we can state that two years is an approximate minimum length of the proceedings in courts.

5. **Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?**

   Hearings are in general public, which is ensured by the principle of publicity of civil proceedings. Nonetheless, according to the Article 17 part 2: 'For the purpose of protection of the privacy of the participants of the proceedings, including trade secrets, interests of minors or justice, as well as national security, social order or morality, the court may, upon the motion of a person participating in the case or on its own initiative, examine the case or a part thereof in a closed court session'.

   On the other hand, all the documents filed to the court are available only to the participants

of the proceedings, including the parties, the third parties involved in the dispute, so as applicants and those interested in the outcome of the examination of an application. While the decisions of the court are available on www.datalex.am, and the decisions of the Court of Cassation are published in the official gazette (and further duplicated at www.arlis.am – Armenian legal information system).

6. **What, if any, are the relevant limitation periods?**

General limitation period is three years. In some case, the law may envisage special limitation periods. There are also special terms for bringing particular types of claims. For examples, the limitation period for a claim for damages caused in consequence of a corruptive practice during the conclusion or execution of a contract is limited to 10 years from the moment the infringement took place. Claims connected to the ownership of real estate can be brought to court within ten years, and there are some other specific regulations as well.

There are no limitation periods for

1. claims for the protection of personal non-property rights and other intangible assets, except for the cases provided for by law;
2. claims filed with banks by depositors for repayment of deposits;
3. Claims for compensation of the damage caused to citizen's life or health. However, claims filed three years after the time of arising of the right for compensation of such damage for the past period shall be satisfied for not more than three years preceding the bringing of the action;
4. claims for the elimination of each violation of the right of the owner or another possessor even if those violations have not been related to dispossession (Article 277);
5. claims of the owner for declaring invalid the act of a state or local self-government body or the officials thereof, which has violated the owner's rights for property possession, use and disposal;
6. other claims defined by law (e.g. labour law claims on requesting the payment of salaries, etc.).

7. **What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?**

RA legislation does not envisage any pre-action conduct requirements as such, but ones foreseen in the contract. Usually, any contract contains terms on commercial dispute resolution through negotiations, and if those do not result in resolution of the dispute parties agree to either hand over the dispute to an arbitrate or decide on the competent court to try the case. Although, if the parties agree on recur to such methods, the statutory period is 30 days from the moment the parties failed to come in agreement if those methods are foreseen in the contract.

8. **How are commercial proceedings commenced? Is service necessary and, if so, is this**

done by the court (or its agent) or by the parties?

The plaintiff has to send the copy of the claim and all the documents attached to it to the defendant: the proof of the claim being sent has to be attached to the copy sent to the Court. After the claim is filed the court has to decide on either to dismiss, return the claim or to accept the claim and commence the proceedings. In 3 days, the defendant is to be notified about the decision of the court.

9. **How does the court determine whether it has jurisdiction over a claim?**

Having in mind that there is no special judicial body to hear commercial disputes, the possible questions of competence refer to the jurisdiction, standing (legal interest) and territorial competence of the court. In terms of jurisdiction, according to the Civil Procedure Code. ' Everyone shall have the right to apply to the court in the manner prescribed by this Code for the protection of their rights and legitimate interests provided by the Constitution, laws and other legal acts or under the contract'. Thus, either the legislation or the contract entitles the plaintiff the right to apply to the court. In what concerns the territorial jurisdiction, the competent court is that of the domicile of the defendant, with the exception of contractual jurisdiction and exclusive jurisdiction (for example disputes about ownership of the real estate, claims from delict relationship etc.).

10. **How does the court determine what law will apply to the claims?**

According to parts 3-4 of the article 4 of the Civil Procedure Code: 'The Court may apply the laws of other States in accordance with the Constitution, the international treaty ratified by the Republic of Armenia or the law. The court, in case the application of the foreign law is necessary, determines existence and content of the norms of the latter, in accordance with their interpretation and rules of practice in a foreign country.' Thus, the application of foreign law is to be necessary and prescribed by the legislation.

11. **In what circumstances, if any, can claims be disposed of without a full trial?**

There can be two situations where a claim may be disposed of without a full trial, first of which is the mechanism of accelerated trial, that can be used only in the following cases

1. the claim is filed to credit sum of money not exciding 50,000 AMD;
2. the claim is based on a written contract, and the respondent does not question its validity;
3. parties participating in the proceedings have informed in written them not participating at the proceedings;
4. parties participating in the proceedings have consented in writing on the accelerated trial of the case;
5. facts important to resolve the dispute are indisputable, and the court is only required to determine the questions of law, or the respondent has accepted the claim.

The second concerns the issue of an injunction of payment by the change if the monetary claims is determined by the agreement of the parties or can be accurately determined by the law or the contract concluded by the parties. If the defendant objects the payment order, the claim is to be heard in regular proceedings.

12. **What, if any, are the main types of interim remedies available?**

Main types include imposing an injunction order on defendant's property in the extent of the amount claimed; prohibiting the defendant from performing certain actions; prohibiting other people from performing certain acts concerning the subject matter of the dispute; obliging the defendant to perform certain acts concerning the subject matter to the dispute; suspending the sale of the property in case of filing a claim about lifting the injunction; imposing an injunction on the property belonging to the claimant, but remaining under possession of the defendant and other remedies prescribed by law.

13. **After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?**

In general the defendant has two main means to defend his rights: the counterclaim (has to be filed before the court decided on distribution of the burden of proof) and the answer to the claim (has to be filed in two weeks period counting from the day the information about the initiation of the proceedings was received by the defendant). Moreover, usually, parties submit written arguments that are neither prohibited nor prescribed by law, although are quite often used to inform the court and opponent about one's standpoint also allowing to make a profound counterargument, but in general the hearings are based on the principle of oral hearings.

In what concerns written documents as written proof, those are to be revealed and presented to the other party and the court before the trial or other term prescribed by the court after the division of the burden of proof.

14. **What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?**

There is no general rule on the disclosure. As it is mentioned before the parties may require any document included in the lawsuit to profound their standpoint. The parties may also make a motion for the court to oblige the other party or third party holding the information or documents to which they have no access. In this case the party must prove their incapacity to acquire the document by their own means. If the latter refuses or avoids presenting the evidence, the fact subject to proof is considered proved.

There is however the rule of attorney-client privilege, that preserves the communication between the attorney and the client, including also any information or documents that the client shared with the attorney, the content and nature of the council given by the latter, as

well as the information and evidence (materials, carriers) that the advocate acquired during the course of the advocacy activity. Such information can be disclosed strictly in cases provided by law, such as if the client gave their permission, it is required in the lawsuit against the client or in the disciplinary hearing to profound or defend their arguments, it is required by the law «On Combating Money Laundering and Terrorism Financing» etc.

15. **How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?**

Witnesses are questioned separately. Procedural rules do not contain any mention on written evidence. Moreover, the proceedings before the court are oral with the exception for the Court of Cassation, which nonetheless is not entitled to decide questions of fact. The evidence is to be recorded simultaneously through audio recording and by automated methods of summarisation. In case if the latter is not available, the protocol is formed by the secretary in a written form (in this case in practice, usually the hearing is postponed to resolve the technical issues). A witness must be informed about criminal liability for false evidence. A witness may only be asked questions included in the motion to call a witness and only those concerning the credibility of the witness evidence, including the relationship between the witness and the parties etc. The questions are first asked by the participant who made a motion to call a witness, followed by other participants and the court. Prompting or otherwise guiding questions are prohibited.

If a participant of the proceedings makes a motion to give witness evidence, the court can permit them to do so. If a participant of the proceedings makes a motion to call another participant to give witness evidence, the court can suggest them to do so. If the court finds that the latter refuses (avoids) to give testimony, the facts subject to proof through that testimony are considered proved. In both cases, the modalities mentioned above are equally applicable to the participants of the case.

A double examination is executed if previously questioned witnesses contradict to one another. During a double examination, witnesses are first asked about their relationship and then allowed to speak in turns. The questions are first asked by the participant who made a motion to make a double examination followed by other participants and the court. In the end, the statements made by the witnesses previously are made public by the court.

16. **Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?**

The court may appoint an expert upon the motion of the party, and, if prescribed by law, at his initiative. When submitting a motion for appointment of a forensic examination, the party is obliged to indicate the fact that has to be proved by the expert’s opinion and to propose issues to be clarified during the examination. Parties to the lawsuit have the right to indicate the specialised expert institution or expert that the court may instruct the examination. If a

license or qualification is required to conduct an appropriate examination, the person participating in the case submits to the motion a proof of his / her competence of such expertise by a specialised expert institution or expert. In the cases envisaged by the law, when appointing an expert at his initiative, the court has the right to nominate questions to the expert at his / her initiative.

Parties have the right to attend the expert examination, except where his presence may hinder the normal work of the expert or violate the rights of others. The court shall decide based on an expert's request to prohibit parties to attend the examination. The court may decide on acquiring samples of human, material or other substances if the examination of those is important to the execution of the expertise. The samples must be taken in respect of requirements of the law, avoiding any means causing mental and physical suffering or threatening to health or body integrity of the person.

The expert shall carry out the assigned expertise personally. The court may appoint more than one expert of the same or different professions. Experts have the right to consult with each other and in give a single opinion — experts who disagree with the unanimous conclusion present separate opinions. The assigned expert must immediately inform the court about his incompetence to give an expert opinion or about the necessity to engage additional experts, if so, and about hindering circumstances or inability from ensuring the normal course of expertise. In that case, the court without convening a hearing decides on taking measures to ensure the normal course of expertise.

Parties can make written objections to the expert opinion before the end of the preliminary hearings, except when the grounds for objection have been revealed during the trial, or the party proves that the objection was not filed within the prescribed time limit for reasons beyond its control.

If the expert opinion is not clear or complete, the court may, upon the motion of the party or at his initiative, decide additional expertise by assigning the execution to the same or another expert. If the court or the party has doubts about the validity of the expert opinion or there are contradictions between the opinions of the several experts or the expert's opinion and the explanation of the specialist, or in case procedural rules for the expertise are violated, the court at his initiative or upon the motion of the party, the same issues may be referred to a repeated examination, the execution of which is assigned to another expert specialist.

The opinion of the expert chosen by the person participating in the proceedings shall be equivalent to the opinion of the expert appointed by the decision of the first instance court, if the expert chosen by the party before the end of the preliminary hearing makes a written statement about being aware of the criminal liability for giving an obviously false opinion.

17. **Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?**

Final decisions of the First decree court of general competence can be appealed to the Civil Court of Appeal within the period of one month starting from the day it was announced. As of the interim decisions, only those can be appealed which are explicitly stated in the law (article 361 of the Civil Procedure Code) and the appeal can be brought again to the Civil Court of Appeal within the period of 7 days starting from the moment of receiving the decision. Those who were not participating in the proceedings but whose rights and interests are affected by the decision of the court can appeal against it within the period of 3 months from the moment they knew or should have known about that decision except for those that were notified about the lawsuit, but didn't want to participate in it.

18. **What are the rules governing enforcement of foreign judgments?**

As a rule, out-of-state court judgments will be enforced if the foreign court is assured the court judgment from the issuing state is valid. First of all, only final decisions and a decision on interim remedy on the basis of an international convention or diplomatic reciprocity (and according to the law the reciprocity is presumed before proven contrary) can be enforced, although some decisions (such as a decision about the legal status of a person) can be valid without having those legal grounds. The latter are the decisions that do not require enforcement, and which were examined by the court without convening a hearing.

The decision is to be submitted to the court in 3 years period from the time it came into force. An application for the recognition and enforcement of a foreign judicial act shall be submitted to the court of the residence of the defendant. If the defendant is not an RA resident or his place of residence is unknown, the application shall be submitted to the court of the place of the property belonging to the debtor. Where a foreign judicial act does not impose enforcement against a single debtor or does not require enforcement in general, an application for the recognition and enforcement of such an act shall be submitted to the court of residence (place of residence) of the person representing it. The court can also take some measures to ensure the enforcement of the judgment by a motion of the party.

The Court shall reject the application for the recognition and enforcement of a foreign judicial act, if:

1. the judicial act has not entered into legal force in accordance with the laws of the State in which it has been passed,
2. the party has been deprived of the opportunity to participate in the proceedings;
3. there is a judgment issued by the court of the Republic of Armenia in respect of the same subject and on the same ground, and a judgment passed by the court of another State and recognised by the court of the Republic of Armenia,
4. the proceedings initiated before the same court, in the case of the same subject and on the same ground,
5. the case on which the court ruling of a foreign state has been issued shall belong to the exclusive jurisdiction of the courts of the Republic of Armenia,
6. the case on which a foreign judicial act has been passed does not belong to the

international jurisdiction of the court of that State,
7. the recognition and enforcement of the judicial act contradict the public order of the Republic of Armenia,
8. the judicial act is not subject to execution according to the legislation of the State where it is made.

Next, the warrant of execution shall be issued by the court, and on that basis, an enforcement procedure is initiated. The procedure is governed by the general rules of judgment enforcement prescribed by the Law on Judicial Acts Enforcement.

19. **Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?**

The costs and expenses are to be compensated by the losing party in a lawsuit in a reasonable amount. This rule is also applicable to third parties having a claim on the subject to the dispute. Third parties that do not have a claim on the subject to the dispute recover the expenses of the judicial actions they made and if they acted on the side of the losing party. The costs of any judicial action recognised by the court as unnecessary for the examination of the claim are carried by the party that executed those.

The costs include court fees; the costs of expertise and translation; the sum of money paid to a witness; expert; specialist or interpreter; the expenses carried by the party to arrive to the place of proceedings and those required for a temporary housing in purpose of appearing before the court; the reasonable honorary of the attorney; costs related to the examination of evidence on the spot, if necessary; postal expenses of participating parties; expenses of preserving material evidence; expenses associated with fulfilment of court assignments and court orders; the remuneration of the mediator, if assigned; other costs recognised by the court as necessary for the examination of the case.

In practice courts rarely if ever satisfy recovery of the judicial costs in full, the courts usually find reasonable expenses to be rather below of the actual costs of the parties, especially in case of complicated and resource requiring litigations.

20. **What, if any, are the collective redress (e.g. class action) mechanisms?**

Class action (actions on behalf of non-exhaustive group of claimants) are not allowed in Armenian legislation.

On the other hand, a special procedure is envisaged if the number of plaintiffs is reaching at least 20, and where the claim on the same grounds is brought against the same defendant. This special procedure is shaped to make the hearing physically possible given the need for all the participants to participate and make the procedures efficiently. During the hearings, a representative is chosen to act on behalf of the plaintiffs to a collective claim (not more than

5 representatives for a group). If the representative is attending the hearing, the plaintiffs are not allowed to do so (they still can attend as visitor, but not to participate), except if one of the plaintiffs acts as a representative on behalf of the group. The majority of the plaintiffs can change the representative. In case if the minority wants to change the representative, the court separates the proceedings. Only the representative(s) are notified about any judicial decisions. The final or interim decisions can be appealed by the representative.

21. **What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?**

Third party's participation at the procedure depends on whether they have an individual claim addressed to one of the parties to a litigation. Third parties who have an individual claim can engage in litigation by filing a claim before the court decides on the distribution of the burden of proof. The third parties that do not have an individual claim, on the other hand, may be brought at the side of either the plaintiff or the defendant before the end of the trial, and in some cases even until the judgment is announced, if their rights or obligations are affected by the judgment or the latter may result in creating rights and obligations for them. They are involved in the proceedings either at their own or the court's initiative or by the motion of one of the parties.

The court shall have the right to consolidate several similar cases before the burden of proof is distributed if the parties to the dispute fully or partially coincide, if there is a mutual connection between the cases and if their joint trial may ensure the fastest and most effective solution of the dispute.

22. **Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?**

No regulations on third party funding do exist in Armenian legislation, which means the funding is not prohibited. There is little practice (mostly benchmark cases on human rights issues are funded, or law firms agree on success fee arrangements as such) and there is no practice on holding the funder liable for judicial costs. There are no legislative or practical bases for this as well.

23. **What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?**

The main advantage generally concerns the economic side of the litigation: the court fees are relatively low, and attorney fees even for complex litigations are not very high, there is no costy discovery procedures etc. Another advantage may refer to the effectiveness of judicial decisions: in terms of international enforcement the RA court decisions are recognized in the territory of countries member to CIS (foreseen by Minsk and Chisinau conventions between the members of those).

Secondly, it is worth mentioning that the RA signed the ECHR and is obliged to ensure the right to a fair trial, which made Armenia constantly change its legislation and legal practice to adjust to standards created by the ECHR. The latter established quite a strong legal basis for procedural rules. For example with the latest amendments, the Civil Procedure Code states that the judge has to decide on distribution of burden of proof in a form of a separate written decision, so from the parties are to file evidence in the manner and within periods prescribed by that decision before the end of the preliminary hearings, which creates predictable proceedings, where the legal questions are dealt in a separate written decision and the evidence is disclosed within a foreseeable time without costly discovery procedures. The process at the same time is still administered well and is predictable at large.

On the other hand, the main disadvantage is the overall length of the proceedings, mostly because of the absenteeism of the parties that leads to no legal consequences. There is also a concern of the court applying the RA legislation in case there is a necessity to apply the foreign law that has some similarities with the latter. The issue stands in different interpretations or even more, in some cases of progressive legislation that developed an even more detailed attitude to the legal issue subject to a trial, but the court is more familiar with the RA legislation is inclined to apply it, if the norms are more or less similar.

24. **What, in your opinion, is the most likely growth area for disputes for the next five years?**

It is more likely that the growth will be noted in contract enforcement and bankruptcy litigations for the following reasons. The contracts are gaining more and more use in the market today, considering that previously it was a common practice for entrepreneurs to opt for making commercial transactions without actually concluding legally binding documents. In consequences, the courts were not always able to solve such disputes, and the parties had to deal with it by themselves out of reach of the law. Nowadays, nearly every commercial transaction is formed, having in mind that litigation is the most effective way of resolving disputes if the negotiations were not productive.

There is a high chance that bankruptcy cases will be growing in number, including volunteer bankruptcy and restructuring. We already see the development in cases initiated based on a voluntary bankruptcy petition. Especially after the establishment of a specialized bankruptcy court we believe this trend will be further developing.

25. **What, in your opinion, will be the impact of technology on commercial litigation in the next five years?**

The impact of technology on commercial litigation and on judicial proceedings of civil cases, in general, is highly anticipated having in mind that measures to implement new technological tools to conduct the judicial procedure, even though we do not anticipate major breakthrough in the function of judicial bodies on the short term period. Already from mid-2000’s judiciary and enforcement systems have implemented several e-justice systems,

including electronic case management systems, e-notifications and measures ensuring transparency. However, many of the projects implemented then are already outdated given the phase of the technology development and new technologies are being implemented now. The fully redesigned solution is expected to be relaunched this fall, with aim to make the solutions more user friendly and with fully updated procedures and UX designs.

One of the major planned changes is to make the case management system also usable by the attorneys (e-cabinet), where the attorney's will also see the cases and the materials by single sign on and relevant solutions. Also new solutions are thought constantly to ensure the speedy service and notification process. Unlike postal or other means of transfer, that can in fact fail, the system of electronic services would be more transparent in function.

It is also possible that the technology of blockchain could be used to ensure the further trust towards the e-justice system, by ensuring the transparency and stability of the system and ensuring there is no technical possibility to intervene within the normal function of the system. In addition to that, even if today some judges accept legal documents submitted in an electronic form through e-mail, it is used in exceptional cases when other means are not available, whereas the electronic cabinet would simplify not only initiation of the proceedings, but also current execution of judicial motions and would make more efficient the protection of the interests of the parties.

We are quite positive that artificial intelligence solutions, including text analysis mechanisms will be developed to assist to raise the effectiveness of the judiciary. Also steps are being undertaken to make it possible to have hearings over the distance, at least for specific motions requiring speedy solution.