

PANORAMIC
**COMPLEX
COMMERCIAL
LITIGATION**

Armenia



LEXOLOGY

Complex Commercial Litigation

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BACKGROUND

Frequency of use

How common is commercial litigation as a method of resolving high-value, complex disputes?

While there are extrajudicial methods of dispute resolution in Armenia, civil litigation remains the primary proceeding for resolving any type of dispute. This is equally true for commercial disputes. If parties fail to settle the dispute on mutually agreeable terms, a court case will or may be initiated, which in the case of commercial litigation will mean that the action will be brought to the court of general jurisdiction of Armenia. There are certain exceptions when the courts of general jurisdiction do not have jurisdiction over cases. For instance, if the amount of the claim is up to two million Armenian drams, the claim must be resolved by the notary (one may apply to the court of general jurisdiction for resolution if the notary decides not to issue a resolution on payment). Disputes that are subject to an arbitration ruling under the arbitration agreement must be resolved by the agreed arbitration mechanism. There are certain mechanisms of appealing the arbitration award or notary's resolution to the courts of general jurisdiction.

Complex commercial litigation does not usually involve contractual disputes and hence, in practice, complex commercial disputes are submitted to the court's examination and are resolved by the court. If high-value cases are contractual disputes, an arbitration agreement is usually agreed between the parties and the case will be resolved by arbitration. This, however, does not mean that no high-value contractual disputes are heard and resolved by the court of general jurisdiction.

Law stated - 19 July 2024

Litigation market

Please describe the culture and 'market' for litigation. Do international parties regularly participate in disputes in the court system in your jurisdiction, or do the disputes typically tend to be regional?

As a general rule, a claim may be brought to the Armenian court of general jurisdiction if the defendant has a primary place of residence in Armenia (natural persons) or is a resident legal entity. There are exceptions to this general rule, such as if the Armenian court has exclusive jurisdiction over a dispute (for instance, if the dispute is about a real-estate property located in Armenia) or if the claimant has a right to bring a claim against a foreign legal entity or foreign natural persons (for instance, a defamation claim) to the Armenian court, as per the Civil Procedural Code of Armenia (CPC).

In order to compulsorily enforce a foreign court order or foreign arbitration award in Armenia (eg, if the property owned by the debtor is located in Armenia), a claim must be submitted to the Armenian court for the foreign court order or award to be recognised and enforcement permitted. Thus, depending on the case, it may be preferable for Armenian courts to have jurisdiction over certain disputes.

As a matter of business practice, high-value contracts between Armenian legal entities and a foreign company will include a dispute resolution clause for an arbitration agreement, usually

specifying resolution of the dispute by an international or internationally renowned arbitration institution.

Law stated - 19 July 2024

Legal framework

What is the legal framework governing commercial litigation? Is your jurisdiction subject to civil code or common law? What practical implications does this have?

Armenian jurisdiction is not subject to common law. Armenian legislation is based on the laws and codes adopted by the National Assembly of Armenia. Court proceedings are also strictly regulated, specifically the courts of general jurisdiction are limited to the rules defined under the CPC.

However, the decision of courts, in particular decisions of the Court of Cassation of Armenia (Supreme Court) have some precedential value for cases with similar factual grounds.

Law stated - 19 July 2024

BRINGING A CLAIM - INITIAL CONSIDERATIONS

Key issues to consider

What key issues should a party consider before bringing a claim?

A party that is considering bringing a claim needs to first determine the jurisdiction (ie, is there an arbitration agreement, or is the case subject to the courts' jurisdiction or does it fall within the jurisdiction of another country?). If there is a requirement under the law or contract to exercise the mediation/negotiation process prior to submission of a claim, those requirements must be met.

There are a number of formal obligations to be met when initiating a claim in Armenia, and a party will need an attorney to ensure that these obligations are met; if they are not met, the claim will not be able to proceed. It is highly recommended to trace the property of a counterpart prior to initiating a monetary claim, because of the procedural costs and average duration of court case proceedings.

It is important to correctly specify the subject matter of the claim, based on the factual grounds of the dispute and the evidence available (ie, commercial litigation in Armenian courts is based on the disposition principle: a court must resolve a civil case only based on and limited to the subject matter of the claim).

The claimant needs to take into consideration not only the legal costs of proceedings but also the other mandatory payments related to the proceedings, such as state duty.

Law stated - 19 July 2024

Establishing jurisdiction

| How is jurisdiction established?

There are 'subject matter' rules under Armenian legislation. For instance, criminal courts hear criminal cases, while the bankruptcy court examines bankruptcy cases, including claims brought against the debtor or debtor's property. However, there are no specialised economic or commercial courts in Armenia and thus, in general, commercial disputes are heard by the courts of general jurisdiction.

Further, Armenian civil procedural legislation defines concepts of:

- general territorial jurisdiction over civil cases (ie, the claim must be brought against a defendant that has a primary place of residence or business registration in Armenia);
- territorial jurisdiction over civil cases is subject to the claimant's choice, for instance if there are several defendants who are residents of different countries, the claim may be brought to an Armenian court if at least one of the claimants is an Armenian resident;
- the right to determine the court under the contractual agreement (ie, the parties may change the territorial jurisdiction of the Armenian court of general jurisdiction (there are 10 territorial courts) that has jurisdiction over the disputes under their agreement); if one of the contract parties is a foreigner it is possible to choose a different jurisdiction to the Armenian courts unless the Armenian court has exclusive jurisdiction over the dispute;
- exclusive territorial jurisdiction, for instance the right of ownership over a land plot that is in Armenia needs to be challenged in an Armenian court;
- the possibility of bringing a claim against foreign persons or entities; the claim may be brought against the foreign persons and entities only in the specific cases defined under the CPC, for instance one may bring a claim against a foreign entity in cases where the foreign legal entity has a branch or property in Armenia.

Foreign parties in Armenian courts have the same rights as local parties and are granted equal procedural protections as local parties.

If a claim is filed to the Armenian court after the same claim has been filed in a foreign court, or a foreign court has decided on the matter, the Armenian court must not examine the claim. If the jurisdiction requirement is met, however, the Armenian court will examine the claim.

Law stated - 19 July 2024

| Preclusion

| Res judicata: is preclusion applicable, and if so how?

Armenia adopted the concept of res judicata to some extent under the Civil Procedural Code (CPC) adopted in 1964, then broadened the concept under the CPC adopted in 1998 and then extended it further under the current CPC, adopted in 2018.

The CPC exempts parties from having to prove any facts that have been confirmed under the final judicial judgment in a civil, bankruptcy or administrative case where that other case was between the same participants as have brought the current case.

The CPC requires the court not to accept the claim for examination, or, if accepted, to terminate any examination of the case if there is a final judicial judgment or arbitration award or decision by a financial system mediator about the dispute between the same persons, over the same subject matter and on the same grounds.

Law stated - 19 July 2024

Applicability of foreign laws

In what circumstances will the courts apply foreign laws to determine issues being litigated before them?

As a matter of common practice and law, Armenian courts must apply the Armenian substantive law while resolving the dispute, except in certain contractual disputes where both parties agree on the use of a governing law other than Armenian law. Even if the 'Governing law' clause is valid and enforceable, in practice resolving the dispute using foreign law will be problematic or even impossible for Armenian courts.

Law stated - 19 July 2024

Initial steps

What initial steps should a claimant consider to ensure that any eventual judgment is satisfied? Can a defendant take steps to make themselves 'judgment proof'?

The claimant has a right to apply for preliminary security measures prior to submission of the claim to the court, or to plead for security measures at initiation of the case. In practice, a party usually seeks preliminary security measures when that party is required to undertake extrajudicial actions prior to submitting the claim, such as mandatory negotiation terms or mediation requirements.

The form of security measures which the court may grant, should it accept the claim for examination, are indicated under the CPC. This Code also defines which cases may be granted security measures by the court. Nonetheless, the courts decide on granting security measures on a case-by-case basis.

Armenian law allows the person or entity to apply for voluntary bankruptcy. If the bankruptcy court declares a person or entity to be bankrupt, all claims against the debtor will need to be submitted to the bankruptcy court.

Law stated - 19 July 2024

Freezing assets

When is it appropriate for a claimant to consider obtaining an order freezing a defendant's assets? What are the preconditions and other considerations?

To ensure the execution of the judgment and to reduce possible damages to the claimant, it is common practice to submit a plea for security measures, including freezing a defendant's assets, at the time the claim is submitted to the court. The court will grant the security measure if the claimant's justification indicates to the court that failure to take such measures may make the execution of the judgment impossible or difficult, lead to a change in the actual or legal status of the property subject to dispute, or cause substantial damage to the claimant. As a matter of court practice, the level of proof for the security measure application pleading is lower than for the claim (ie, the level 'beyond a reasonable doubt' will be applied to the pleading on security measures).

Law stated - 19 July 2024

Pre-action conduct requirements

Are there requirements for pre-action conduct and what are the consequences of non-compliance?

The court returns the submitted claim if the contract that was agreed between the parties on which the dispute arose, or the law, mandates that as a pre-condition to court submission, the parties must engage in an alternative method of dispute resolution or negotiations before applying to the court (eg, if the parties agree under the contract that they must mediate within two months of the dispute arising, no claim may be submitted until they fulfil this obligation). If the claimant bypasses the alternative dispute resolution procedure (eg, by applying to the first instance court instead of applying to the arbitration institution for dispute resolution), and the court accepts the claim, the defendant has the right to refer to the violation of the alternative dispute resolution procedure before the end of the period for filing a response to the claim submitted. In these cases, the court will leave the claim without examination.

In some cases, the substantive law requires certain actions to be performed prior to submission of specific claims. For instance, to bring a claim on termination or amendment of the contract to the court, 30 days' prior notice must be given to the defendant. The consequences of breaching the material law requirements may lead to the rejection of the claim.

Law stated - 19 July 2024

Other interim relief

What other forms of interim relief can be sought?

The CPC defines the following form of security measures:

- imposing arrest (freezing) on the property of the defendant to an amount equal to the cost of the claim;
- prohibiting certain actions of the defendant;
- prohibiting certain actions of other people in relation to the object of the dispute (eg, to prohibit a company director from calling an extraordinary general meeting in cases where there is a dispute over the validity of an annual general meeting);
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obliging the defendant or other persons to perform certain actions relating to the subject of the dispute (eg, if the claim is for compensation for lost profit due to a contractual breach by the party, the claimant may plea as a security that the defendant ceases the violation);

- suspending the sale of property if the subject matter of the claim is to unfreeze the property;
- imposing arrests (freezing) on the property that belongs to the claimant and is at the disposal of the defendant; and
- other measures for securing the claim as prescribed by the CPC.

Law stated - 19 July 2024

Alternative dispute resolution

Does the court require or expect parties to engage in ADR at the pre-action stage or later in the case? What are the consequences of failing to engage in ADR at these stages?

The court may not proceed with examining the claim if there is a pre-action agreement on negotiation or mediation. The law does not currently state that pre-action mediation is required, and such a requirement is not likely to become part of Armenian law for commercial disputes in the foreseeable future.

Law stated - 19 July 2024

Claims against natural persons versus corporations

Are there different considerations for claims against natural persons as opposed to corporations?

According to the CPC, the procedure in civil cases is based on the principle of the equality of all persons (ie, natural persons and legal entities) before the law and court. However, the CPC determines separate rules for some proceedings where the parties involved are corporations.

For instance, legal entities may only file claims through the electronic system, as per recently adopted amendments to the CPC (ie, legal entities cannot submit claims in hard copy to the court office). Furthermore, if the defendant in the case is a legal entity, the claimant must not mail a hard copy of the claim to the defendant, as the defendant (the legal entity) will be considered to have been notified through the electronic system; this rule does not apply in cases where the defendant is a natural person.

Other examples are related to special rules for the application of security measures: no security measures may be applied against the corporation should this lead to an impossibility to carry out its activities or create essential obstacles to its activities or lead to a breach of the law by the corporation.

The CPC defines a special set of rules for proceedings with corporate (eg, disputes on incorporation and management of legal entities, shareholder disputes) and employment

disputes where the defendant is a corporation. According to the CPC, the employer (corporation) must bear the burden of proof in employment disputes. In corporate disputes, the court may oblige the defendant corporation to notify corporate governance bodies about the court dispute and the possibility of being enrolled as a third party.

Law stated - 19 July 2024

Class actions

Are any of the considerations different for class actions, multiparty or group litigations?

Armenian legislation allows the plurality of persons on the side of claimant and defendant. In general, these claims are subject to examination in accordance with the general procedural rules. If more than 20 claimants with identical subject matter and grounds bring an action against the same defendant(s), and all claimants have the same representative (up to five of the same representatives are allowed), the claim will be classified as a group litigation and subject to examination in accordance with special rules, which mostly relate to the right of the court to examine all claims in the scope of one proceeding with the condition that the claims are totally identical and all claimants have the same representative(s).

In class actions, group litigation representatives can be any of the claimants, non-governmental organisations engaged in legal defence or an attorney.

Law stated - 19 July 2024

Third-party funding

What restrictions are there on third parties funding the costs of the litigation or agreeing to pay adverse costs?

There are no rules or limitations for third parties funding the costs of the litigation or agreeing to pay adverse costs. An attorney may be engaged by the client to represent the client's interests as well as to represent the interests of any person(s) indicated by the client. Practical issues arise when the court decides on the distribution of costs while resolving the case (ie, the courts usually consider the costs proved and subject to compensation (in reasonable amount) if a participant (ie, claimant or defendant) of the case who submitted a written plea for compensation provides proof that it bore the cost itself).

Law stated - 19 July 2024

Contingency fee arrangements

Can lawyers act on a contingency fee basis? What options are available? What issues should be considered before entering into an arrangement of this nature?

Lawyers in Armenia are free to choose their remuneration, and may decide to charge an hourly fee, a fixed fee or a contingency fee. The Chamber of Advocates of the Republic

of Armenia has issued an advisory average price list for common types of cases, which are often indicative for the courts when determining the reasonable price of lawyers' fees, including the contingency fee, which will be compensated by the party who lost the case.

Law stated - 19 July 2024

THE CLAIM

Launching claims

How are claims launched? How are the written pleadings structured, and how long do they tend to be? What documents need to be appended to the pleading?

Since 2024, a claim must be submitted through the electronic system to the court of general jurisdiction. Only natural persons who are not represented by an attorney may submit claims in hard copy. The claim must contain at least the following:

- the name of the court to which the application is submitted;
- the paternal name and surname (natural person) or firm name (entity) of the claimant and the defendant and of any other persons participating in the case, the address of the place of registration (location), the notification address (if it is different to the address of registration or location) and other personalising data;
- the facts on which the claims are based;
- the contested amount and calculations in case of monetary claims;
- the material and legal claim addressed to the defendant; and
- the list of documents and evidence, if any, attached to the claim.

It is not mandatory to refer to the legal norms on which the claim is based.

At this stage of the claim submission, it is not mandatory to submit evidence; however, the evidence available is usually attached as it gives a better chance of succeeding with the pleading on security measures.

The Civil Procedural Code (CPC) requires the following to be attached to the claim in the initial submission stage:

- identification documents (copy of passport for natural persons, copy of registration certificate for legal entities), as well as the power of attorney, if necessary, along with the identification documents of the attorney;
- the state fee payment receipt; and
- evidence of sending the copy of the claim and the attached documents to the defendant and other parties; however, if a pleading on security measures is attached to the claim, the claimant must not provide the copy of the claim and its attachments to the defendant or other parties – instead, the claimant must attach the copies of the claim for the other parties to the claim (ie, the court will provide these to the other participants, either after the application of security measures or when the rejection of the pleading on security measures becomes final).

Law stated - 19 July 2024

Serving claims on foreign parties

How are claims served on foreign parties?

The claim must be mailed (a hard copy of the claim if the claimant is a natural person or electronically if the claimant is a legal entity) to the foreign party by the claimant at the time of submission of the claim, as long as no pleading on security measures was submitted with the claim. If a pleading on security matters is attached to the claim, the court must mail (a hard copy if the claimant is a natural person or electronically if the claimant is a legal entity) its decision on acceptance of the claim to the proceedings as well as copies of the claim and its attachments to the defendant. As a matter of law, the court must provide procedural documentation to the foreign party. Proceedings often need the assistance of foreign courts, which needs to be done through the Ministry of Justice of Armenia and based on international treaties.

Law stated - 19 July 2024

Key causes of action

What are the key causes of action that typically arise in commercial litigation?

Most commercial litigation arises due to the breach of civil contractual obligations. In particular, the breach of obligation to pay for the services utilised or provided and the breach of obligation to return the loans to the financial institutions to an amount of up to two million Armenian drams was the cause of the vast majority of proceedings (up to 90 per cent) in the court of general jurisdiction until recently, when the jurisdiction for most of these cases changed. Although there are other commercial litigations related to commercial contracts apart from debt collection, the number of employment disputes in the courts is almost equal to or probably higher than commercial contract disputes. The number of cases related to the compensation of damages are also significant. Corporate disputes, including fiduciary duty breach, are rarely passed to the court for resolution.

Law stated - 19 July 2024

Claim amendments

Under what circumstances can amendments to claims be made?

The claimant has a right to change both the subject matter of the claim and the grounds of the claim, either together or separately. Amendments to the claim may be made until the court decides on the distribution of burden of proof. The court will not accept the amendments if the amendment changes the essence of the claim or the court of general jurisdiction loses its jurisdiction over the case after the amendment has been allowed.

Law stated - 19 July 2024

Remedies

What remedies are available to a claimant in your jurisdiction?

The Civil Code of Armenia lists the remedies which are available for protection of civil rights, as follows:

- recognition of the civil right;
- restoration of the situation that existed before the violation of the civil right;
- prevention of actions violating the civil right or creating a threat for the violation of it;
- applying the consequences of the invalidity of a void transaction; declaring a disputable transaction as invalid and applying the consequences of the invalidity of it;
- declaring an act of a state or local self-government body as invalid;
- not applying by the court the act of a state and local self-government body that contradicts the law;
- self-protection of the civil right;
- enforcing the performance of the duty in kind;
- compensation for damages;
- levy a default penalty;
- termination or alteration of a legal relation;
- other remedies provided for by law, for instance, the remedies available for the employee against the employer are defined under the Labour Code or the remedies available for shareholders that are defined under the Law on Joint Stock Companies and the Law on Limited Liability Companies.

Law stated - 19 July 2024

Recoverable damages

What damages are recoverable? Are there any particular rules on damages that might make this jurisdiction more favourable than others?

According to Armenian legislation, damages that can be claimed are:

- expenses incurred by the person whose right has been violated, which have been or must be covered by said person in order to restore the violated right;
- the loss of or harm to the person's property (actual damage);
- unearned income that this person would have received under the usual conditions of civil practices had the person's right not been violated (lost benefit); and
- intangible damages.

The causes when the intangible damages can be claimed are limited by the law. Also, the law limits the maximum amount that can be claimed as intangible damages. In some cases,

the law may also limit the amount of the tangible damages subject to compensation. The parties may agree to limit the damages subject to compensation under the contract, except for contracts with customers when the amount of compensation cannot be limited.

Law stated - 19 July 2024

RESPONDING TO THE CLAIM

Early steps available

What steps are open to a defendant in the early part of a case?

Some of main defences available to the defendant under Armenian legislation are as follows:

- if the defendant becomes aware of the claim prior the court's decision to proceed with the claim and the defendant knows of grounds to reject the acceptance of the claim (eg, the court has no jurisdiction over the dispute) or grounds for a claim's return (eg, requirements on pre-action are not met), the defendant may inform the court about those grounds and stop or delay initiation of the proceedings;
- the defendant has a right to submit a response (objections) to the claim within two weeks of the court's decision to proceed with the claim;
- if there are grounds determined under the Civil Procedural Code (CPC) to close the case by leaving the claim without consideration (eg, requirements on pre-action are not met) or terminate the proceedings (eg, if the court has no jurisdiction over the case) the defendant may plead this;
- if there are grounds for an accelerated trial, for instance if the claim is obviously groundless because it is presented against the improper defendant, the defendant may plead that the court apply an accelerated trial; and
- the defendant may submit a counterclaim if the criterion for allowing a counterclaim is met and this counterclaim will be resolved in the scope of the initial case.

Law stated - 19 July 2024

Defence structure

How are defences structured, and must they be served within any time limits? What documents need to be appended to the defence?

The defendant has a right to submit a response (objections) to the claim within two weeks of the court's decision to proceed with the claim. There are no consequences for the defendant if the latter fails to submit the response within this time frame, the defendant still will have an option to submit a written objection against the claim. The CPC lists the following as mandatory to include in the response (objection):

- name of the court to which the statement of claim is submitted;
- number of the case;
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name, address of registration (location), notification address (if different from address of registration (location)) of the defendant, passport data of the defendant as a natural person, state registration number of the defendant as a legal person;

- names of other persons participating in the case;
- statement of the defendant with regard to accepting or partially or fully objecting to the demand as presented in the statement of claim;
- statement with regard to factual grounds of the claim;
- facts substantiating the response (objections); and
- list of documents and evidence attached to the response to the statement of claim.

Law stated - 19 July 2024

Changing defence

Under what circumstances may a defendant change a defence at a later stage in the proceedings?

A defence may need to be changed after the court allows the amendment to the claim, in which case the defendant must be allowed to submit proper response/objections. Other cases are not directly regulated under the CPC.

However, since the court distribute the burden of proof based on the arguments presented by both parties, the defendant's procedural ability to change its defence may be available until the court decides on distribution of the burden of proof.

Law stated - 19 July 2024

Sharing liability

How can a defendant establish the passing on or sharing of liability?

Because the civil procedure is based on the disposition principle, the defendant may merely point out that the claim has been submitted against the improper defendant or that not all defendants are involved. The claimant may or may not change the defendant(s) or involve new defendant(s). If the claimant makes no changes and the court decides that the defendant's arguments regarding the proper defendant or sharing liability are justified, the claim will be rejected or satisfied in the relevant part.

Law stated - 19 July 2024

Avoiding trial

How can a defendant avoid trial?

A motion to leave the claim without consideration or to terminate the proceedings, as well as a motion to apply a statute of limitation may help to avoid the trial. It should be noted that all of these, except for a motion to apply a statute of limitation, may be performed at any stage

of litigation. A motion to apply a statute of limitation may be submitted to the court until the court decides on the distribution of the burden of proof.

Law stated - 19 July 2024

Case of no defence

What happens in the case of a no-show or if no defence is offered?

The defendant's failure to submit a response (objection) to the claim cannot be interpreted as acceptance of the claim or the facts based on it.

The defendant may also choose not to participate in the court hearings, which is also not grounds to classify this as acceptance of the claim.

If the defendant has been properly notified, the court will proceed in the absence of the defendant.

Law stated - 19 July 2024

Claiming security

Can a defendant claim security for costs? If so, what form of security can be provided?

Costs are not included in the value of the subject matter of the claim and hence the court will grant no security for costs.

However, the defendant may plea to the court to apply counter security measures (ie, the defendant, against whom the measure for securing the claim is applied, may ask the court to grant a security from the claimant to whom the court grants security for the claim). The defendant must justify the counter security's purpose, that is, securing payment for the compensation of possible damages that may be caused to the defendant by the security granted to the claimant. The measures available for counter security are the same as those available to the claimant for securing the claim.

Law stated - 19 July 2024

PROGRESSING THE CASE

Typical procedural steps

What is the typical sequence of procedural steps in commercial litigation in this country?

The first instance procedural steps of the courts of general jurisdiction are as follows:

- initiation of the claim, including its acceptance to further proceedings by the court and submission of the response;
- preliminary hearings, including the distribution of burden of proof and submission of the evidence;

- trial (ie, the examination of evidence); and
- decision making.

Almost all decisions of the first instance court are subject to appeal to the Appeal Court, and decisions of the Appeal Court may be appealed to the Court of Cassation. In both the Court of Appeal and the Court of Cassation, the procedural steps are as follows:

- initiation of the appeal, including its acceptance for examination;
- examination of the appeal (should it be accepted); and
- decision making.

Law stated - 19 July 2024

Bringing in additional parties

Can additional parties be brought into a case after commencement?

The claimant cannot be changed during the examination of the case. The involvement of a new defendant and change of defendant is allowed if the claimant agrees, and the court approves the involvement or amendment. This must be done within the terms specified under the Civil Procedural Code (CPC).

A third party may be involved in the case after initiation of the claim if the court allows it, and this may be done until the end of the trial. However, the third party may not bring a claim after the court decides on distribution of burden of proof.

Law stated - 19 July 2024

Consolidating proceedings

Can proceedings be consolidated or split?

The CPC allows the court to both consolidate the number of cases and split the joined claims into separate proceedings. In cases of consolidation or split claims, the court must do this before it makes a decision on distribution of the burden of proof. One peculiarity is that the judge cannot decide to consolidate a number of related cases with fully or partially identical participants into one proceeding if one of the cases is not assigned to that particular judge.

Law stated - 19 July 2024

Court decision making

How does a court decide if the claims or allegations are proven? What are the elements required to find in favour, and what is the burden of proof?

During the preliminary hearing the court must determine the facts that are essential for disposition of the case, specifically:

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through hearing and examination of procedural documents, the court establishes the factual basis of the claim and objections;

- the court determines the legal norms on the ground of which the case must be resolved and concludes on the criterion which must in place for these legal norms to apply; and
- the essential facts must be proved as per the distribution of the proof which the court decides according to the rules defined under the CPC; the general rules are that each person must prove the facts that serve as a basis for either a claim or a response (objections); exceptions are explicitly defined under the laws.

The implication of the distribution of the burden of proof is based on the rule that where the existence or absence of a fact remains disputable after examination of all the evidence by the court, the party with responsibility for the burden of proof for that fact will bear the negative consequences of failure to prove.

The court assesses the evidence in the context of its relevancy, admissibility, credibility and overall sufficiency for confirmation of the fact. The CPC is responsible for regulating when the evidence is relevant and admissible, while the court practice develops the approach to credibility and sufficiency of evidence in the context of different cases or factual grounds.

Law stated - 19 July 2024

Court decision making

How does a court decide what judgments, remedies and orders it will issue?

The court decides when it should issue a decision, and announce the type of decision, in accordance with the requirements of the CPC. The CPC defines explicitly what type of decision the court needs to make and when. The CPC also determines the criteria that each decision must comply with. The court of general jurisdiction is limited to issuing decisions on the subject matter of the claim and pleadings (ie, in general, the court of general jurisdiction has no ex officio authority while examining the case).

Law stated - 19 July 2024

Evidence

How is witness, documentary and expert evidence dealt with?

The CPC allows the following types of evidence in civil procedures:

- testimony of a witness (in the court);
- written evidence;
- physical evidence;
- photos (photographic films), audio and video recordings;
- expert opinion (forensic); and

- explanation from a specialist.

No type of evidence may be deemed stronger than another. They all must be examined separately and together to determine their relevancy, admissibility, credibility and sufficiency.

There may be factual grounds for which the admissibility rule is that the fact must be proved with a specific type or kind or form of evidence and only the existence of that required evidence may lead to satisfaction of the claim.

Law stated - 19 July 2024

Evidence

How does the court deal with large volumes of commercial or technical evidence?

If the evidence is relevant and admissible, the court must permit the submission of evidence of any volume or content. The court may accept digital (scan) copies of large volumes of evidence. If a lot of the evidence contains content that requires specialist knowledge rather than legal knowledge, one of the parties to the claim will usually present a motion to appoint an expert or will submit an explanation from a specialist. The court has no right to appoint an expert or specialist on its own initiative and hence, if the interested party fails to call for an expert or specialist, there is a risk that the court may assess the content incorrectly due to the lack of specialist knowledge.

Law stated - 19 July 2024

Evidence

Can a witness in your jurisdiction be compelled to give evidence in or to a foreign court? And can a court in your jurisdiction compel a foreign witness to give evidence?

The CPC determines that foreign courts may submit a request for the Armenian court to perform procedural actions (including hearing a witnesses' testimony) and vice versa, based on the international treaty and the CPC.

Law stated - 19 July 2024

Evidence

How is witness and documentary evidence tested up to and during trial? Is cross-examination permitted?

As a matter of practice and law, the court tests the witness during the trial. However, a motion to summon a witness must be submitted by one of the parties to the proceedings within the terms defined by the court for submission of evidence. The court decides during the preliminary hearing on summoning witnesses who will testify during the trial.

Cross-examination is permitted. The courts assess the witnesses' statement and other evidence during the decision-making stage.

Documentary evidence also needs to be submitted within the terms defined by the court. The court must assess the relevancy and admissibility of the evidence in the preliminary hearing stage, as per the CPC; however, in practice the court 'reads' and 'discusses' the evidence in the trial stage and assesses the evidence at the decision-making stage.

Law stated - 19 July 2024

Time frame

How long do the proceedings typically last, and in what circumstances can they be expedited?

Proceeding typically lasts from two to three years. If there are grounds for applying for an accelerated trial, the party may plead for this to the court. However, in practice the courts are reluctant to satisfy these motions.

Law stated - 19 July 2024

Gaining an advantage

What other steps can a party take during proceedings to achieve tactical advantage in a case?

No default judgment is possible for claims initiated under the general procedure.

However, there are a few specific proceedings for which the CPC allows default judgment. For instance, if the entity submits for collection of debt through 'proceeding on issuing an order on payment' and the defendant fails to submit the objections within the time limit specified by the CPC, the court may issue a default judgment.

The abuse of rights concept is known to Armenian legislation and regulated both under the Civil Code of Armenia and the CPC.

Law stated - 19 July 2024

Impact of third-party funding

If third parties are able to fund the costs of the litigation and pay adverse costs, what impact can this have on the case?

There can be no impact on the case if a third party is able to fund the costs of the litigation and pay adverse costs.

Law stated - 19 July 2024

Impact of technology

What impact is technology having on complex commercial litigation in your jurisdiction?

From 2024, legal entities must submit their claims and further procedural documents and evidence to the court of general jurisdiction electronically via the court's software system.

The examination of the case in the first instance is orally through the court hearings, which are recorded electronically.

Digital evidence is permitted and is examined by the court, using the relevant technology.

Video and audio communication during a closed-door hearing is prohibited. In other cases, the court may allow a party to participate in the court hearing via video communication, if that party presents a reasoned motion for doing so. Interrogation of a witness, experts and specialists may be conducted using audio-visual telecommunication.

Law stated - 19 July 2024

Parallel proceedings

How are parallel proceedings dealt with? What steps can a party take to gain a tactical advantage in these circumstances, and may a party bring private prosecutions?

According to the CPC, the court must suspend the proceedings in a civil case where examination of the given case is impossible unless a final judgment is rendered on another matter or case examined under constitutional, civil, criminal or administrative proceedings. Once the court grants a party's motion to suspend the civil case, no procedural action will be permitted in the scope of the case except for procedural actions relating to recusal or self-recusal, securing a claim, securing evidence, accepting a counterclaim for proceedings, ensuring implementation of an expert examination, issuing a writ of execution upon a motion filed by an expert.

Law stated - 19 July 2024

TRIAL

Trial conduct

How is the trial conducted for common types of commercial litigation? How long does the trial typically last?

When a case comes to trial, the court will assign a hearing for it. In the vast majority of cases the trial is conducted within one court hearing. However, additional hearings for conducting the trial may be scheduled if there is a large volume of evidence to be examined during the trial, including the number of witnesses and experts to be heard in the trial, or if the witnesses or experts do not answer to the call (notification) of the court promptly.

Law stated - 19 July 2024

Use of juries

Are jury trials the norm, and can they be denied?

No jury trials are established under Armenian procedural laws.

Law stated - 19 July 2024

Confidentiality

How is confidentiality treated? Can all evidence be publicly accessed? How can sensitive commercial information be protected? Is public access granted to the courts?

In general, courts examine cases through open-door court sessions. For the protection of defined sensitive information, a party may ask the court to examine the case or part of a case in a closed-door court session, for example if there is a need to protect trade secrets. The court may decide that the closed-door regime is for the whole case or for part of a case (for instance, to hear specific evidence). If the case is not a closed-door session or only part of it was, the public may access all materials of the case or the part of the case that was not classified as subject to a closed-door regime after the case is closed.

Law stated - 19 July 2024

Media interest

How is media interest dealt with? Is the media ever ordered not to report on certain information?

In open-door court cases, media representatives may be present in the court sessions and there are no restrictions on the parties' right to communicate the details of the case with the media. There is no need for permission to make notes, short-hand notes or audio recordings of the court session. However, the court must grant permission and all persons participating in the case must give their consent for filming, photo shooting, video recording or broadcasting (by radio, TV or other means of telecommunication) the court session or part of the hearing for which consent for reporting in the media has been granted in the civil court of general jurisdiction.

In closed-door court cases no person but the participants of the case may be present in the court room and there are restrictions about what the parties may discuss with the media (ie, the closed-door case or closed-door part of the case may not be disclosed to the media).

Law stated - 19 July 2024

Proving claims

How are monetary claims valued and proved?

The proving of monetary claims depends on the type and grounds of the claim. If the monetary claim has been submitted due to a failure to fulfill monetary obligations under the contract, and there is no dispute over the existence of that obligation under the contract,

proving the value of a claim will be possible without an expert's opinion and based on an invoice or bank statements or similar evidence. However, if the monetary claim is a claim for compensation of damages, the expert report on an assessment of damages will be needed (ie, the party will need either to submit the expert report or plea for the appointment of an expert by the court in order for the latter to perform an assessment). This must be presented to the court during the term defined by the court for submission of evidence. If the court appoints the expert, the court proceedings will be suspended until the court receives the expert report.

Law stated - 19 July 2024

POST-TRIAL

Costs

How does the court deal with costs? What is the typical structure and length of judgments in complex commercial cases, and are they publicly accessible?

The state duty and other expenses related to the examination of a case such as translation costs, expert opinion costs and attorney fees are classified under the Civil Procedural Code (CPC) as judicial costs. The motion on recovery of judicial costs must be submitted in the scope of the case to which they are related. The court must decide on judicial costs when announcing its final decision. There are different cases where the CPC defines how the court must decide on the distribution of the costs such as (1) approved in the settlement (the court may address the matter as it is agreed under the settlement, otherwise the court will distribute the costs equally); (2) leaving the claim without consideration, or (3) termination of proceedings (the judicial costs must be reimbursed by the claimant except when the defendant fulfils the claim voluntarily, in which case the judicial cost must be paid by the defendant as well); (4) deciding on the merits of the case (the general rule is that the judicial costs must be distributed among participants of the case in proportion to the amount of satisfied claim).

Law stated - 19 July 2024

Appeals

When can judgments be appealed? How many stages of appeal are there and how long do appeals tend to last?

The decision of the first instance court may be appealed to the civil Court of Appeal of Armenia, where the appeal will be examined at least within eight months; the decision of the Appeal Court may be appealed to the Court of Cassation of Armenia and, if accepted, will be examined in average within two years.

The decisions of first instance court that are subject to appeal are determined under the CPC. In general, the judgment (final decision) of the first instance court is subject to appeal. The appeal decision may be appealed to the Court of Cassation if the CPC does not place restrictions on appeals for that specific type of decision.

Law stated - 19 July 2024

Enforceability

How enforceable internationally are judgments from the courts in your jurisdiction?

The enforcement of an Armenian court order in another jurisdiction depends on the regulations adopted under that jurisdiction, for instance whether recognition is allowed based on the reciprocity principle.

Armenia has a few international treaties under which an Armenian court order may be presented for recognition and enforced in countries that are members of those treaties (eg, Russia, Belarus, Kazakhstan). Armenia also allows recognition of foreign court acts based on reciprocity.

Law stated - 19 July 2024

Enforceability

How do the courts in your jurisdiction support the process of enforcing foreign judgments?

The CPC regulates separately the process and rules of recognition of foreign judgments in Armenia. The following should be noted.

- The final judgments of a foreign court on resolution of a case are subject to recognition and enforcement in Armenia; decisions on security measures may also be subject to recognition and enforcement.
- If the foreign court decision does not comply with the public order (eg, constitutional rights and freedoms) of Armenia, the recognition will be rejected.
- The decision of a foreign court that is submitted for recognition and enforcement must be final and in force; the application for recognition and enforcement to an Armenian court may be submitted within three years of that decision entering into force.
- The decision of a foreign court may be recognised and enforcement allowed in part, namely that part which has not been executed before the recognition (eg, if a foreign court awarded compensation but only a portion of that compensation was able to be collected in the jurisdiction in which the foreign court made the decision, the Armenian court could recognise the foreign court's decision and allow the remaining part of the unclaimed compensation to be awarded in Armenia).
- The decisions of a foreign court on civil cases only may be submitted for recognition and enforcement.
- Recognition and enforcement are possible based on an international treaty or reciprocity and the presumption of reciprocity applies unless the defendant proves otherwise.

Law stated - 19 July 2024

OTHER CONSIDERATIONS

Interesting features

Are there any particularly interesting features or tactical advantages of litigating in this country not addressed in any of the previous questions?

All features and tactical advantages of litigation in Armenia are addressed in the previous questions.

Law stated - 19 July 2024

Jurisdictional disadvantages

Are there any particular disadvantages of litigating in your jurisdiction, whether procedural or pragmatic?

The main disadvantage of litigation is its length, as it can take years from initiation of the proceedings until they are completed.

Law stated - 19 July 2024

Special considerations

Are there special considerations to be taken into account when defending a claim in your jurisdiction, that have not been addressed in the previous questions?

The question was addressed in the answers to previous questions.

Law stated - 19 July 2024

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

The main legislative and practical development relates to the digitalisation of the process (ie, the court documentation needs to be submitted and presented digitally in the software introduced by the judicial department, except for parties who are natural persons without a representative).

A huge number of commercial cases related to debt collection of up to two million Armenian drams have not been submitted to the courts since the beginning of year, which has led to a somewhat accelerated examination of cases in the courts of general jurisdiction.

The key cases and decisions which may impact business activities are related to shareholder rights protection and competition protection. Decisions related to the protection of minority shareholder rights reveal that minority shareholders are not protected against the major

shareholder and management of the company (ie, if there is a conflict of interest between minority and majority shareholders, the minority shareholders will usually lose, and there is no protection for minority shareholders if the company is managed in such a way as is disadvantageous to them) and, in the case of investment, additional protection needs to be discussed and agreed. A closed-door decision that related to the competition protection may have a positive impact because the courts addressed the unfair competition in the context of the fiduciary duty concept.

Law stated - 19 July 2024