

Russia is a party to the Kiev Convention on the Procedure for Resolving Disputes Relating to Business Activities (the Kiev Convention). According to the Kiev Convention, judgments rendered by state courts of certain CIS nations are enforceable in the Russian Federation. The Russian Federation is also a party to a number of bilateral agreements concerning the recognition and enforcement of court judgments.

Arbitral awards rendered by arbitration tribunals located in the Russian Federation or abroad are also executed by the bailiff service after such awards are recognized and ordered to be enforced by Russian courts. As a rule, Russian courts may not review any foreign arbitral award on its merits. The grounds for the refusal to recognize and enforce foreign arbitral awards are generally the same as those set forth in the New York Convention.

## **15.6 Alternative Dispute Resolution**

Although mediation and other forms of alternative dispute resolution (ADR) are fairly widely discussed in the legal community, there is no established practice for invoking such procedures in the Russian Federation. Nor is there any legislative regulation available for ADR (apart from commercial arbitration). There is no statutory provision, for example, that states that documents received by the parties in the course of mediation may not later be used as evidence in the court, or that the ADR mediator may not subsequently be called as a witness in legal proceedings between the parties.

# **16. NATURAL RESOURCES (OIL AND GAS/MINING)**

Today Russia is one of the largest mineral producers in the world. Russian deposits contain approximately 15- 17 per cent of the world's global mineral deposits and Russian mineral resources are an important component of its wealth.

## **16.1 Introduction**

Russia differs from other countries where the private ownership of minerals in the ground exists and where land owners have title to all mineral resources located below their land plots. All Russian subsoil resources in the ground, including oil, gas, gold and other minerals, unless extracted, are owned by the Russian state, irrespective of who holds the title to the relevant land plot or holds the relevant subsoil license. Rights to extract subsoil resources can be granted under subsoil licenses which, as a rule,

provide that ownership rights to the extracted resources belong to the holder of the relevant license. Geological survey rights may be granted under both a license and a state contract (when a geological survey is performed at a request of the Russian state).

## **16.2 Subsoil Legislation**

The Constitution of the Russian Federation stipulates that subsoil-use legislation falls within the joint competence of the federal and regional state authorities. However, in practical terms the regional authorities have competence over deposits of certain widespread mineral resources and insignificant subsoil deposits.

The core legal act in the mining and oil and gas domain is Russian Federation Law on Subsoil Resources dated 21 February 1992, as amended (the Subsoil Law). The Subsoil Law provides the general legal framework for the use of subsoil resources in Russia and covers almost all principal issues connected with geological survey, exploration and production/mining of underground resources.

The other principal law governing the use of subsoil resources in Russia is the Federal Law on Production Sharing Agreements dated 30 December 1995, as amended (the PSA Law). The PSA Law sets forth the legal framework for Russian and foreign investments in the geological survey, exploration and production of subsoil resources.

## **16.3 Subsoil Users**

Under the Subsoil Law, both Russian and foreign companies may hold subsoil licenses in the Russian Federation, save for licenses for strategic deposits which may be developed by Russian companies only. In respect of off-shore fields, the user of such fields may only be a Russian company which is at least 50% owned by the Russian state and which has at least five year experiences of development of off-shore fields. Although foreign companies are allowed to hold subsoil rights in respect of non-strategic deposits, in practice there are only a few cases where a foreign company directly holds subsoil rights in Russia. Therefore, usually foreign companies hold subsoil rights to Russian deposits indirectly through their Russian subsidiaries which are allowed to hold subsoil rights in respect of on-shore strategic deposits.

## 16.4 Licenses

Russia, similarly to many other countries, has adopted a licensing system. Subsoil licenses in Russia include: geological survey licenses, exploration and mining/production licenses and combined licenses (geological survey, exploration and mining/production licenses).

A geological survey license may be granted for a maximum period of 5 years and can be extended if needed for completion of the works. Exploration and mining/production licenses and combined licenses can be issued for a term equal to the life of the project, however in practice they are usually granted for 20 or 25 year terms and can generally be extended.

Geological survey licenses are issued without a tender or auction based on an application of the interested party. Unlike geological survey licenses, mining/production licenses and combined licenses can be granted only through a tender or auction, except when a mining/production or combined license is issued to a holder of geological rights that made a commercial discovery under a geological survey license.

Subsoil licenses are issued by the Federal Agency for Subsoil Use (Rosnedra). Rosnedra is in charge of granting subsoil rights with respect to all onshore deposits, as well as granting rights for the geological survey of offshore deposits. Rights to production of oil and gas on offshore fields may only be granted based on a decision of the Government of the Russian Federation.

## 16.5 Transfer of Subsoil Rights

As a general rule, subsoil rights in Russia are not freely transferable. This means that they cannot be sold, pledged or otherwise encumbered. However, the Subsoil Law permits the transfer of subsoil rights, except for the rights to strategic deposits, in certain instances, which makes such rights transferable to a limited extent. Such instances include: (i) transfer of subsoil rights from a parent company to its subsidiary and vice versa and transfer between the subsidiaries of the same parent company; (ii) transfer following a merger of the license holder with and into another company; (iii) transfer following a consolidation of the license holder with another company; (iv) transfer following a spin-off or split-off of a new company. Any such transfer of subsoil rights requires a special decision of Rosnedra. Rights to strategic deposits are not transferrable unless otherwise is determined by the Russian Government in respect of a specific deposit.

The above options are often used by subsoil users for structuring their business, as well as for the “sale” of licenses, which is only possible through a sale of the licensee’s shares.

## 16.6 Strategic Deposits

In 2008 Russia introduced a long-discussed set of restrictions for foreign investors in respect of strategic subsoil plots (subsoil plots of federal significance). Strategic deposits include the following:

- 1) subsoil plots containing deposits and showings of uranium, diamonds, high-purity quartz, the yttrium group of rare earths, nickel, cobalt, tantalum, niobium, beryllium, lithium, or the platinum group of metals (irrespective of the size of the deposits);
- 2) subsoil plots containing the following reserves, as evidenced by the State Register of Reserves, as of January 1, 2006:
  - recoverable oil reserves equal to or exceeding 70 million tons;
  - gas reserves equal to or exceeding 50 billion cubic meters;
  - hard-rock gold reserves equal to or exceeding 50 tons; or
  - copper reserves equal to or exceeding 500 thousand tons;
- 3) subsoil plots located in the inland sea waters, territorial sea waters, or on the continental shelf of the Russian Federation;
- 4) subsoil plots that can only be developed using land used for defense and security.

The list of subsoil plots of federal significance has been published by the Federal Agency for Subsoil Use and includes approximately 1,000 strategic deposits.

## 16.6 Production Sharing Agreements

In the Russian Federation Production Sharing Agreements (PSAs) are used to provide a particular legal framework for foreign investors in the mining, oil, gas, and other extraction sectors. The main objective of the PSA legislation is to provide investors in these sectors with greater stability in fiscal and regulatory areas over long-term periods. The main legislation governing PSAs in Russia is the PSA Law.

Since 2003 subsoil plot development under the PSA Law has been available only if such subsoil plot was put out to auction and the auction failed. That is, only those plots that are not interesting to subsoil users on standard license terms and conditions may be developed under a PSA. Therefore, the best deposits are distributed under subsoil licenses and the PSA regime is not very attractive to subsoil users.

Due to the above and to the PSA tax regime established at the same time (see section 6.9 below), PSAs have, in practice, become largely ineffective in terms of attracting foreign investment into Russia.

## **17. BANKING**

### **17.1 Legal Framework**

The foundations of the Russian banking system are provided in Federal Law No. 395-1 *On Banks and Banking Activities*, dated 2 December 1990 (the “Banking Law”), and Federal Law No.86-FZ *On the Central Bank of the Russian Federation*, dated 10 July 2002 (the “CBR Law”). Bank insolvency is regulated by Federal Law No. 40-FZ *On Insolvency (Bankruptcy) of Credit Organizations*, dated 25 February 1999. The Central Bank of the Russian Federation (the “CBR”) is responsible for regulating banking activities. Through its instructions, regulations, and other acts, the CBR establishes rules, standards, and obligatory requirements for banks and non-banking credit organizations throughout the territory of the Russian Federation.

### **17.2 Regulatory Bodies**

The primary regulatory body governing the banking sector of the Russian Federation is the CBR. The CBR is one of the few institutions under the control of the Russian legislative (rather than executive) branch. The State Duma must not only approve the nomination of the chairman of the CBR, but also approve the resignation of the chairman. However, the CBR Law provides for the establishment of a specific body within the structure of the CBR, the National Banking Council (the “NBC”), comprised of representatives of various executive and legislative bodies. The NBC exercises control over the CBR’s board of directors, and participates in establishing the basic principles of Russian banking and financial policy.

The CBR and the Government share authority over monetary policy. The CBR is responsible for circulating monetary funds and ensuring the stability of the Russian