

It is impossible to import telecommunications equipment that must be certified without a certificate, because the certificate is one of the documents required by customs for customs clearance of the equipment.

If equipment is not specified in the statutory certification list, such equipment may be imported without certification. For distribution of such equipment in Russia, a declaration of conformity is required. A declaration of conformity should be filed for registration by an applicant accompanied with the relevant evidence of the device's conformity available to the applicant and obtained with the help of accredited testing laboratories. The declaration of conformity should be registered with the FCA within three days. Applications for certificates of compliance may be submitted only by the manufacturers, sellers or the "legal entities or private entrepreneurs registered in the Russian Federation and providing for compliance of communications equipment with the established requirements on the basis of an agreement with the *manufacturer*" (the latter, the "**Manufacturer's Proxy**"). Declarations of conformity may be made, however, only by Manufacturer's Proxies, or by the manufacturer if registered in the Russian Federation.

Russian laws provide for sanctions for violating the certification rules: using uncertified communications equipment in communications networks, or rendering uncertified communications services where obligatory certification thereof is provided for by law, entails the imposition of an administrative fine with or without confiscation of the uncertified communications equipment.

21. CLIMATE CHANGE

21.1 Introduction

Russia ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the "**Kyoto Protocol**") by Federal Law No. 128-FZ dated November 4, 2004. However, the only Kyoto-related mechanism that was covered by a number of additional enactments is Joint Implementation ("**JI**"). Russia implemented JI-related regulations in several enactments. Of particular relevance are:

- Russian Government Resolution No. 332, "On the Procedure for Adopting, and Checking the Development of Projects Implemented Under Article 6 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change" (the "**Resolution**"); and

- Regulations “On Adopting, and Checking the Development of Projects Implemented Under Article 6 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change” (the “**JI Rules**”).

21.2 Summary of the JI Rules

21.2.1 Parties Involved in the Implementation of JI projects

After much debate, the JI Rules assigned the respective competencies of Russian state bodies for regulation of JI projects, and also established rules for the private participants in JI projects.

State Bodies

The JI Rules foresee the interaction of the following four state bodies in the various activities required under the JI Rules (such as approval of a JI project, establishment of limits for emission reductions, etc.):

1. The Russian Government;
2. The Russian Ministry of Economic Development (the MED), performing the functions of a focal point (the Focal Point) pursuant to the Resolution;
3. Authorised bodies, whose functions, according to the Resolution, and depending on the sectors in which a project is to be implemented, are to be performed by the relevant federal ministries; and
4. A special Commission, to be established by the MED.

Investor in a Project

A Russian or foreign legal entity, individual entrepreneur or individual, may apply for approval of a JI project and provide financing for its implementation (“**Project Investor**”). Under the current version of the JI Rules, the possibility of the Project Investor to cover and participate only in the carbon part of the whole project is at least questionable.

To be eligible for a JI project, the Project Investor must have assets in an amount exceeding the anticipated costs of the project’s implementation. According to the

Minutes of the Interagency Commission dated February 21, 2008, the following documents can, inter alia, be used as proof of the sufficiency of the Project Investor's funds:

- Extract from the bank account;
- Extract from the balance sheet and a profit and loss report (form No. 2) for the last reporting period - for legal entities and individual entrepreneurs registered in Russia;
- Copy of the decision of a credit organisation confirming provision of funds.

It is not yet clear whether and how authorities will deal with the danger of so-called "paper investments", for instance to prevent that the proof of investment is limited to transferring funds to the investors account only for the purpose of obtaining an extract confirming the availability of the funds, and immediate return the assets to their provider.

Project Host

According to the JI Rules the following entities may act as project host:

- a. Owner of the site at which the project activity is to be implemented; or
- b. Another person authorised in accordance with Russian legislation to perform such activity.

These somewhat unclear definitions raise at least two related questions:

- What factual conditions have to be met for an entity to be considered an emitter? A typical example of such an issue would be a pipeline where operation and ownership may be in different hands.
- What are the legal conditions that have to be in place for the project host to be considered as the person possessing the emissions: should it be the owner of land or buildings? May it be a lessee or a third party acting on the basis of a special agreement with the owner?

What is clear is that the legal position of the project host is subject to review for every JI project. In addition, according to the JI Rules, a document confirming the consent of the project host to the JI project's implementation is to be provided. The law is not clear as to the format of such consent. In particular, it is unclear whether simple consent is sufficient or whether an agreement is required.

21.2.2 Limits for Emission Reductions

Limits for emission reductions or greenhouse gas absorption are to be established on an annual basis to control the maximum amount of emission reductions and the amount of greenhouse gas absorption generated by JI projects, and transferred to the corresponding parties to the Kyoto Protocol.

Limits are to be established by the Focal Point for a particular sector or category of emitters and/or absorbers, but under certain circumstances they may be redistributed to other sectors or categories of emitters and/or absorbers.

With Order No. 422, dated November 30, 2007, the Focal Point approved a total limit of 300 million tCO₂e for greenhouse gas emission reductions for 2008-2012. The following limits (in million tCO₂e) were established for greenhouse gas emission reductions in particular sectors of emitters, and for greenhouse gas absorption by absorbers:

- a. For greenhouse gas emission reduction:
 - energy sector - 205;
 - industrial processes - 25;
 - use of solvents and other products - 5;
 - agricultural sector - 30;
 - waste - 15.
- b. For greenhouse gas absorption by means of use of land, change in use of land, and forestry - 20.

21.3 Implementation of a JI Project

According to the JI Rules, implementation of a JI project consists of the following stages:

1. Approval of the project (i.e. pre-approval of a project's application, including project design documentation, and final approval of the project); and
2. Development of the project and confirmation of emission reductions generated by the project.

21.3.1 Pre-Approval of a Project Application

Initially, the Project Investor provides the Focal Point with an application for approval of the project as a JI project, accompanied by a number of documents, including a validation report prepared by an expert organisation chosen by the Project Investor from the list of authorised organisations adopted by the Focal Point at the proposal of the Commission,⁶⁸ project-design documentation, etc. Some of the documents submitted together with the application are to be prepared in accordance with requirements adopted by the Focal Point.

The Focal Point rejects applications that either contemplate emission reductions and/or absorption before January 1, 2008 or after December 31, 2012, or are not prepared in compliance with the JI Rules. Non-rejected applications are to be transferred by the Focal Point to the relevant authorised bodies.

The authorised bodies are to consider the application and provide the Focal Point with a motivated positive or negative opinion on the JI project's implementation.

As the next stage, the application is to be considered by the Commission. The project application *will be* rejected by the Commission if:

- The application is not in accordance with the JI Rules;
- The anticipated efficiency indexes are not in compliance with the thresholds of the model efficiency indexes adopted for the relevant sector (category) of the emitter and/or absorber; or
- No positive validation report is presented.

The project application *may be* rejected by the Commission if:

- The JI project cannot be implemented by December 31, 2012;
- A negative opinion on the JI project was received from the relevant authorised bodies; or

⁶⁸ According to the Order adopted by MED on March 14, 2008, the following companies may act as such expert organisations in Russia: Det Norske Veritas Certification Ltd., Bureau Veritas Certification Holding SAS, TÜV SÜD Industrie Service GmbH, SGS United Kingdom Limited, and TÜV NORD CERT GmbH

- The planned amount of emission reductions to be generated by the JI project, in addition to the emission reductions whose transfer is contemplated by the adopted JI projects, exceeds the limits established for the relevant sector or category of emitters and/or absorbers.

21.3.2 Final Approval of a JI Project

Within 10 days of the date of a resolution reflecting the decision having been made by the Commission, but only once in a quarter, the Focal Point forms a list of JI projects recommended for approval, and submits it to the Russian government for final approval.

The Focal Point is authorised to communicate with the agencies maintaining Russia's national registry and to perform actions leading to the receipt, transfer or acquisition of Emission Reduction Units as prescribed by Article 6 of the Kyoto Protocol.

21.3.3 Withdrawal of a JI Project's Approval

The Russian government may exclude a JI project from the list of projects approved by the Russian government in the following cases:

1. Repeated missing of deadlines for submitting reports on project implementation by more than 30 days;
2. If during project implementation, non-compliance with the anticipated efficiency indexes was discovered;
3. If a Party to the Kyoto Protocol has not approved a project within 12 months from its approval by the Russian government;
4. If a Party to the Kyoto Protocol has withdrawn its approval of a JI project and such withdrawal has entered into force;
5. Liquidation of the legal entity, death of the individual or de-registration of the individual entrepreneur being the Project Investor; or
6. Upon other events as may be established by the Russian government.

21.4 Monitoring

The Project Investor is obliged to provide the federal state agency determined by the Russian government to control the project implementation with annual reports on project implementation for each project. Reports are to be prepared in accordance with the methodologies adopted by the Focal Point.

Upon the completion of the project's implementation, the Project Investor must provide the authorised state agency with a final report containing the final summary of the project results. This report is to be reviewed by the authorised state agency and forwarded by it to the Focal Point.

21.5 Contractual Instruments for JI Projects

The relationship between the project host and the Project Investor has been the subject of much debate. While in other countries, a so-called emission reductions purchase agreement (ERPA), being a type of a purchase and sale agreement, has been concluded, the JI Rules, furthering what the Kyoto Protocol provided for, pre-suppose an investment agreement for this relationship. Indeed, an ERPA would require that emission reductions are transferred from the Project Host to the Project Investor, which is typically not the case under the JI Rules. Also, the ERPA creates unfavorable tax consequences, and investment agreements allow the achieving of most of what is typically intended by the parties.

21.6 Taxation

The JI Rules do not contain any specific provisions on taxation of operations performed under agreements covering a JI project. Therefore, the general rules of Russian law should apply, depending on the particular agreements governing the relationship of the parties to a JI project.

In general, the applicable tax regime depends on the terms and conditions and on the nature of an agreement between the Project Investor and the project host. Typically, while under certain circumstances, the parties may avoid Russian VAT on transfer of ERUs to the Project Investor under the investment agreement, the project host may either be subject to the Russian profits tax on funds received from the Project Investor, if the Project Investor is Russian resident, or may avoid Russian profit tax, if the Project Investor is non-resident.