Doing Business in Russia
2015
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2015

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# Table of Contents

1. Russia – An Overview ................................................................. 1  
   1.1 Geography ............................................................................. 1  
   1.2 Population ............................................................................. 1  
   1.3 Political System ...................................................................... 1  
   1.4 International Relations ......................................................... 4  
   1.5 Economy ............................................................................... 5  

2. The Russian Judicial System ....................................................... 7  
   2.1 Introduction ............................................................................. 7  
   2.2 Courts of General Jurisdiction .............................................. 7  
   2.3 State Arbitrazh Courts ......................................................... 9  
   2.4 Administrative Judicial Proceedings .................................... 17  
   2.5 International Arbitration ...................................................... 18  
   2.6 Enforcement of Judgments and Arbitral Awards .................... 19  
   2.7 Alternative Dispute Resolution and Mediation ..................... 19  

3. Promoting Foreign Investment in Russia ..................................... 21  
   3.1 General Provisions Regarding Foreign Investments .......... 21  
   3.2 Restrictions on Strategic Companies ...................................... 23  
   3.3 Controlled Transactions ....................................................... 25  
   3.4 Special Restrictions for Foreign States, International  
       Organizations and Organizations under Their Control ... 28  
   3.5 Consequences of Violation of the Law on Strategic  
       Companies ........................................................................... 29  

4. Establishing a Legal Presence ..................................................... 30  
   4.1 Representative Office and Branch of a Foreign Legal  
       Entity ................................................................................... 30  
   4.2 Forming a Russian Legal Entity .......................................... 31  
   4.3 Limited Liability Companies ............................................... 34  
   4.4 Joint Stock Companies ....................................................... 37  

5. Issuance and Regulation of Securities ....................................... 43  
   5.1 Introduction ........................................................................... 43
8. Taxation ........................................................................................................... 92

8.1 Introduction ................................................................................................... 92
8.2 Types of Tax .................................................................................................. 93
8.3 Tax Audits ...................................................................................................... 94
8.4 Transfer Pricing Rules .................................................................................. 96
8.5 Corporate Profits Tax ................................................................................... 99
8.6 Taxation of Foreign Companies ................................................................... 108
8.7 Double Taxation Treaties ............................................................................ 113
8.8 Value Added Tax (“VAT”) ............................................................................ 124
8.9 Mineral Extraction Tax ................................................................................. 128
8.10 Taxation under Production Sharing Agreements ...................................... 132
8.11 Corporate Property Tax .............................................................................. 133
8.12 Social Security Contributions ..................................................................... 134
8.13 Individual Income Tax ................................................................................ 136
8.14 Regional and Local Taxes .......................................................................... 137

9. Customs, Trade and WTO Aspects ................................................................. 139

9.1 Introduction ................................................................................................... 139
9.2 Accession to the World Trade Organization ............................................. 139
9.3 CIS Free Trade Agreement .......................................................................... 146
9.4 Eurasian Economic Union and Customs Union ....................................... 148
9.5 Unified Tariff Regulations of the Customs Union ....................................... 149
9.6 Preliminary Classification Decisions ............................................................ 150
9.7 Sanitary-Epidemiologic Measures ............................................................... 150
9.8 Technical Regulations (Confirmation of Compliance) ............................. 151
9.9 Phytosanitary and Veterinary Control ....................................................... 153
9.10 Import and Export Licensing ..................................................................... 154
9.11 The Russian Customs Authorities .............................................................. 155
9.12 Declarant (Importer of Record) ................................................................. 157
9.13 Registration of Importer of Record with Local Customs Authorities ....... 158
9.14 Customs Brokers (Representatives/Agents) .............................................. 158
9.15 Authorized Economic Operator .................................................................. 159
9.16 Customs Clearance ..................................................................................... 159
9.17 Electronic Declaration ................................................................................ 160
9.18 Customs Regimes ....................................................................................... 161
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.14</td>
<td>Employment of Foreigners in Russia</td>
<td>193</td>
</tr>
<tr>
<td>12.15</td>
<td>Trade Secrets (Know-how)</td>
<td>196</td>
</tr>
<tr>
<td>12.16</td>
<td>Personal Data</td>
<td>198</td>
</tr>
<tr>
<td>13.</td>
<td>Property Rights</td>
<td>199</td>
</tr>
<tr>
<td>13.1</td>
<td>Introduction</td>
<td>199</td>
</tr>
<tr>
<td>13.2</td>
<td>Other Real Estate</td>
<td>211</td>
</tr>
<tr>
<td>13.3</td>
<td>State Registration of Rights to Real Estate</td>
<td>215</td>
</tr>
<tr>
<td>13.4</td>
<td>Classification of Real Estate</td>
<td>219</td>
</tr>
<tr>
<td>13.5</td>
<td>Payments for Real Properties</td>
<td>219</td>
</tr>
<tr>
<td>13.6</td>
<td>Residential Real Estate</td>
<td>220</td>
</tr>
<tr>
<td>13.7</td>
<td>Mortgage of Real Properties</td>
<td>220</td>
</tr>
<tr>
<td>14.</td>
<td>Privatization</td>
<td>228</td>
</tr>
<tr>
<td>14.1</td>
<td>History of Privatization</td>
<td>228</td>
</tr>
<tr>
<td>14.2</td>
<td>Current Status</td>
<td>229</td>
</tr>
<tr>
<td>14.3</td>
<td>Recent developments</td>
<td>232</td>
</tr>
<tr>
<td>15.</td>
<td>Language Policy</td>
<td>233</td>
</tr>
<tr>
<td>16.</td>
<td>Civil Legislation</td>
<td>236</td>
</tr>
<tr>
<td>17.</td>
<td>Intellectual Property</td>
<td>241</td>
</tr>
<tr>
<td>17.1</td>
<td>Regulatory Environment</td>
<td>241</td>
</tr>
<tr>
<td>17.2</td>
<td>Patents</td>
<td>242</td>
</tr>
<tr>
<td>17.3</td>
<td>Trademarks, Service Marks, Trade Names and Appellations of Origin of Goods</td>
<td>245</td>
</tr>
<tr>
<td>17.4</td>
<td>Company Names and Trade Names (Commercial Designations)</td>
<td>248</td>
</tr>
<tr>
<td>17.5</td>
<td>Domain Names</td>
<td>249</td>
</tr>
<tr>
<td>17.6</td>
<td>Copyrights and Neighboring Rights</td>
<td>251</td>
</tr>
<tr>
<td>17.7</td>
<td>Software Programs and Databases</td>
<td>252</td>
</tr>
<tr>
<td>17.8</td>
<td>Topologies of Integrated Microcircuits</td>
<td>252</td>
</tr>
<tr>
<td>17.9</td>
<td>Trade Secrets and Know-How</td>
<td>252</td>
</tr>
<tr>
<td>17.10</td>
<td>Employee’s Developments</td>
<td>254</td>
</tr>
<tr>
<td>17.11</td>
<td>License and Franchise Agreements</td>
<td>255</td>
</tr>
</tbody>
</table>
17.12 IP Enforcement. IP Court ...................................................... 257
17.13 Russia’s New Anti-Piracy Legislation ...................................... 259

18. Insolvency .............................................................................. 262
18.1 Overview .............................................................................. 262
18.2 Legislation ........................................................................... 262
18.3 Procedure ............................................................................ 263
18.4 Challenging transactions ....................................................... 267
18.5 Priority of Claims ................................................................. 269
18.6 Treatment of Secured Creditors ............................................. 269
18.7 Liability of Controlling Persons ............................................. 270
18.8 Insolvency of Banks and Financial Institutions .................... 272

19. Natural Resources (Oil and Gas/Mining) .................................... 273
19.1 Introduction ........................................................................... 273
19.2 Subsoil Legislation ................................................................ 273
19.3 Subsoil Users ...................................................................... 274
19.4 Licenses .............................................................................. 274
19.5 Transfer of Subsoil Rights .................................................... 275
19.6 Strategic Deposits ................................................................ 276
19.7 Production Sharing Agreements .......................................... 277
19.8 Export of Gas and LNG ....................................................... 278
19.9 Precious Metals and Gem Stones ........................................... 278

20. Banking ................................................................................... 280
20.1 Introduction ........................................................................... 280
20.2 Banking and Banking Operations .......................................... 280
20.3 Legal and Regulatory Framework ......................................... 286

21. Insurance in Russia ................................................................. 294
21.1 Introduction ........................................................................... 294
21.2 Licensing Requirements ....................................................... 294
21.3 Restrictions on Foreign Investments ..................................... 295
21.4 Regulation of the Insurance Market and Products ................ 296
21.5 Types of Insurance in Russia ............................................... 297

22. The Pharmaceuticals and Healthcare Industry ............................ 298
### 22. Legal Framework

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>22.1</td>
<td>Legal Framework</td>
<td>298</td>
</tr>
<tr>
<td>22.2</td>
<td>Regulatory Bodies</td>
<td>299</td>
</tr>
<tr>
<td>22.3</td>
<td>Clinical Trials of Medicinal Preparations and Clinical Studies of Medical Devices</td>
<td>301</td>
</tr>
<tr>
<td>22.4</td>
<td>Registration of Medicinal Preparations and Medical Devices</td>
<td>304</td>
</tr>
<tr>
<td>22.5</td>
<td>Manufacturing</td>
<td>312</td>
</tr>
<tr>
<td>22.6</td>
<td>Importation</td>
<td>314</td>
</tr>
<tr>
<td>22.7</td>
<td>Wholesale</td>
<td>315</td>
</tr>
<tr>
<td>22.8</td>
<td>Retail Sale</td>
<td>317</td>
</tr>
<tr>
<td>22.9</td>
<td>Price Regulation</td>
<td>318</td>
</tr>
<tr>
<td>22.10</td>
<td>Interchangeability</td>
<td>319</td>
</tr>
<tr>
<td>22.11</td>
<td>Technical Maintenance of Medical Equipment</td>
<td>320</td>
</tr>
<tr>
<td>22.12</td>
<td>Government-run Programs for Medicinal Supply</td>
<td>321</td>
</tr>
<tr>
<td>22.13</td>
<td>Promotion</td>
<td>322</td>
</tr>
</tbody>
</table>

### 23. Telecommunications

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>23.1</td>
<td>Applicable Laws and Competent State Bodies</td>
<td>327</td>
</tr>
<tr>
<td>23.2</td>
<td>Telecommunications Licenses</td>
<td>329</td>
</tr>
<tr>
<td>23.3</td>
<td>Rights to Use Radio Frequencies</td>
<td>331</td>
</tr>
<tr>
<td>23.4</td>
<td>Registration of Radio Frequency Emitters</td>
<td>333</td>
</tr>
<tr>
<td>23.5</td>
<td>Broadcasting of Mandatory Public TV Channels and Radio Stations</td>
<td>333</td>
</tr>
<tr>
<td>23.6</td>
<td>SORM Issues</td>
<td>334</td>
</tr>
<tr>
<td>23.7</td>
<td>Technical Regulation Requirements</td>
<td>334</td>
</tr>
<tr>
<td>23.8</td>
<td>Internet Communications Programs</td>
<td>336</td>
</tr>
<tr>
<td>23.9</td>
<td>Bloggers</td>
<td>336</td>
</tr>
<tr>
<td>23.10</td>
<td>Mass Media Regulation</td>
<td>337</td>
</tr>
</tbody>
</table>

### 24. Climate Change

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.</td>
<td>Climate Change</td>
<td>348</td>
</tr>
</tbody>
</table>
Preface

Baker & McKenzie provides sophisticated legal advice to the world’s most dynamic global enterprises, and has done so for more than 60 years.

With a network of more than 5,600 locally qualified, internationally experienced fee earners in 77 offices across 47 countries, we have the knowledge and resources to deliver the broad scope of quality services required to respond effectively to both international and local needs — consistently, with confidence and with sensitivity to cultural, social and legal differences.

Active in the USSR and the Commonwealth of Independent States for over 40 years, with offices in Almaty, Baku, Kyiv, Moscow, St. Petersburg we now have one of the largest legal practices in the region, offering expertise (in close cooperation with our offices worldwide) on all aspects of investment in the region including corporate law, banking and finance, securities and capital markets, venture capital, competition law, tax and customs, real estate and construction, labor and migration, intellectual property, and dispute resolution.

The first western law firm to be registered with the then Soviet authorities, our Moscow office was opened in 1989, followed by the opening of our St. Petersburg office in 1992.

Since the dissolution of the Soviet Union in 1991, the Russian Federation has adopted new legislation at a rapid pace. It remains a country in transition and its legal system in continued development. Doing Business in Russia has been prepared as a general guide for companies operating in or considering investment into the Russian Federation. It is intended to present an overview of the key aspects of the Russian legal system and regulation of business activities in this country.

This book reflects information and exchange rates current as of 1 January 2015.

We will be happy to provide you with updates on the material contained in this guide, or to provide you with further information regarding a specific industry or area of Russian law in which you may have a particular interest.

Baker & McKenzie – CIS, Limited
January 2015
1. Russia – An Overview

1.1 Geography
The Russian Federation stretches across Eurasia from Eastern Europe to the Pacific coast. After the collapse of the Soviet Union, Russia became the largest country in the world in terms of territory.

1.2 Population
The population of the Russian Federation is approximately 143 million. Although approximately 80% of the country’s population is ethnically Russian, the Russian Federation is a multinational state and is home to numerous ethnic minority groups, including sizeable Tatar (3.8%) and Ukrainian (2%) populations. Roughly 73% of the population lives in urban areas and 12 cities have a population of over 1 million. The largest city in the Russia is Moscow, with a population of approximately 11.9 million, followed by St. Petersburg, with a population of approximately 5 million.

1.3 Political System
The Russian Federation is a federal republic consisting of 85 constituent entities. There are six categories of federal constituent entity which, while subtly different in classification, are constitutionally defined as equal members of the federation. The 22 republics (corresponding to the homelands of various ethnic groups) enjoy a certain degree of regional autonomy. The federation is further divided into 46 oblasts (regions), one autonomous oblast (autonomous region), 3 cities of federal significance and 9 krais (territories) in which 4 autonomous okrugs (autonomous districts, also delineated for various ethnic groups) are located. In 2000, Russia was further divided into seven federal super-districts (circuits) with the aim of ensuring federal supervision over regional affairs.

Each constituent entity of the federation possesses its own charters, political institutions and local legislation. Approximately half of the constituent entities have signed bilateral treaties regulating the
relationship between the regional and federal governments. Significant progress has been made towards greater consistency between the regional and federal legal systems. However, when conducting business transactions at the regional level treaty stipulations should be carefully reviewed as they may assign slightly different rights and privileges to the constituent entity in question.

Constitutionally, the President of the Russian Federation is elected for a six year term (which was extended from four to six years in 2008). Any given individual is limited to two terms in succession. The President is vested with extensive powers, serving as the head of state, the commander-in-chief of the armed forces, and the highest executive authority of the federation. The office of the President also includes the powers of decree, legislative veto, and the power to appoint and dissolve the Government. The President is primarily responsible for domestic and foreign policy and represents Russia in international relations.

The Prime Minister oversees the activities of the government and serves as the acting President if the President becomes ill and is unable to carry out the functions of that office. The Prime Minister’s authority as acting President expires upon the election of a new President, which would normally be three months after the former President’s authority expired.

Since the election of Vladimir Putin to the Russian presidency in May 2000, the country has undergone a number of sweeping political reforms aimed at centralizing power within the federal executive. Mr. Putin was re-elected in March 2004. In March 2008 Putin’s designated successor, Dmitry Medvedev, won the general election with an overwhelming majority. In May 2008 Vladimir Putin was appointed Prime Minister. On 4 March 2012, Mr. Putin won the 2012 Russian presidential elections in the first round.

Legislative power is exercised by a bicameral Federal Assembly, which consists of the Federation Council (upper house) and the State Duma (lower house). Since January 2002 the Federation Council
has consisted of two representatives from each federal constituent entity, one from the executive branch appointed by the regional governor, and one from the legislature nominated by the regional assembly. This has changed from the previous system in which leaders of the regional legislative and executive branches served on the council ex officio. The State Duma consists of 450 members elected nationwide by proportional representation though party lists. Previously 225 of the 450 members were elected in single member constituencies, however in December 2004 these seats were abolished. The first election under the new rules was held in December 2007. In addition, new rules were introduced governing national political parties, increasing both the minimum number of party members required for registration (from 10,000 to 50,000) and the threshold to secure Duma seats (from 5% to 7% of the national vote).

The lowest governmental level in the Russian Federation is local self-government. Reformed in September 2003, bodies at this level remain relatively new and untested. Current law distinguishes between community-level government and the governments of towns and villages, reforming the roles and responsibilities of each level. However, the overall influence of local self-government depends on how much authority has been delegated to the local level by the regional government. Foreign investors should be aware of the position of local bodies in regions where they conduct business since these bodies may possess limited powers of taxation.

At the top of the Russian judicial system are two high courts: the Constitutional Court and Supreme Court. The 19 judges of the Constitutional Court review all constitutional disputes. The Supreme Court reviews civil, criminal, and administrative disputes involving private individuals, as well as commercial disputes and administrative disputes involving legal entities and individual entrepreneurs. Judges for all of these courts are appointed for life by the Federation Council on the recommendation of the President.
1.4 International Relations

Russia is still in the process of defining its position in the post-Cold War world. One of the primary accomplishments of Russian foreign policy has been an improved relationship with Western Europe and the United States, although this bond has been severely tested on several occasions. In the past few years Russia has been re-evaluating its foreign policy agenda in response to increased Western involvement in both Eastern Europe and Central Asia.

One of the key pillars of Russian foreign policy has been the Commonwealth of Independent States (CIS), whose membership is comprised of most of the former Soviet republics. Since 1991 the CIS has struggled to establish itself as an effective and integrated body. Currently, the most significant issue facing the CIS is the establishment of a “Common Economic Space” between Russia, Belarus, and Kazakhstan. Agreement in principle was announced in 2003, mandating the creation of a self-governing supranational commission on trade and tariffs. The ultimate goal is the creation of a regional organization with the ability to expand its membership and forge a currency union, the first stage of which was scheduled to begin in 2005. In August 2008, following an escalation of hostilities between Russia and Georgia over the separatist region of South Ossetia, Georgia withdrew from the CIS.

Recently Russia has been very active in various Western programs, including the strengthening of the International Non-proliferation Initiative as well the formation of a joint Russia-NATO action plan on international terrorism, which envisages the exchange of confidential information as well as joint exercises and anti-terrorism training. Internationally, Russia continues to be an active member of all bodies of the United Nations and retains a permanent seat on the Security Council with veto rights.

Russia has always had close ties with its neighbor and major trading partner – Belarus. In 1997 a supranational entity, the Union of the Russian Federation and the Republic of Belarus, was formed.
However, since then the initial enthusiasm for integration has waned and a union with a single currency remains merely a project.

1.5 Economy

The 8 years of Vladimir Putin’s presidency from 2000 to 2008 coincided with an era of rapid economic growth fueled by sky-high commodity prices and accompanied by a significant increase in living standards. The government’s devaluation of the ruble during the 1998 financial crisis gave local producers significant advantages over their foreign competitors. Local consumption was boosted by the introduction of consumer loans and mortgages. Among the other drivers of economic growth was an increase in the utilization of industrial capacity constructed in the Soviet period. Between 1999 and 2007 GDP rose by an average of 6.8% annually. Real fixed capital investments increased by an annual average of 10% between 2000 and 2007, while real personal incomes rose at an average annual rate of 12%.

Over these years Russia successfully paid off a substantial portion of its foreign debt and amassed the third largest foreign currency reserves after China and Japan. These achievements, in conjunction with prudent macroeconomic policies and renewed government efforts to advance structural reforms, have raised business and investor confidence, with new business opportunities emerging in such sectors as telecommunications, retail, pharmaceuticals and the power industry in particular.

In 2008-2009 Russia was severely hit by the international financial crisis. A slump in commodity prices, collapse in the financial markets, restricted access to external financing, rising unemployment and a consequent drop in internal consumption shook the foundations of the Russian economy. In 2009 GDP contracted by 7.9%, while industrial output fell by 10.8%.
Since the outbreak of the crisis the government has increased its efforts to safeguard the economy. The Central Bank implemented a step-by-step ruble devaluation which prevented panic and an eventual bank run. The government has proposed bail-out initiatives for the economy’s largest companies with a view to limiting the negative social impact of massive lay-offs. Some banks and financial services companies have been acquired by government-controlled organizations. A package of tax initiatives encouraging economic activity has been adopted.

During 2010-2012 the Russian economy seemed to had stabilized. In 2014 Russia’s gross domestic product grew by 0.5 percent.
2. The Russian Judicial System

2.1 Introduction

The Russian judicial system consists of federal courts (the Constitutional Court of the Russian Federation, courts of general jurisdiction, and state “arbitrazh” (commercial) courts and the courts of the Russian Federation’s constituent entities (constitutional courts and magistrates).

The Constitutional Court of the Russian Federation generally resolves issues relating to compliance with the Constitution of federal and some regional laws and regulations if they are related to issues within the competence of federal authorities.

Constitutional courts of constituent entities resolve issues of compliance of the constituent entity’s laws, regulations of its state and municipal authorities with the constitution of the constituent entity.

Disputes regarding business activities and those involving legal entities and self-employed entrepreneurs are heard before state arbitrazh (commercial) courts. Other disputes fall under the purview of courts of general jurisdiction and magistrates.

2.2 Courts of General Jurisdiction

Dispute resolution procedure in the courts of general jurisdiction is governed by the Russian Federation Code of Civil Procedure. Most claims subject to courts of general jurisdiction are heard at first instance by either a magistrate or a district court, the Code of Civil Procedure expressly provides for specific types of claims to be heard at first instance by federal general jurisdiction courts of constituent entities and the Supreme Court of the Russian Federation.

Courts of general jurisdiction have four levels:

- Trial court;
• Court of appeal;
• Court of cassation appeal (two-tier); and
• Court of supervisory appeal.

The particular court entitled to resolve disputes at each level depends on the category of the case, with the levels for review available to a party and their sequence being uniform. Each subsequent review is possible once the preceding lower level of review has been passed.

Judgments of trial courts can be appealed within one month of their issuance. A court of appeal reviews a judgment on the grounds stated in the appeal. New evidence is accepted only when the party succeeds in proving it was unable to present such evidence to the trial court for reasons beyond its control and the court finds these reasons to be valid. The rulings of a court of appeal become effective immediately upon issuance.

Decisions of a court of appeal (and a trial court’s decisions) may be further appealed at a court of cassation appeal within 6 months of becoming effective. As a rule, review by a court of cassation appeal is possible only after the review by a court of appeal. The decisions of a trial court that were not subject to appellate proceedings may be appealed in a court of cassation appeal only when the appeal was left unheard for failure to comply with the submission deadline and the deadline was not restored.

Cassation review is a two-tier process. Upon filing, a cassation appeal is reviewed by the relevant judge of a court of cassation appeal who is entitled to establish whether there are grounds for carrying out the cassation review. If such grounds are established, the cassation appeal is transferred for review at a session of the court of cassation appeal. Otherwise the judge issues a ruling refusing to transfer the cassation appeal for review.
A court of cassation appeal may set aside or modify court resolutions only when it finds material violations of substantive or procedural law rules that have affected the outcome of the case.

Decisions of a court of cassation appeal become effective immediately upon issuance and may be appealed with the court of cassation appeal one more time (at a higher division of the court of cassation appeal). Thus strictly speaking there are two levels of cassation review within the general jurisdiction court system.

Lastly, certain court acts may be appealed (within three months of becoming effective) at the court of supervisory appeal: the Presidium of the Supreme Court of the Russian Federation.

The court of supervisory appeal may set aside or modify a decision of lower courts when it finds that it violates:

- the rights and freedoms guaranteed by the Constitution of the Russian Federation, international law principles and international agreements of the Russian Federation; or
- the rights and lawful interests of an indefinite number of persons or other public interests; or
- the uniformity of the courts’ interpretation and application of law.

### 2.3 State Arbitrazh Courts

The title “arbitrazh court” is not related to arbitration tribunals, but originates from an old Soviet tradition whereby disputes between state enterprises were heard before the so-called “State Arbitrazh.” In the USSR it was assumed that under a planned economy no disputes could arise between socialist enterprises (since all enterprises ultimately had the same owner), and any differences that did arise could be settled by an intermediary – the State Arbitrazh – which was a quasi-judicial government institution.
Since then, the arbitrazh court has evolved into an independent branch of the court system, mainly dealing with commercial disputes.

The procedural rules applicable to Russian arbitrazh courts are based on the general principles of procedural law adopted in continental Europe.

Traditionally, Russian arbitrazh courts favor written documentary evidence rather than examination of witnesses, hearing experts, or use of audio or video recordings.

There is also a specialized court dealing with intellectual property disputes, which is part of the system of Russia’s arbitrazh courts. The Court of Intellectual Property Rights is a court of first instance in disputes over the establishment and validity of IP rights and challenges to regulatory and non-regulatory acts in the intellectual property field. The decisions issued thereby in such cases are effective immediately, and can be appealed to the Presidium of the Court of Intellectual Property Rights for cassation review.

IP infringement cases are reviewed by the Court of Intellectual Property Rights as the court of cassation instance by a panel of judges, and not by the Court’s Presidium.

Arbitrazh courts have four levels:

- Trial court;
- Court of appeal;
- Court of cassation appeal; and
- Court of supervisory appeal.
Since 6 August 2014 the Supreme Court is the court of supervisory appeal within the system of arbitrazh courts.1 The Supreme Court has powers to unify and direct the practice of lower arbitrazh courts.2

At present there is a draft law pending whereby the arbitrazh court system is to become part of the courts of general jurisdiction, governed by a unified code of civil proceedings.

2.3.1 Trial court

The maximum state fee for filing a claim is limited to approximately EUR2,740. The trial period in Russian arbitrazh courts is relatively short. Proceedings start with a statement of claim. Under current regulations, a court must consider cases within three months of receipt of a statement of claim. The judge may request an extension of up to six months due to the complexity of the case or considerable number of parties. In practice the period may be longer but regular cases are reviewed within these deadlines. A judgment is announced immediately after the final hearing.

A judgment of a trial court may be appealed within one month of being rendered; otherwise it comes into force at the end of the month. The basis for an appeal can be mistakes either in establishing the factual circumstances of a case or in application of the law. In fact an appeal is a limited retrial.

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1 On 6 August 2014 the Supreme Court of the Russian Federation became the highest judicial authority adjudicating civil, criminal, administrative and other types of cases as well as economic disputes and thus replaced the Supreme Arbitrazh Court as the highest judiciary body within the arbitrazh court system.

2 The Plenum of the Supreme Court can provide arbitrazh courts with clarifications/instructions on issues of court practice in order to ensure uniform application of Russian legislation. The explanatory parts of arbitrazh courts’ rulings may contain references to resolutions of the Supreme Court as well as those resolutions of the Supreme Arbitrazh Court that continue to be in force. It has been established that clarifications of the Supreme Arbitrazh Court concerning the application of laws and other regulations are to stay in force until the relevant resolutions are adopted by the Supreme Court.
2.3.2 Court of appeal

In most cases an oral hearing takes place one to two months after filing an appeal with a court of appeal. Before the hearing all parties to a case are allowed to provide the court with written responses to the appeal. The resolution of a court of appeal comes into force immediately after its operative part is pronounced.

2.3.3 Court of cassation appeal

A judgment of the first instance, after undergoing the review of a court of appeal, may also be appealed in a court of cassation appeal (a third level court) within two months after such judgment or resolution comes into force. A court of cassation appeal does not retry the case or re-evaluate the evidence, but deals only with issues of law. As a result of the cassation hearing the decision may be upheld, reversed or amended, or the case may be sent back to the court that has issued the decision for a re-trial.

A cassation appeal must be filed within two months, and is heard within two months of the date of filing. Generally, the submission of a cassation appeal does not suspend the enforcement of the appealed decision, though a court of cassation appeal may order a stay of execution.

A losing party may appeal decisions of the court of cassation appeal and relevant lower courts with the panel of the RF Supreme Court within two months.

Cassation review at the Supreme Court is a two-tier process. A judge of the RF Supreme Court first resolves within 2–3 months whether there are grounds for the review of the cassation appeal at a court session of the Supreme Court’s panel. If transferred to the panel, the cassation appeal is to be considered within two months of the ruling on such transfer. The refusal to transfer the case for such review may be challenged via the Supreme Court’s chairman or deputy chairman. If the challenge is successful, the cassation appeal is transferred for review in a court session of the Supreme Court’s panel.
The rulings of the RF Supreme Court’s panel may be appealed with the court of supervisory review within three months of becoming effective.

2.3.4 Supreme Court

The supervisory review is also a two-tier process. Before the appeal is actually heard on its merits, a judge of the Supreme Court resolves within 2–3 months whether there are grounds for review of the cassation appeal at a court session of the Supreme Court’s Presidium. If transferred to the Presidium, the supervisory appeal is to be considered within two months of the ruling on such transfer. The refusal to transfer the case for such review may be challenged via the Supreme Court’s chairman or deputy chairman. If the challenge is successful, the supervisory appeal is transferred for review in a court session of the Supreme Court’s Presidium.

A resolution issued by the Supreme Court’s Presidium upon review of the supervisory appeal cannot be further appealed.

2.3.5 Procedural Issues

A legal entity involved in an arbitrazh court case in Russia may represent itself in court using the services of an in-house lawyer, or retain a foreign or local law firm.

Certain formalities must be followed in order for a person to appear as a legal representative in court. The Code of Arbitrazh Procedure provides that a legal entity may be represented by its general director or by another person acting pursuant to a power of attorney. The power of attorney must be signed by the general director of the company or other person duly authorized under the law and the constituent documents and bear the corporate seal. If a power of attorney is issued outside the Russian Federation it must be notarized and legalized in a Russian embassy or by affixing an Apostille (an option available in the countries which are parties to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents).
Moreover, a representative acting under a power of attorney may perform certain procedural actions only if such actions are expressly stated in his/her power of attorney. These actions include the right to sign a statement of claim, a statement of defense, appeals, applications to amend the subject-matter or grounds of a claim, applications for provisional measures, acceptance or withdrawal of claims, transfer of the case to arbitration, concluding an amicable agreement and agreement on facts, delegation as well as the right to sign applications for review based on new or newly discovered facts, challenge court acts, receive awarded funds or other property.

An arbitrazh court needs to send by post only the first ruling on initiation of proceedings in respect of a party (setting the date of the first hearing in a case). The relevant information is also placed in the database of arbitrazh court cases. The parties should obtain further information regarding the pending proceedings themselves.

The filing of claims and submissions is done either on paper with the personal signatures of the authorized representatives or electronically via MyArbitr.ru.

2.3.6 Summary Proceedings

A summary proceeding is an expedited procedure for resolving disputes on the basis of written evidence, which aims to reduce litigation costs and mitigate the caseload for judges. A list of disputes subject to a summary proceeding is provided for in the law. Among those are various types of disputes with either a relatively small or an undisputed amount of claim. Corporate disputes, class actions and bankruptcy disputes cannot be resolved in summary proceedings.

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4 http://my.arbitr.ru/
The peculiar features of summary proceedings include:

- no preliminary or main hearing, the case is resolved based on written submissions and evidence only;
- examination of the case file, as well as all filings in the case is done electronically, with an individual access code sent to the parties together with a ruling on initiation of summary proceedings;
- a fixed term for filing submissions and evidence established by the court, and the court does not consider and returns all filings made after this date, unless a party can prove it was unable to comply with the term for reasons beyond its control;
- no minutes are kept;
- the postponement of proceedings is not possible.

The judgment in summary proceedings is subject to immediate enforcement. It becomes effective within 10 days of its issuance unless an appeal has been lodged, in which case it becomes effective upon the resolution of a court of appeal. Cassation review of summary judgments is possible only if it has passed appellate review or the request for extension of the term for filing an appeal has been refused.

2.3.7 Personal Jurisdiction over Foreign Respondents

Russian arbitrazh courts have jurisdiction over foreign respondents if:

- The respondent or his/her assets reside or are located in the Russian Federation;
- The management body or a branch or representative office of the foreign party is located in the Russian Federation;
- The dispute arose out of a contract, whose performance should have taken place, or actually took place, in the Russian Federation;
• The claim arose out of damage caused to assets by an act or other event that occurred in the Russian Federation, or upon the onset of harm in the Russian Federation;

• The dispute arose out of unjust enrichment that took place in the Russian Federation;

• The claimant files an action for the protection of its business reputation and is located in the Russian Federation;

• The dispute arose out of a relationship connected with circulation of securities that were issued in the Russian Federation;

• The applicant in a case to establish a fact of legal relevance claims that such fact occurred in the Russian Federation;

• The dispute arose out of a relationship connected with state registration of names and other assets and the provision of services via the Internet in the Russian Federation; or

• In other cases where the disputed legal relationship is closely linked with the Russian Federation.

In addition, Russian arbitrazh courts also have jurisdiction over disputes involving foreign parties if such disputes fall within the exclusive jurisdiction of the Russian courts, i.e.:

• Disputes relating to state property, including privatization disputes and takeovers of private property for public needs;

• Disputes relating to title and other registered rights to real property located in the Russian Federation;

• Disputes connected with the registration in the Russian Federation of patents, trademarks, designs or utility models, or registration of other rights in the results of intellectual activity;
• Disputes involving the establishment, liquidation or registration of legal entities and self-employed entrepreneurs in the Russian Federation;

• Bankruptcy proceedings with respect to a Russian debtor;

• Corporate disputes with regard to a Russian legal entity; and

• Disputes arising over administrative and other public law relationships with Russia or Russian state agencies.

Russian arbitrazh courts also have jurisdiction over a foreign respondent where the parties have agreed in writing to submit their disputes to Russian courts, provided that the agreement does not violate the exclusive jurisdiction of a foreign court.

2.4 Administrative Judicial Proceedings

Article 23.1 of the Code of Administrative Offenses stipulates the competence of courts in resolving administrative cases by listing the types of administrative offenses subject to the jurisdiction of courts (either general jurisdiction courts (district courts and magistrates) or arbitrazh courts) (part 1 of Article 23.1) as well as those disputes that may be referred to court pursuant to a decision of a competent body and/or official (part 2 of Article 23.1).

The Code (Part 3 of Article 23.1) clearly distinguishes those administrative disputes that are to be resolved by arbitrazh (commercial) courts. Such disputes include competition disputes as well as certain disputes when the administrative offense is committed by a legal entity and/or individual entrepreneur.

As to disputes to be resolved by general jurisdiction courts, the general rule is that those are heard by magistrates.

Several exceptions apply, namely, the Code specifies cases when a dispute regarding an administrative offense is referred for resolution to district court. Firstly, these are special types of administrative
offenses, such as: violation of the rules for public meetings; violation of the rules regarding cultural heritage objects; failure to perform an order of a supervisory authority responsible for cultural heritage objects; some public security and public order offenses etc. Secondly, district courts resolve disputes where an administrative enquiry has been made, as well as administrative cases entailing certain administrative penalties, such as administrative deportation from the RF, administrative stay of activity and disqualification of state officials.

Please note that anti-corruption cases based on Article 19.28 of the Code of Administrative Offenses (Illegal Remuneration on Behalf of a Legal Entity) are heard by magistrates. The decision of magistrates to impose penalties may be appealed in district courts.

### 2.5 International Arbitration

As an alternative to state arbitrazh courts, foreign investors may refer disputes to a private arbitration tribunal, including ad hoc and institutional arbitration tribunals located either in the Russian Federation or abroad. Arbitration proceedings may handle a wide range of issues, but not disputes arising from administrative relations (e.g., tax and customs) and disputes that fall within the exclusive jurisdiction of Russian arbitrazh courts (e.g., disputes arising from bankruptcy proceedings, or other disputes specifically listed in Russian law).

The principal rules of international arbitration are governed by the Law On International Commercial Arbitration, enacted on 7 July 1993 and based on the provisions of the UNCITRAL Model Law.

In addition, the international commercial arbitration provisions of various international treaties to which the Russian Federation is a party – in particular, the European Convention on International Commercial Arbitration of 1961 and the New York (United Nations) Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) – also apply in Russia.
2.6 Enforcement of Judgments and Arbitral Awards

Judgments of Russian courts of general jurisdiction and of Russian arbitrazh courts are enforced through the state bailiff service.

A foreign court judgment may be enforced in Russia only if the judgment has been recognized by a Russian court. Such recognition is available if supported by a relevant international treaty, or on the basis of reciprocity. Russian courts also recognize and enforce foreign court judgments relying on the principle of reciprocity on a case by case basis.

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 refusal to recognize and enforce foreign arbitral awards are generally the same as those set forth in the New York Convention.

2.7 Alternative Dispute Resolution and Mediation

The Federal Law on an Alternative Procedure for Dispute Resolution with the Participation of an Intermediary of 27 July 2010 (the “Law on Mediation”) regulates dispute resolution procedures involving the assistance of a mediator on the basis of voluntary consent of the parties.
The mediation procedure may be applied to civil disputes (including disputes arising out of economic relations), labor disputes (except for collective employment disputes) and family law disputes. However mediation is not possible in these if they affect public interest or the rights and legitimate interests of third parties that are not participating in the mediation procedure. From the start of mediation the limitation period is suspended.

The mediation agreement concluded by the parties as a result of the mediation procedure cannot be judicially enforced and is subject to voluntary performance by the parties.

When the parties have concluded a mediation agreement as the result of the mediation procedure after the dispute has been referred to a state court or arbitration, the court or arbitration tribunal may approve the mediation agreement as an amicable settlement.

Mediators, as well as other intermediaries assisting the parties in settling the dispute, may not be questioned as witnesses in state courts on matters that came to their knowledge in the course of performing their duties.
3. Promoting Foreign Investment in Russia

3.1 General Provisions Regarding Foreign Investments

The Constitution and the Civil Code of the Russian Federation, as well as laws on joint stock and limited liability companies, securities markets and insolvency, provide the general legal framework for trade and investment in Russia.

Foreign investments are regulated by the Federal Law No. 160-FZ On Foreign Investments in the Russian Federation, dated 9 July 1999 (the “Law on Foreign Investments”). The Law on Foreign Investments guarantees foreign investors the right to invest and to receive revenues and profits from such investments, and sets forth the terms for foreign investors’ business activity in Russia.

The Law on Foreign Investments does not apply to the investment of foreign capital in banks and other credit organizations, insurance companies or non-commercial organizations; foreign investments in such entities are regulated under different Russian legislation.

The objective of the Law on Foreign Investments is to attract foreign materials, financial resources, and technology and management skills to improve the Russian economy, while providing stability for foreign investors.

The Law on Foreign Investments emphasizes the role of both federal and regional legislation, and stipulates that foreign investors must be treated no less favorably than domestic investors, with certain exceptions. Such exceptions may be introduced to protect the Russian constitutional system, morality, health and rights of persons, or in order to ensure state security and defense.

The Law on Foreign Investments permits foreign investment in most sectors of the Russian economy: government securities, stocks and bonds, direct investment in new businesses, the acquisition of existing Russian-owned enterprises, joint ventures, etc. Foreign investors are protected against nationalization or expropriation unless such action is
mandated by a federal law. In such cases, foreign investors are entitled to receive compensation for any investment and other losses.

One of the most important features of the Law on Foreign Investments is the tax stabilization clause, also known as the “Grandfather Clause”, set forth in Article 9. This clause applies to (i) foreign investors that are implementing “priority investment projects”, (ii) Russian companies with more than 25% foreign equity ownership, and (iii) Russian companies with foreign participation that are implementing “priority investment projects”, regardless of the percentage of foreign participation in the company.

Article 2 defines a priority investment project as a project with foreign investment of at least RUB1 billion (approx. USD17.8 million), or where a foreign investor has purchased an equity interest of at least RUB100 million (approx. USD1.8 million); in either case, the investment project must also be included in a list of projects approved by the Russian Government.

For companies and projects that qualify, the Grandfather Clause prohibits increasing the rates of certain federal taxes until initial investments have been recouped (up to a maximum of seven years, unless this period is extended by the Russian Government). Key exceptions to the Grandfather Clause are established for excise tax, VAT on domestic goods, and Pension Fund payments. Article 9.4 provides a further and potentially broad exception for laws protecting certain public or state interests. Article 9.5 contemplates the adoption of regulations to implement the Grandfather Clause. Despite all these exceptions and qualifications, it remains arguable whether the tax stabilization clause is of real benefit to foreign investors.

Please also note that Russia is a member of the World Trade Organization and has committed to implement its treaties and regulations.
3.2 Restrictions on Strategic Companies

Certain restrictions on foreign investments are imposed by Federal Law No. 57-FZ “On the Procedures for Foreign Investments in Companies of Strategic Significance for National Defense and Security,” dated 29 April 2008 (the “Law on Strategic Companies”). The Law on Strategic Companies is designed to regulate the acquisition of control over Russian strategic companies by foreign investors or “groups of persons” that include a foreign investor. Acquisitions by such entities of control over strategic companies (including through direct or indirect acquisitions of shares of strategic companies as well as acquisition of main production facilities of strategic companies having a value of 25% or more of the balance sheet value of the company’s assets) require the preliminary consent of the Russian Government or a post-transaction notification.

The Law on Strategic Companies provides a list of more than 40 activities that constitute strategic activities in Russia. Accordingly, any company engaged in such activities is viewed as a strategic company. Strategic activities include the following:

1. Works having an active impact on geophysical processes;
2. Works related to hydro-meteorological processes and events;
3. Activities related to the use of infectious agents which are subject to licensing;
4. Activities related to the nuclear industry and the storage of nuclear and radioactive materials;
5. Activities related to encryption and licensed encryption techniques, excluding distribution and maintenance of encryption techniques and related services performed by Russian banks that are not directly owned by the Russian Federation;
6. Activities related to the secret obtaining of information in premises and equipment (excluding activities performed for the internal purposes of legal entities);

7. Activities related to the production, trade, repair and utilization of weapons and military equipment, and their spare parts and ammunition (excluding bladed weapons, civil and service weapons) and explosive materials for industrial purposes;

8. Activities related to aviation equipment and security;

9. Space activities;

10. Activities related to television or radio broadcasting on a territory, where resides half or more of the population of a constituent entity of Russia;

11. Services provided by a company included in the register of natural monopolies (excluding natural monopolies in the public telecommunications and postal communications fields, services for the supply of heat energy and electrical energy through the distribution grid, and rendering services in ports of the Russian Federation);

12. Activities performed by a company included in the register of companies having more than a 35% market share in a particular market and occupying a dominant position in the following fields:

- communication services in the territory of Russia (excluding providing access to the Internet);

- fixed telephonic communication services in the territory of five or more constituent territories of Russia;
- fixed telephonic communication services in the territories of Moscow and St. Petersburg;
- rendering services in ports of the Russian Federation (in accordance with the list approved by the Russian Government)

13. Activities related to geological research of subsoil or mineral exploration and extraction of federal subsoil;

14. Procurement of aquatic biological resources (e.g. fishing);

15. Printing by a commercial entity if the commercial entity is capable of printing no less than two hundred million pages a month; and

16. Activities performed by editorial boards, publishing houses and the founders of printed publications provided that their circulation reaches certain thresholds specified by law.

Therefore, from the standpoint of foreign investment, it is important to verify all activities the target company is engaged in to assess whether it qualifies as strategic and is therefore subject to the restrictions outlined below.

3.3 Controlled Transactions

The following transactions and other actions involving the acquisition of control over strategic companies require the preliminary consent of the Russian Government:

1. For companies engaged in strategic activities other than the use of federal subsoil plots - transactions where a foreign investor or group of persons acquires:
   - Direct or indirect disposal of more than 50 percent of the total number of votes at shareholder level;
The right to appoint (a) the chief executive officer, and/or (b) more than 50 percent of the members of a collegial executive body of a strategic company;

The unconditional ability to elect more than 50 percent of the members of the board of directors (supervisory council) or other collegial governing body of a strategic company;

2. For strategic companies using federal subsoil plots – transactions with shares (participatory interests) where a foreign investor or group of persons acquires:

Direct or indirect disposal of 25 or more percent of the total number of votes at the shareholder level;

The right to appoint (a) the chief executive officer, and/or (b) 25 or more percent of the members of a collegial executive body of a strategic company;

The unconditional ability to elect 25 or more percent of the members of the board of directors (supervisory council) or other collegial governing body of a strategic company;

3. For companies using federal subsoil plots – transactions aimed at the acquisition by a foreign investor or group of persons of the right of direct or indirect disposal of shares (participatory interests) if the foreign investor or group of persons already has (a) the right of direct or indirect disposal of more than 25 but less than 75 percent of the total number of votes attached to voting shares (except for acquisition by a foreign investor or group of persons of shares (participatory interests), which does not lead to an increase in the shareholding of such foreign investor or group of persons);
4. Agreements resulting in the acquisition by a foreign investor or by a group of persons of rights to perform the functions of a management company;

5. Other transactions aimed at the acquisition by a foreign investor or group of persons of the right to determine the decisions of the governing bodies of a strategic company, including the rights to determine its business activities; and/or

6. Transactions and agreements aimed at the acquisition by a foreign state, international organization or organization controlled by them, of the right to dispose directly or indirectly of more than

   - Five percent of the total number of votes at shareholder level – for companies using federal subsoil plots; or

   - More than 25 percent of the total number of votes at the shareholder level or other means of blocking decisions of the governing bodies – for companies engaged in strategic activities other than the use of federal subsoil plots.

Similar criteria are employed by the Law on Strategic Companies when defining the notion of “control.” “Control” denotes not only a certain minimum shareholding level, but also rights to appoint governing bodies and otherwise determine the company’s business activity.

Preliminary consent is also required for the acquisition by a foreign investor of main production facilities of a strategic company if their value is 25% or more of the company’s book asset value.
The Law on Strategic Companies also provides for a requirement to provide post-transaction notification to the Federal Antimonopoly Service in case of:

- Acquisition of five or more percent of the shares (whether voting or not) in any strategic company;
- Completion of the transactions and other actions for which preliminary consent was previously obtained.

3.4 Special Restrictions for Foreign States, International Organizations and Organizations under Their Control

Investments of foreign states, international organizations and organizations under their control into Russian companies (strategic and non-strategic) are subject to additional clearance requirements under the Law on Foreign Investments. Any transaction which gives a foreign state, an international organization or an organization under their control the right to dispose directly or indirectly of more than 25 percent of the total number of votes attached to voting shares in any Russian company, or otherwise block decisions of the governing bodies of a Russian company, requires preliminary clearance with the Russian Government and/or the Federal Antimonopoly Service.

Moreover, foreign states, international organizations and organizations controlled by them are explicitly prohibited from acquiring control, as defined by the Law on Strategic Companies, over strategic companies. Namely, they are not allowed to acquire:

1. the right to dispose directly or indirectly of 25 or more percent of the total number of votes attached to voting shares – for companies using federal subsoil plots;
2. the right to dispose directly or indirectly of more than 50 percent of the total number of votes attached to voting shares – for companies engaged in strategic activities other than the use of federal subsoil plots;

3. Other rights mentioned in items 1, 2, 4 and 5 of the above section “Controlled Transactions.”

3.5 Consequences of Violation of the Law on Strategic Companies

Transactions executed in breach of the Law on Strategic Companies or the Law on Foreign Investments are deemed void. The parties to a void transaction may be ordered to return everything received under such transaction in a court action. If it is impossible to reverse a deal, a court may rule to deprive the foreign investor of voting rights at general shareholders meetings of a strategic company if the foreign investor has not complied with the requirements of the Law on Strategic Companies.
4. Establishing a Legal Presence

Foreign investors generally do business in Russia by acting directly through foreign companies or by establishing representative offices or branches of foreign legal entities or by incorporating Russian legal entities.

4.1 Representative Office and Branch of a Foreign Legal Entity

4.1.1 Legal Status

A representative office is designed to carry out liaison and ancillary functions in order to promote the business of its foreign founding company in Russia. Formally, representative offices are not permitted to engage in commercial activities. Consequently, most representative offices are not subject to profits tax, unless their activities give rise to a “permanent establishment” for tax purposes, i.e., when a foreign legal entity engages in regular commercial activity through its representative office (for example, the sale of goods or the provision of services) without establishing a branch.

A branch may engage in any functions, in which the parent company engages pursuant to its corporate documents, so long as this is provided for in the branch’s regulations and permitted under Russian law. This broad spectrum of permitted activities is the primary advantage in forming a branch in Russia, as distinct from the representative office, which, if engaged in commercial activities, would technically violate the terms of its accreditation.

The representative office or branch of a foreign legal entity is not deemed to be a Russian legal entity, but rather a body representing the interests of the foreign founder that is directly liable for their actions.
4.1.2 Registration

In order to lawfully operate in Russia, the representative or branch office must be accredited by the Federal Tax Service of the Russian Federation in accordance with the Federal Law On Foreign Investments or in certain industries by a special accrediting body, for example, by the Central Bank of Russia for representative offices of foreign banks.

For the purposes of accreditation, all documents submitted to the Russian authorities by a foreign legal entity must be notarized and apostilled/legalized in the country of execution, and any document supplied in a language other than Russian must be accompanied by a translation which has a notarized certification.

Following accreditation, the representative office or branch office must carry out a number of post-accreditation procedures before it becomes fully operational, including registration with the State Statistics Committee and with the Russian social benefits funds.

4.2 Forming a Russian Legal Entity

The Civil Code of the Russian Federation recognizes, among others, the following types of commercial legal entities:

- General and limited partnerships;
- Commercial partnerships and production cooperatives;
- Limited liability companies (“LLC”); and
- Joint stock companies (“JSC”).

Companies are divided into two categories: public and private. Public companies are defined as joint stock companies whose shares or other securities convertible into shares are placed through a public offering or are traded on a stock exchange. All other joint stock companies and limited liability companies are deemed private.
4.2.1 The two most common corporate forms are LLCs and JSCs. Choosing between an LLC and a JSC

LLCs are generally the most common corporate form in Russia, particularly for wholly-owned subsidiaries and certain joint ventures because they are easier to establish, maintain and finance, and offer flexibility in corporate governance.

In certain circumstances, a participant in an LLC is entitled by law to exit the company and receive his proportionate share of the value of the LLC’s assets – this right may need to be addressed in the context of structuring certain joint ventures.

Private JSCs have similarly flexible corporate governance rules but shares issued by a JSC are deemed securities and must be registered with the Central Bank of Russia, which makes financing JSCs more time consuming, as registration currently may take a couple of months.

A JSC must use a licensed registrar to maintain its shareholders register which is not available publicly and decisions taken at its shareholders meetings must be certified by a notary or the registrar. In an LLC, the participants and their shares are recorded in the state register of legal entities which is publicly available and the decision of the LLC’s general meeting may be certified in a simpler way, specified in its charter — for example, by having the protocol signed by its participants.

In a JSC shares exist as entries on accounts in the shareholders register maintained by an independent registrar. The transfer of title to shares becomes effective when an entry is made on the shareholder’s account in the register.

In an LLC, in most instances, the transfer of title to participation interest must be notarized by a Russian notary and becomes effective as soon as the notarial certification is made and the state register of legal entities is notified.
Participants (shareholders) in an LLC and private JSC are entitled to apply to a court seeking the expulsion of a participant (shareholder), provided they can prove that the participant (shareholder) substantially hindered the company’s operations or materially breached his obligations. This option is not available in a public JSC.

An LLC or a JSC may not have as its sole participant another business entity consisting of a single person unless otherwise provided by the applicable law.

LLCs and JSCs are governed by Federal Law No. 14-FZ On Limited Liability Companies dated 8 February 1998 (as amended), (the “LLC Law”), and Federal Law No. 208-FZ On Joint Stock Companies dated 26 December 1995 (as amended), (the “JSC Law”), respectively. Draft bills updating these laws are currently being discussed in order to bring them into compliance with the recently amended Civil Code.

4.2.2 Rights of participants (shareholders) of LLCs and JSCs
The participants (shareholders) of LLCs and JSCs have the right to:

- Participate in the management of the company;

- Obtain information concerning the activities of the company and have access to its accounting and other documents in accordance with the procedures established by law and the company’s charter;

- Participate in the distribution of profits; and

- Receive a portion of the assets remaining after settlements with creditors in case the company is liquidated.

They may also enjoy other rights in cases provided by law and the charter of the company.
The participants in an LLC may also have broader additional rights which must be specified in the charter of the LLC. Additional rights granted to a particular participant in the LLC are not automatically transferred to a party acquiring all (or a part) of such participant’s ownership interest.

4.2.3 Obligations of participants (shareholders) of LLCs and JSCs

The participants (shareholders) of LLCs and JSCs are obliged to make contributions to the charter capital and may have other obligations in cases provided by law and the charter of the company.

Participants in an LLC may also have additional obligations which may be specified during the establishment of the LLC in its charter, or at a later stage by a decision of the LLC’s general participants’ meeting. Additional obligations imposed on a particular participant in the LLC do not automatically transfer to a party acquiring all (or part) of such participant’s ownership interest.

4.3 Limited Liability Companies

4.3.1 Number of Participants

An LLC may be established by one or more individuals or legal entities (“participants”). If the number of participants exceeds 50, the LLC must be reorganized into a joint stock company or a production cooperative within a year.

4.3.2 Charter Capital

The charter capital of an LLC consists of contributions made by its participants. The initial charter capital may not be less than RUB10,000 (approx. USD178).

The charter capital must be paid up in full within 4 (four) months from the date of the LLC’s registration. No less than RUB10,000 (approx. USD178) of the initial charter capital must be paid in cash. Other contributions may be made in cash or in kind, which includes tangible
assets, shares in other commercial entities, state and municipal bonds and intellectual property rights (exclusive rights and licenses), but not other rights such as leases and accounts receivable. The charter of an LLC may provide for additional restrictions on the type of assets accepted as contributions. The charter capital may be increased only after the initial charter capital has been paid up in full.

An LLC must provide access to information about its net assets to any interested party. The net assets of a company must exceed its charter capital amount. If the LLC has net assets less than its charter capital amount for two years from its establishment and each subsequent year, it must reduce the charter capital to the amount of its net assets. If an LLC has net assets less than the minimum charter capital established by law for two years from the LLC’s establishment and each subsequent year, it must take a decision on voluntary liquidation. Failure to take such decision may result in a claim from the Russian tax authorities for the forced liquidation of such company. Also, an LLC with negative net assets may not declare and/or pay dividends to its shareholders.

It should be noted that the charter capital reduction procedure triggers the right of the LLC’s creditors to demand early performance of the LLC’s obligations to such creditors.

4.3.3 Participation Interests

A participation interest (i.e., an ownership share) in an LLC is a property right and is not deemed a security under current Russian legislation.

Generally equal participation interests carry equal rights as regards the number of votes at the general participants meeting and the share of dividends. However, the law allows participants to agree to have a disproportionate distribution of rights carried by participation interests and to specify this in the company’s charter.
The LLC is obliged to maintain a register of its participants specifying their shareholdings and their nominal value. Participation interests held by LLC participants are also recorded in the Russian register of legal entities which generally has precedence for the purpose of confirming title to the participations interest (unless proved in court otherwise).

Participation interests in an LLC may be sold to third parties, unless this is prohibited by the LLC charter. Generally, other participants enjoy the right of first refusal to purchase the participation interests at the price offered to a third party. Participants in an LLC, if allowed by the LLC charter, may have a unilateral right to withdraw from the LLC and to be compensated for their participation interests.

4.3.4 Management Structure

The general participants’ meeting is the highest governing body of an LLC. Participants in an LLC may but are not required to create a board of directors to govern the operations of the LLC.

The following issues normally fall within the competence of the general participants’ meeting:

- amendments of the charter;
- determination of the basic goals and directions of the LLC;
- granting additional rights and obligations to the participants in the LLC;
- approval of the annual financial report and the distribution of profits;
- changes to the size of the charter capital of the LLC; and
- reorganization or liquidation of the LLC.
The daily management of the LLC is the responsibility of the executive body, which may be one person (the general director, CEO, etc.) or may consist of both the general director and the management council. The LLC may have more than one executive body who may act jointly or severally, depending on the provisions in the company charter. The executive body is responsible for all matters that do not fall within the authority of either the management board, the board of directors or the general participants’ meeting. The general participants’ meeting or (if provided by the LLC charter) the board of directors may choose to delegate the powers of the executive body to an external commercial organization or to an individual manager on a contractual basis.

Decisions taken by the general participants meeting of the LLC must be certified either by a notary or by other means envisaged in the company’s charter or by a unanimous decision taken by its participants.

4.3.5 Registration

Pursuant to the Federal Law On State Registration of Legal Entities (the “Registration Law”) the state registration of legal entities and their registration as taxpayers are under the auspices of the local bodies of the Federal Tax Service of the Ministry of Justice of the Russian Federation.

4.4 Joint Stock Companies

4.4.1 Public and private Joint Stock Companies

A JSC is a legal entity which issues shares in order to raise capital for its activities. A shareholder of a JSC is not generally liable for the obligations of the JSC and bears the risk of any loss only in the amount due by it as payment for the shares.

Joint stock companies can be established as:

- public joint stock companies; or
private joint stock companies.

Public JSCs are subject to more stringent corporate governance and disclosure rules, while private JSCs enjoy much greater flexibility, particularly as regards governing bodies and their competence, procedures for convening and holding general shareholders meetings and shareholders’ rights, as specified in more detail below.

All JSCs are required to maintain a shareholder register. The register includes information about each registered shareholder including the number, category, and classes of shares held. The keeping of the shareholder register shall be maintained by a licensed registrar.

All JSCs must undergo audits performed by independent auditors.

4.4.2 Formation of a Joint Stock Company

Individuals and legal entities may be the founders of a JSC. A company’s foundation document, i.e., its charter, must include the following information:

- The name and address of the JSC;
- The size of the JSC charter capital;
- The quantity, nominal value, and categories (common or preferred) of shares, as well as the classes of preferred shares issued and distributed by the JSC;
- The rights of the holders of shares of each category;
- The structure and competence of the governing bodies of the JSC, and their decision-making procedures;
- The procedure for preparing for and holding general meetings of shareholders, including a list of issues requiring either unanimous consent or a resolution adopted by a qualified majority of votes;
• Information about branches and representative offices;

• Information about the existence of any special right of participation in the management of the company held by the Russian Federation, a constituent entity of the Russian Federation, or a municipality of the Russian Federation (a “golden share”); and

• Other provisions required by law.

The charter may include other provisions, so long as they do not contradict applicable Russian legislation.

4.4.3 Charter Capital

The charter capital of a public JSC may not be less than 1,000 times the Russian statutory monthly minimum wage (the monthly minimum wage used for the purposes of calculating the minimum charter capital of the JSC is currently RUB100). Currently, the minimum charter capital for a public JSC is approx. USD1,778.

In contrast to the LLC, the founders of a JSC must pay at least 50% of the JSC charter capital within three months following its state registration, with the balance payable in full within the first year.

4.4.4 Shares and Other Types of Securities

A JSC can issue securities in the form of shares, bonds and issuer’s options. Such securities must be registered with the Bank of Russia. A JSC issues common shares and may issue several classes of preferred shares. Different classes of preferred shares may have different nominal value, while all common shares must have equal nominal value. The total value of a JSC’s preferred shares may not exceed 25% of its charter capital.

The holders of preferred shares have priority in receiving dividends (the amount of which may be set as a fixed sum or as a formula) over holders of common shares or preferred shares of a subordinate class. In contrast to common shares, preferred shares do not carry voting
rights, except when voting on certain key issues (reorganization, liquidation, restricting the rights of the owners of such preferred shares). Preferred shares with a fixed dividend also become voting if dividends are not paid when due.

All shares of a certain class carry equal rights. In private companies, the Civil Code allows for a disproportionate distribution of rights in the charter or a shareholders’ agreement, but this information must be reflected in the state register of legal entities.

Generally, however, each common share carries one vote at the general meeting of shareholders (except for cases of cumulative voting in cases provided in the JSC Law), and most decisions require a simple majority vote of shareholders attending the general meeting, although for certain key decisions a supermajority of 75% or unanimity is required.

The JSC may also have “fractional shares.” A fractional share is a share representing a portion of a whole share, which can come into existence when it is not possible to acquire the whole share during a consolidation of shares, when a shareholder exercises its preemptive right, or in the course of acquiring newly-issued shares. A fractional share grants its owner the same rights that are granted by the whole share of the corresponding category or class, on a pro rata basis.

In a private JSC, the charter may set the maximum number of shares, total nominal value of shares and number of votes which may belong to a single person. The charter may also provide that the shareholders of a private JSC have the right of first refusal to purchase the shares at the price offered to a third party.

4.4.5 Management Structure

Public JSCs must maintain three governing bodies: the general meeting of shareholders, the board of directors consisting of not fewer than five directors and the executive body. In addition, a public JSC must either establish an internal auditing commission or elect an
internal auditor to oversee its financial and economic activities, members of which must be elected by the shareholders. Private JSCs must have a general meeting of shareholders and the executive body. The law does not set a required minimum of directors for boards of private companies in the event they chose to have a board of directors.

The general meeting of shareholders is the highest governing body overseeing the activities of a JSC. Its authority is outlined in the JSC Law and the Civil Code of the Russian Federation; it cannot be altered in public JSCs, but its authorities may be tailored in private JSCs. In particular, in a private JSC the competence of the general shareholders’ meeting may be extended or, on the contrary, transferred to the management council or the board of directors, subject to certain restrictions. The charter of a private JSC may provide for a different – as compared to the law – procedure for convening and holding general shareholders meetings, provided that shareholders’ rights are respected.

The daily management of a JSC is the responsibility of the executive body, which may be one person – the general director – or may consist of both the general director and the management council. The JSCs may have more than one executive body who may act jointly or severally, depending on the provisions in the company charter. The executive body is responsible for all matters that do not fall within the authority of either the board of directors or the general meeting of shareholders. The general meeting may (by a majority vote) choose to delegate the powers of the executive body to an external commercial organization or to an individual manager on a contractual basis; however this decision may be taken only pursuant to a proposal from the board of directors (if the company has a board of directors).

Recent amendments to the Civil Code of the Russian Federation envisage that decisions taken by a general meeting of shareholders of a public company must be certified by a professional registrar which maintains its shareholders register. For a private joint stock company such function can be performed either by a professional registrar or by
a notary. For decisions taken by a sole shareholder no certification is required.

4.4.6 Registration

The procedure for state registration described in Section 3.5 above for LLCs is also applicable to JSCs; the only additional requirement with respect to JSCs is registration of the issuance of the JSC’s shares with the Bank of Russia, which is obligatory upon establishment of the company and when increasing the charter capital of the JSC.
5. Issuance and Regulation of Securities

5.1 Introduction

The securities market and securities transactions within the Russian Federation are primarily regulated by Federal Law No. 39-FZ “On the Securities Market” (the “Securities Law”), dated 22 April 1996. The offering of corporate securities is regulated by Federal Law No. 208-FZ “On Joint-Stock Companies” (the “JSC Law”), dated 26 December 1995 and by Law No. 395-1 “On Banks and Banking Activity,” dated 2 December 1990. The issuance of securities in the Russian Federation is also subject to a number of regulations issued by the Central Bank of the Russian Federation and the Federal Service for Financial Markets of the Russian Federation, and other regulatory agencies, as well as the general provisions of the Civil Code. On 1 September 2013, all the powers of the FSFM were transferred to the Central Bank of the Russian Federation (together with its predecessors — the “Bank of Russia”).

5.2 Securities in General

Particular instruments will not be considered securities unless they are specifically recognized as such under Article 142 of the Civil Code or other relevant securities laws.

Generally, all types of securities existing in the Russian Federation can be divided into two main groups: those which should be issued in compliance with a specific issuance procedure prescribed by the Securities Law and which require registration with the Bank of Russia (such securities are referred to as “mass-issued”) and those which need not be registered (“non mass-issued”).

In certain cases the Securities Law also requires a prospectus to be registered simultaneously with registration of the securities’ issue (e.g. when securities are to be distributed through an offering to the public).
The Securities Law also provides for disclosure of certain financial and other information by issuers who have registered a prospectus. Such information includes:

- quarterly reports of the issuer (drafted in compliance with the requirements of the Bank of Russia);
- consolidated financial statements (which shall be included in the quarterly report for the respective period); and
- material events that may affect the financial results or business activities of the issuer (a list of such events has been set forth by the Bank of Russia).

Generally, information should be disclosed through one of the authorized news agencies (within one day of occurrence), through an Internet site (within two days of occurrence) and in some cases should also be published in a printed publication, which is compliant with requirements set out by the Bank of Russia.

5.3 Placement and Circulation of Foreign Securities in Russia

In general, foreign securities may be admitted to placement and/or public circulation in Russia (i) by decision of either the Moscow Stock Exchange (the “MoEX”) (if foreign securities have been listed abroad with any of 56 stock exchanges approved by the Bank of Russia); or (ii) by decision of the Bank of Russia (if foreign securities are not listed with a stock exchange recognized by the Bank of Russia and are offered to the general public for the first time).

To the extent securities have not been listed with a stock exchange recognized by the Bank of Russia, in order to list them in Russia, a foreign issuer has to comply with a number of requirements, the most important of which are:

- registration of a Russian prospectus with the Bank of Russia;
• obtaining permission of the Bank of Russia for placement of foreign securities; and

• assignment of ISIN/CFI codes.

The prospectus must be in Russian, signed by a Russian broker and in certain cases by a foreign issuer, and meet the disclosure requirements established by the Bank of Russia. Persons signing a prospectus are liable if any information contained in the prospectus is false, incomplete or misleading.

Title to foreign securities admitted for public placement or public trading in Russia must be recorded with a Russian custodian licensed to provide depositary services by the Bank of Russia.

Securities of a foreign issuer not admitted to public placement and/or public circulation may be offered to qualified investors only.

5.4 Equity Securities

Russian joint-stock companies (the “JSCs”) may issue shares, options on shares, corporate bonds, and other securities. JSCs may raise capital either by issuing shares to the public or by private placement. Shares in a limited liability company are not deemed to be securities and cannot be used for raising capital from the general public.

5.5 Debt Securities

5.5.1 Domestic Bonds

The issuance of domestic bonds is regulated by the Civil Code, the JSC Law, the Securities Law and, in respect of limited liability companies, by Federal Law No. 14-FZ “On Limited Liability Companies,” dated 8 February 1998 (as amended). This legislation provides for the regulation of secured and unsecured bonds. Secured bonds must be fully or partly secured with a third-party guarantee or suretyship, or with a pledge (or a mortgage) over the issuer’s and/or third party’s property.
On 2 August 2014 amendments to the Securities Law became effective that allowed the establishment of domestic documentary bond programs. Such bonds may not be secured by pledge. A bond program is established by preparation of a “framework” decision on issuance which provides for the terms and conditions applying to each issue within such bond program and a “specific” decision on issuance with the terms and conditions of a separate issue within such bond program.

5.5.2 Promissory Notes and Bills of Exchange


5.5.3 Exchange Bonds and Commercial Bonds

Exchange bonds differ from ordinary bonds in that they can be issued through a simplified procedure, because the issuance, prospectus and placement report do not need to be registered. However, the following conditions apply: (i) the placement must be made through a public offering; (ii) exchange bonds may not be secured by pledge; (iii) the bonds must be issued in documentary form; and (iv) the Bank of Russia must be notified of admittance to trading and placement on the stock exchange.

Commercial bonds are also issued in documentary form through a simplified procedure. Such bonds may not be secured by pledge. However, commercial bonds can only be placed by way of private offering.
5.5.4 General Meeting of Bondholders

Recent amendments to the Securities Law introduced the concepts of a general meeting of bondholders and bondholder representative. The amendments became effective on 1 July 2014.

The general meeting of bondholders may be called by the issuer, bondholder representative or a bondholder/bondholders holding more than 10% of the bonds’ issue. Generally, bondholders get one vote for each bond with decisions being taken by a majority of votes of bondholders present at the meeting.

However, certain matters would require three fourths (3/4) of votes of bondholders present at the meeting:

- election of a bondholder representative;
- approval of amendments to the terms and conditions of bonds;
- waiver of rights to early redeem the bonds, enforcement of security, filing of a lawsuit, etc.; and
- termination of bonds by way of settlement or novation.

5.5.5 Bondholder representative

A bondholder representative must be appointed if the bonds are (i) publicly placed, or (ii) privately placed with more than 500 investors who are not qualified investors, or (iii) suitable for non-qualified investors and admitted to trading on a securities exchange. A bondholder representative is appointed by the issuer, however, bondholders have a right to replace the bondholder representative at the general meeting at any time.

Duties of a bondholder representative may be performed by any professional participant of the securities market, including banks, (see Section 9 Infrastructure of the Securities Market) or a company established under Russian laws and existing for more than three (3) years. Any entity willing to perform duties of a bondholder
representative must be included in the special list maintained by the Bank of Russia and published on its website. Issuers and arrangers of bonds, their affiliates and any other entity with a conflict of interest cannot act as a bondholder representative (except when the bondholders have expressly consented to appoint the arranger as a bondholder representative).

The rights and obligations of a bondholder representative should be set out in a services agreement between the issuer and the bondholder representative. A bondholder representative must comply with decisions made by the general meeting of bondholders, monitor the performance of issuer’s obligations, inform the bondholders of any breach of the issuer’s obligations and protect the legitimate interests of bondholders.

Although a bondholder representative is appointed by the issuer, like a trustee, it acts in the interests of the bondholders. The general meeting of bondholders may empower the bondholder representative with certain rights and impose certain obligations on it without its consent. Bondholders cannot act individually in matters that are within the competence of the bondholder representative, unless this is expressly envisaged by the terms and conditions of the bonds or by a decision of the general meeting of bondholders.

The issuer must pay for the services of the bondholder representative. The bondholder representative is entitled to use any funds received from the issuer to cover its fees and expenses incurred in connection with the performance of its obligations. Any funds received by the bondholder representative from the issuer for the benefit of bondholders are placed on a separate account with a bank or the central depository and the bondholder representative’s creditors do not have recourse to such funds.

The issuer and the bondholder representative may terminate the services agreement only with the approval of the general meeting of bondholders and upon simultaneous appointment of a new bondholder representative.
5.6  Securitization

5.6.1  Securitization of Mortgage Loans


The MBS Law provides for two types of mortgage-backed bonds: (i) issued directly from the balance sheet of a Russian bank (covered bonds); and (ii) issued via a Russian special purpose vehicle (a so-called, mortgage agent) acquiring mortgages from an originator (“RMBS”).

To issue covered bonds a bank will need to observe certain mandatory ratios imposed by the Bank of Russia, e.g. liquidity ratios, ratio of cover pool to the volume of issued bonds. However, unlike issuance of RMBS, issuance of covered bonds does not allow to free up capital and reserves for a bank. Usually such bonds are rated with rating of the issuer.

Issuance of RMBS implies a true sale of mortgage loans from a bank to a mortgage agent. Under the MBS Law, mortgage agents have limited capacity and are allowed to conduct specific activities related to the issuance of RMBS and purchase of mortgages. A mortgage agent is not allowed to have employees, it should be managed by an independent management company and its accounting should be maintained by a specialized accounting organization (which may not be affiliated with the management company). It should be also noted that the mortgage agent is not subject to corporate profits tax. Such RMBS structures allow to achieve rating uplift up to 5–6 notches from the rating of the bank selling mortgage loans.

Mortgage participation certificates may be issued only by commercial organizations having a license to manage investment funds, mutual investment funds and non-governmental pension funds, as well as by
credit organizations. Unlike mortgage-backed bonds mortgage-participation certificates have no nominal value, are not considered as issuable securities and do not require state registration with the Bank of Russia. Being similar to a unit in a mutual fund, a mortgage participation certificate verifies right of its owner to a part of the cover pool. There have been only several issuances of mortgage participation certificates in Russia due to lack of investors’ interest in such instruments.

Cover pool of mortgage-backed bonds and mortgage-participation certificates may be comprised of mortgage loans, cash, Government securities and, in limited cases, real estate. During the life of the bonds, the value of the cover pool must not be less than the total principal amount outstanding under the mortgage-backed bonds. Mortgage loans included in the cover pool should also meet certain eligibility criteria set out in the MBS Law (e.g., LTV level, property insurance, etc.). The cover pool is pledged by the issuer to holders of mortgage-backed bonds.

The MBS Law provides for a concept of specialized depositary which acts as a cover pool monitor. It should possess a special license to act as a specialized depository and may not be affiliated with the issuer. The specialized depository maintains a register of the cover pool, safekeeps documents relating to mortgage loans (typically mortgage certificate (zakladnaya) and other ancillary documents) and monitors on a daily basis compliance of the cover pool with eligibility criteria and ratios set out in the MBS Law.

Upon insolvency of the issuer the cover pool is excluded from its insolvency estate by operation of law and is applied in full towards the discharge of its obligations under the mortgage-backed bonds. The MBS Law does not provide for a separate cover pool administrator, which would continue servicing the cover pool to its maturity. Under the MBS Law, an insolvency administrator, which deals with insolvency of the issuer, would also have to administer and sell the cover pool in order to redeem the mortgage-backed bonds. If the proceeds received from the sale of the cover pool are insufficient to
redeem the bonds in full, then the bondholders would be able to claim the shortfall from the issuer as unsecured creditors.

5.6.2 Securitization of Other Assets

On 13 December 2013 the State Duma passed two federal laws — No. 379 and No. 367 aimed at creating a legal basis for securitizations of a wide range of assets on the Russian market (collectively referred to as the “Securitization Law”). The Securitization Law introduced changes to various pieces of legislation, including the Civil Code, the Securities Law, the Tax Code, the Banking Law, the Bankruptcy Law and a number of other laws.

The Securitization Law envisages a new domestic corporate entity — the special finance company (the “SFC”), which is entitled to issue bonds secured by pledge of securities, immovable property or various types of receivables which are assignable under Russian law (including existing and future receivables).

The structure of an SFC in many ways resembles that of a mortgage agent. Thus, SFC may not enter into any employment agreements, and its management and accounting operations must be outsourced to external management and accounting companies, respectively. A company willing to manage SFCs must be enrolled with a special list maintained by the Bank of Russia.

According to the Securitization Law a 20% risk retention rule would apply to the originator. The Bank of Russia would need to develop certain ancillary legislation regulating the form in which such risk is to be retained.

The Securitization Law provides for several new types of accounts. One of them is a nominal bank account, which is to be used for operations with funds not belonging to an account holder (client). The use of nominal bank accounts is intended to minimize commingling risk in securitization transactions - the originator will open nominal accounts that will be holding SFC’s funds received from the debtors.
The other one is a collateral account. The pledge may be created in respect of all existing and future funds in collateral account, or in respect of a fixed amount. The collateral account allows pledgor to use funds in the collateral account, although there may be certain limitations agreed by the parties. Collateral accounts are expected to be widely used during issue of asset-backed bonds — in accordance with the Securitization Law, all collections from the securitized receivables should be credited to the collateral account and may only be used to satisfy the claims of bondholders, or for making payments indicated in the terms and conditions of bonds.

Although the Securitization Law became effective on 1 July 2014 and is expected to boost the amount and types of securitization transactions in Russia, the Bank of Russia will need some time in order to adopt ancillary regulations which would allow securitization of various assets under this law.

5.7 Russian Depositary Receipts (RDRs)

An RDR is a documented registered security without a nominal value stored centrally by the issuer (i.e. Russian depositary), which certifies both the right to a specified amount of shares or bonds of a foreign issuer and the provision of services in connection with the realization of rights by a Russian holder of an RDR.

Only a Russian depository that has been in business for three or more years can issue RDRs. In case the issuer performs services relating to the payment of income on shares or bonds certified by RDRs, it must open separate depository accounts for the holders of the RDRs.

A foreign issuer assumes obligations to Russian RDR holders by entering into an agreement governed by Russian law with a depository. Such agreement must specify the procedure for voting under such securities and the obligation of the foreign issuer to disclose information in Russian. This agreement cannot be terminated without the consent of the RDR holders, except for the RDRs admitted to organized trading. Where a foreign issuer does not assume
obligations to Russian RDR holders, public circulation of RDRs is only allowed if the securities of such foreign issuer are listed on the foreign stock exchanges featured in the list drawn up by the Bank of Russia.

5.8 Investment Units of Mutual Investment Funds ("Investitsionniy Pai")

Pursuant to Federal Law No. 156-FZ “On Investment Funds” (the “Investment Funds Law”), dated 29 November 2001 (as amended), mutual investment funds are considered to be property complexes and not legal entities. Mutual investment funds are managed by a management company, which acts on behalf of the founders pursuant to a fiduciary management agreement. Management companies need to be licensed. An investment unit is a registered security issued by a management company certifying the share of its holder in the ownership right to the property composing an investment fund and property coming about through the management.

The Investment Funds Law and relevant acts of the Bank of Russia provide detailed regulation of various issues regarding investment funds, including the foundation, decision-making and asset structure thereof. Management companies of mutual investment funds are also subject to certain information disclosure requirements (e.g., regarding information on the value of an investment share).

5.9 Infrastructure of the Securities Market

The Securities Law regulates the status of professional participants of the securities market and provides the legal requirements for their operations. The activities of professional participants of the securities market are subject to licensing by the Bank of Russia, and the procedures for obtaining a license and the requirements for professional participants of the securities market are prescribed in various regulations adopted by the Bank of Russia. A summary of the types of professional participants of the securities market that are
subject to the Bank of Russia’s licensing and regulation is set forth below.

5.9.1 Brokers, Dealers, and Trust Managers of Securities

Under the Securities Law, brokers are professional participants of the securities market who perform transactions with securities on behalf of and at the expense of their clients (investors or issuers), or on their own behalf and at the expense of a client.

Dealers are defined as professional participants of the securities market who perform transactions with securities on their own behalf and for their own account by declaring in public bid/ask prices with the obligation to buy and/or sell securities at such prices.

On 1 October 2015 the regulation of forex dealers becomes effective. Forex dealers will be required to have at least RUB100 million (approx. USD1.8 million) in capital and maintain membership of specialized self-regulating organizations. Forex dealers will also have to disclose certain information on their websites, including the terms for setting quotes, certain financial performance of their clients’ investments, notification of risks and other information. The complete scope of the information to be disclosed by forex dealers will be defined in a regulation of the Bank of Russia.

Trust managers of securities are professional participants of the securities market who manage the securities of their clients under a fiduciary management agreement. Fiduciary management may be exercised over securities, money for investment in securities, or assets and securities derived from such management activities.

5.9.2 Registrars, Depositaries

Under the Securities Law, registrars are professional participants of the securities market who are charged with maintaining registers of securities owners. All joint-stock companies are subject to requirement to appoint a professional licensed registrar to maintain its shareholders’ register.
Under the Securities Law, depositaries are professional participants of the securities market who hold certificates of securities and/or record the transfer of rights to securities. The conclusion of a depositary contract does not involve the transfer of ownership over depositor’s securities to the depositary. The depositary has no right to dispose of the depositor’s securities, to manage them, or to perform any actions with securities on behalf of the depositor, except for those performed at the demand of the depositor in cases provided for by the depositary contract.

5.9.3 Central Depositary

On 7 December 2011 the Russian President signed into law Federal Law No. 414-FZ “On the Central Depositary” (the “Law on the Central Depositary”), dated 7 December 2011 and Federal Law No. 415-FZ “On Introduction of Amendments into Russian Legislative Acts in Connection with the Adoption of the Federal Law on the Central Depositary” (the “Amendments”), dated 7 December 2011, which entered into force on 1 January 2012 and 1 July 2012 respectively.

The Central Depositary is the only organization able to open depositary accounts directly in the registrars of companies the securities of which are publicly traded. The Law on the Central Depositary does not require that transactions with publicly traded securities be settled exclusively through the Central Depositary. In order to prevent any loss of rights the Central Depositary must immediately verify the status of its accounts with registrars if operations are undertaken, and do so on a daily basis if no operations are undertaken.

Apart from the right to open accounts for Russian legal entities the Central Depositary has exclusive rights to open accounts for foreign central depositaries or entities conducting settlement and clearing on regulated markets included in the list published by the Bank of Russia and to open nominee accounts with foreign registrars or depositaries incorporated in a member state of the OECD, FATF or MONEYVAL
or in a jurisdiction whose securities market regulator has concluded a cooperation agreement with the Bank of Russia.

Also, foreign organizations incorporated in a member state of the OECD, FATF or MONEYVAL, or in a jurisdiction whose securities market regulator has concluded a cooperation agreement with the Bank of Russia, will be allowed to open the following foreign nominee accounts with Russian depositaries:

- foreign nominal holder accounts if the foreign organization is authorized to register and transfer rights to securities under their domestic legislation; and

- foreign authorized holder accounts if the foreign organization is authorized to act in its own name but on behalf of other persons under their domestic legislation. This also applies to brokers.

In addition, issuers of foreign securities that represent Russian securities (such as depositary receipts) (the “Depositary Banks”) will be allowed to open special depositary program accounts with Russian depositaries, which, in turn, have to have nominee accounts opened with the Central Depositary. The Depositary Banks will have to disclose all holders of the depositary receipts on a quarterly basis in a manner still to be confirmed by the Bank of Russia. Otherwise operations on the relevant depositary program accounts may be suspended. Furthermore, the Depositary Banks must also disclose the holders of the depositary receipts on an ad hoc basis in order to exercise voting rights attached to the underlying shares and receive dividends.

5.10 Organizers of Trade, Stock Exchanges, and Clearing Organizations

In accordance with Federal Law No. 325-FZ “On Organized Trading” (the “Law on Organized Trading”), dated 21 November 2011, trade organizers are legal entities that directly facilitate the conclusion of
transactions on the financial and commodities markets on the basis of a license issued by a stock exchange or a trade system. The Law on Organized Trading requires trade organizers to disclose information on the rules for trading, annual reports, constituent documents and other information related to trading to any interested party.

MoEX is the leading Russian stock exchange for both debt and equity instruments. In December 2011 RTS, the second largest Russian stock exchange, merged with MoEX (previously named MICEX).

In accordance with Federal Law No. 7-FZ “On Clearing and Clearing Activities,” dated 7 February 2011, clearing organizations are legal entities licensed by the Bank of Russia to clear settlements under transactions with securities. Typically a clearing organization works closely with a stock exchange.

5.11 Regulation of the Securities Market

5.11.1 The Bank of Russia

The main functions of the Bank of Russia, as a securities market regulator, include: the licensing and supervision of professional participants of the securities market and banks; the authorization of self-regulatory organizations; the registration of securities issuances and prospectuses and the approval of standards of their issuance; approval of issuance of securities outside the Russian Federation.

The Bank of Russia has the authority to take certain actions against professional participants of the securities market that have breached the securities market regulations. Such measures include the suspension and revocation of licenses, enforcement actions and petitions for criminal prosecution.

In addition, the Bank of Russia has the power to fine legal entities or individual entrepreneurs for various securities law violations. Any action pursued against issuers, such as for invalidation of an issuance, must be effected through the courts. Consequently, the ultimate jurisdiction over breaches of securities laws remains with the courts.
Issuance of securities by state and municipal authorities falls outside the regulation of the Bank of Russia and is regulated by the Ministry of Finance.

5.11.2 Self-regulating Organizations (“SROs”)

Under the Securities Law, an SRO is a voluntary association of professional participants in the securities market functioning on the principles of a non-profit organization established for the provision of their professional activity, the observance of standards of professional ethics, the protection of interests of owners of securities, and the implementation of regulations and standards to ensure effective functioning of the securities market. Membership in an SRO is not mandatory.

5.12 Regulation of Certain Securities Transactions

5.12.1 Acquisition of More Than 30%, 50% and 75% of Voting Shares of an Open Joint-stock Company

According to the JSC Law a person who intends to buy more than 30% of the voting shares in a company (including shares owned by its affiliates) should make an offer to the shareholders of such company (the “Voluntary Offer”) to purchase their shares. A shareholder who acquires together with its affiliates more than 30%, 50% or 75% of the voting shares in a company must make an offer (the “Obligatory Offer”) to purchase the remaining shares. The JSC Law provides general requirements as to the terms, form and content of such an Obligatory and Voluntary Offer. The law also sets certain limitations with respect to determination of the price of purchased shares.

5.12.2 Acquisition of Remaining Shares by a Person Who Acquires More Than 95% of a Company’s Voting Shares (“Squeeze Out”)

Under the JSC Law a shareholder who has acquired more than 95% of a company’s voting shares (as a result of an Obligatory Offer or Voluntary Offer) is obliged to purchase the remaining shares in the company and securities convertible to such shares. Moreover, a
minority shareholder is entitled to demand that his shares be purchased.

5.13 Placement and Circulation of Russian Shares Overseas

Starting January 2010, the total number of shares of a Russian company that may be placed outside Russia should not exceed:

- 25% of the outstanding shares for a company whose shares are included into the “A1” or “A2” listing categories;
- 15% of the outstanding shares for a company whose shares are included into the “B” listing category; or
- 5% of the outstanding shares for a company whose shares are included into the “V” or “I” listing category, and for a strategic company conducting a geological survey at, and/or exploration and development of, deposits of federal significance (i.e., major deposits).

Also, if the FSFM has an agreement with the relevant regulator in the country of the depository bank, the Russian company may place 25% of the outstanding shares, even if the company’s shares are included into the “B,” “V” or “I” listing categories.

In addition, at least 50% of newly issued or existing shares of a Russian company that are to be placed should be placed in Russia.

These requirements are intended to maintain liquidity of Russian issuers on domestic financial markets, and to restrict foreign investment in certain strategic industries.

Although the Listing Rules of the MoEX were changed on 15 September 2014 to introduce new listing categories, as of the date of preparation of this handbook the abovementioned regulation of FSFM has not been amended accordingly.
5.14 Regulations of Derivatives in Russia

5.14.1 Civil Law Recognition

According to amendments to the Civil Code introduced in February 2007, claims based on “an obligation of a party or parties to the transaction to pay monetary amounts depending on the changes of prices for goods, securities, foreign exchange rates, interest rates, levels of inflation, or parameters calculated based on an aggregate of such indicators, or on the ensuing of another circumstance which is provided by law and relative to which it is unknown whether it will ensue or not ensue” are awarded court protection, provided that one of the parties to the transaction holds a license for banking operations or a license of a professional participant of the securities market. Since then, there have been a number of court precedents when non-deliverable derivative transactions have been granted judicial protection.

Furthermore, according to court practice that dealt with the issue prior to 2007, transactions that had an economic purpose were granted court protection even if they were non-deliverable.

From time to time it has been argued that those provisions are also applicable in case foreign law is chosen, which is generally possible if the transaction includes one international element, which is the case if one party is non-Russian. We however do not believe this argument to be convincing.

5.14.2 Netting and Securities Markets Treatment

In the context of plans to protect netting, the Securities Law was amended in January 2010 to regulate trading in Russian and foreign derivative instruments. In particular, the law now deals with trading in Russia in stock exchange and OTC derivatives, in derivative instruments designated for trading by so-called qualified investors and foreign derivative instruments (i.e. derivative contracts issued under foreign law).
According to the relevant legislation, derivative instruments may only be offered to qualified investors. The exact sanctions for violation of the new rules in case of cross-border trading are unclear. In particular, it is unclear whether the contracts violating such rules would be deemed invalid or whether the parties offering such contracts face sanctions for undertaking non-permitted activity.

5.14.3 Russian Master Agreement

In May 2008, three associations, namely NAUFOR, the NVA and the Association of Russian Banks, asked a law firm to develop standards for concluding derivatives transactions. The contracts prepared on this basis were discussed again and reviewed in 2011, with the result being approved by the FSFM and frequently referred to as the Russian ISDA, or RISDA.

5.14.4 Netting and Offset

Offsetting of claims is generally impossible in bankruptcy and is likely to be challengeable within six months preceding bankruptcy. It is commonly understood, despite good arguments to the contrary, that this prohibition extends to netting.

The Securities Law allows to net contractual claims, including in course of bankruptcy of one of the parties, provided that, inter alia, the transactions are concluded between eligible counterparties, transactions are documented under eligible master agreements information about which is provided to a repository. Eligible cross-border master agreements include those developed by ISDA and ISMA.

5.15 Inside Information

Pursuant to Federal Law No. 224-FZ “On Countering Illegitimate Use of Inside Information and Market Manipulation” (the “Inside Information Law”), dated 27 June 2010, inside information is defined as exact and specific information the disclosure of which may have material effect on prices of financial instruments, foreign currency
and/or goods and which has been included in the list of inside information.

The list of insiders includes the following:

- Issuers and management companies;
- Monopolies;
- Consultants and counterparties;
- Major shareholders;
- Organizers of trade, clearing and other organizations making settlements on exchanges;
- Professional participants of the securities market;
- Members of corporate governing bodies;
- Authorities / officials;
- Press agencies;
- Rating agencies;
- Persons involved in a voluntary, mandatory or competitive share offering; and
- Employees.

The Inside Information Law requires insiders to comply with, inter alia, the following requirements:

- to maintain a list of insiders;
- to notify the persons included in the list of insiders of their inclusion in such list and delisting, as well as to inform them on the requirements of the Inside Information Law;
• to transfer the list of insiders to the market operator through which transactions are effected;

• to provide the Bank of Russia with the list of insiders at its request;

• to approve own lists of inside information (not applicable to insiders who are consultants and contractors, employees and members of the management bodies); and

• to notify the Bank of Russia of transactions with financial instruments, securities, currency and goods, which relate to inside information.

Existing legislation on inside information provides for criminal and administrative liability for non-compliance with the above-mentioned requirements.
6. **Competition Protection Law**

Antitrust matters in Russia are mainly regulated by the Federal Law on Protection of Competition (the “Competition Law”) and fall under the auspices of the Federal Antimonopoly Service (“FAS”).

The Competition Law has extra-territorial effect and applies to agreements concluded and actions taken outside Russia, including by non-Russian persons, if they affect competition in Russia.

The Competition Law and related legislation address the following areas that may be relevant for foreign investors:

- Abuse of market dominance;
- Anticompetitive agreements and other concerted practices between companies;
- Anticompetitive agreements between companies and government authorities;
- Requirements for procurement tenders by government authorities, government enterprises and private companies;
- Requirements for the transfer of state-owned property;
- Government aid;
- Establishment of companies;
- Mergers and acquisitions; and
- Unfair competition and advertising.

6.1 **Abuse of Market Dominance**

Dominant entities are subject to certain restrictions on their activities. Determining whether a particular entity holds a dominant position involves a complex evaluation of various factors, including, most
importantly, the definition of a market and the entity’s market share. When determining market share FAS normally reviews the entire group of entities, including all persons and legal entities related by a common controlling share ownership, and contractual or other de facto management control, rather than looking at the dominant entity in isolation.

For entities with a market share exceeding 50% there is a presumption of market dominance. Entities with a market share between 35% and 50% are deemed dominant, provided their dominant position has been established by FAS. For entities with a market share not exceeding 35% there is a presumption of non-dominance, with a few exceptions provided by the Competition Law.

Different (lower) thresholds apply to certain industries. For example FAS deems a financial organization to be a dominant entity according to the criteria set by the Russian Government (and with respect to credit organizations, together with the Russian Central Bank). A financial organization whose share in any single market in the Russian Federation does not exceed 10%, or whose share does not exceed 20% in a commodity market if the commodity also circulates in other commodity markets in the Russian Federation, may not be deemed dominant.

The Competition Law also uses the concept of “collective dominance”, which is deemed to exist if all of the following criteria are met:

- the market share of up to three companies exceeds 50%, or the market share of up to five companies exceeds 70%, provided the share of each such company is or exceeds 8% and at the same time exceeds the respective shares of other market players;
• during a continuous period of time (at least one year) the shares of companies active on the relevant market are stable or fluctuate insignificantly, and there are barriers to market entry;

• goods sold or purchased by the companies cannot be substituted, any price increase is not proportionate to the respective decrease in demand and the information on prices and terms of selling or purchasing the goods is publicly available.

For those in a dominant position, the Competition Law prohibits any of the following activities:

• Setting and/or maintaining monopolistically high or low prices;

• Withdrawal of goods from circulation if this leads to higher prices for such goods;

• Creation of discriminatory conditions, i.e. those which place one or more business entities in an unequal position as compared to other entities in their ability to access the market for particular goods;

• Unjustified imposition of contractual terms that are disadvantageous to the other party or do not relate to the subject matter of the contract;

• Stopping or decreasing the production of goods for which there is consumer demand if it is possible to produce such goods on a profitable basis;

• Unjustified refusal to enter into a contract with particular customers if it is possible to provide the relevant goods to such customers;

• Unjustified setting of different prices for the same goods;
• Creation of barriers to market entry or exit for other business entities;
• Violation of pricing rules established by legislation;
• Price manipulation in the wholesale and (or) retail electricity markets.

However, certain of the above activities may be allowed if the dominant entity can prove that the positive effects of a particular activity outweigh its negative consequences pursuant to the criteria set in the Competition Law.

The prohibitions against the abuse of market dominance do not apply to the exercise of intellectual property rights.

6.2 Agreements, Concerted Actions and Actions of State Bodies Limiting Competition

6.2.1 Agreements Limiting Competition

The Competition Law specifically prohibits cartels, i.e. agreements concluded between competitors, if such agreements lead or may lead to the following:

• Setting or maintaining prices, discounts, bonus payments, or surcharges;
• Increase or reduction of prices or manipulation of prices at tenders;
• Division of the market by territory or according to the volume of sales/purchases, assortment, or the range of sellers or buyers;
• Refusal to deal with particular sellers or customers;
• Ceasing or decreasing production of goods.
The Competition Law also specifically prohibits vertical agreements, i.e. agreements between companies at different levels in the supply chain, if they: (i) lead to resale price fixing, save for setting a maximum resale price; and/or (ii) impose an obligation on the buyer not to allow the sale of a competitor’s products unless the sales are organized by the buyer under a trademark or other means of individualization of the respective manufacturer or supplier.

The Competition Law specifically prohibits agreements between economic entities acting in wholesale and/or retail electricity markets and commercial or technological infrastructure markets if such agreements lead to price manipulation in the wholesale or retail electricity markets.

In addition, the Competition Law generally prohibits other agreements that lead or may lead to restriction of competition as may be determined by market analysis. These are agreements which impose unfavorable conditions on the counterparty, set different prices for the same goods without a valid objective justification, create barriers for third parties entering or exiting a certain market, or set conditions for participating in professional or other associations.

Lastly, the Competition Law prohibits “coordination of economic activities” by economic entities if such coordination may lead to restriction of competition. “Coordination of economic activities” is understood as coordination of the actions of economic entities by a third person who does not belong to the “group of persons” of such economic entities and does not act on the market where coordination is taking place. Actions pursuant to a vertical agreement are not treated as coordination of economic activities.

At the same time, the Competition Law provides certain exemptions from the above restrictions, in particular:

- The Competition Law permits vertical agreements (i) that are concluded between economic entities each having a market share of less than 20% in any market; and/or (ii) that are
commercial concession (franchise) agreements concluded in written form;

- Save for cartels, an agreement may be recognized as permissible if it can be proved that (i) the agreement does not lead to elimination of competition or impose excessive restrictions on the parties or third parties and (ii) the positive effects of the agreement, including socio-economic effects, outweigh the negative consequences pursuant to the criteria set in the Competition Law;

- An agreement on joint activities, even if it may technically be viewed as a cartel, may be recognized as permissible if it can be proved that (i) the agreement does not lead to the elimination of competition or impose any restrictions on third parties and (ii) the positive effects of the agreement, including socio-economic effects, outweigh its negative consequences pursuant to the criteria set in the Competition Law;

- Some agreements are exempt from all restrictions if entered into between companies of the same group of persons and either party to the agreement controls, is controlled by or is under common control with the other party to the agreement. Control for this purpose is understood as the ability of one person or entity to determine directly or indirectly the decisions taken by the other entity either through exercise of more than 50% of voting shares in the entity or by performing the functions of an executive body of the entity;

- Agreements on intellectual property rights are exempt from all restrictions specified above.

In addition, the Russian Government has introduced general block exemptions and block exemptions in a number of economic areas (e.g. credit and insurance organizations). The general block exemptions specify certain conditions which automatically render a
vertical agreement permissible, as well as conditions which prevent the permissibility of an agreement.

6.2.2 Concerted Actions Limiting Competition

The Competition Law specifically prohibits concerted actions between competitors acting on the same market, if such concerted actions lead to the following:

- Setting and/or maintaining prices, discounts, bonus payments, or surcharges;
- Increase or reduction of prices or manipulation of prices at tenders;
- Division of the market by territory or according to the volume of sales/purchases, the range of marketable goods, or the range of sellers or buyers;
- Refusal to deal with particular sellers or customers unless such refusal is provided for by federal legislation;
- Ceasing or decreasing production of goods.

Under the Competition Law “concerted actions” are defined as actions carried out by economic entities without agreement and that meet the following criteria: (i) the outcome of the actions is in the interest of each of the participating economic entities, (ii) each economic entity is aware of the actions due to a public announcement made by one of the economic entities participating in the concerted actions, and (iii) the actions of each of the economic entities are based on the actions of other economic entities and do not result from circumstances equally affecting all economic entities in the market.

In addition, the Competition Law prohibits concerted actions made by economic entities acting on the wholesale and/or retail electricity markets and commercial or technological infrastructure markets if
such agreements lead to manipulation of prices in the wholesale and/or retail electricity markets.

The Competition Law generally prohibits concerted actions between competitors that lead to restriction of competition, including creation of unfavorable conditions for a counterparty, setting of different prices for the same goods without economic or technological justification, or creation of barriers for third parties trying to enter into or exit from a certain market.

Certain concerted actions may be permitted provided it can be demonstrated that their positive effect, including socio-economic effect, outweighs their negative consequences pursuant to criteria set in the Competition Law.

The above prohibitions do not apply to concerted actions taken (i) by persons whose aggregate market share does not exceed 20% and individual shares do not exceed 8%, or (ii) among the same group of companies if one of the participants controls or is under common control with the other participant of concerted actions.

6.2.3 Actions and Agreements Involving State Bodies Limiting Competition

The Competition Law also contains certain restrictions applicable to anticompetitive actions and agreements involving federal executive state bodies, the Central Bank, non-budgetary funds, regional and municipal state bodies and organizations performing state functions or providing state services.

The Competition Law specifically prohibits (i) restrictions in relation to the establishment of legal entities, (ii) restrictions on the movement of goods within Russia or other restrictions on the sale, purchase or exchange of goods, (iii) limitations on the right to choose suppliers, (iv) steps that grant state preferences in breach of prescribed procedures, or (v) discriminatory conditions, etc.
6.3 Requirements for Tenders and Price Quotations

The Competition Law lists actions that are prohibited during tenders (including government tenders) and when seeking price quotations if they lead to restriction of competition. Such actions include setting preferential conditions for participation in tenders, breaching procedures for determining the winner, and restricting participation in tenders. In addition, when conducting public procurement tenders or seeking price quotations, it is prohibited to restrict competition by including into tender lots products that differ technologically and functionally from the products, services and works that are the subject matter of a tender.

In addition to the Competition Law, detailed requirements for public procurement tenders and price quotations are outlined in Federal Law No. 44-FZ “On the Contractual System for the Purchase of Goods, Works and Services for State and Municipal Needs.” Special rules concerning tenders organized by state corporations and state-controlled companies are outlined in Federal Law No. 223-FZ “On Procurement of Goods, Works and Services by Certain Types of Legal Entities.” Finally, tenders for the transfer of state property are also subject to special procedures similar to public procurement tenders.

6.4 State Aid

The Competition Law defines state (or municipal) aid as granting an economic entity certain privileges over other market participants, ensuring more favorable conditions for its activity in the relevant market by transferring property and (or) civil rights, preferences or state (or municipal) guarantees.

State (or municipal) aid may be granted with preliminary written approval of FAS, subject to a few exceptions specified in the Competition Law, for the following purposes:

- Ensuring vital services for the population in Arctic regions and equivalent areas;
• Developing science and education;
• Conducting fundamental scientific research;
• Protecting the environment;
• Development and conservation of the cultural heritage;
• Developing sports and physical culture;
• Agricultural production;
• State defense and security;
• Rendering social services for the population;
• Protecting health and labor; and
• Rendering support to small or medium businesses.

In order to provide state (or municipal) aid, the authority intending to grant the aid must submit an application to FAS for approval with supporting documents (including a draft of the grant indicating the goals and amounts of the aid, a list of the beneficiary’s activities over the two years preceding the date of the FAS application, and other information required by the Competition Law).

FAS should rule on the application within one month of the date of filing of a complete application but may extend the review period to two months if it believes that the state (or municipal) aid might restrict competition.
6.5 Establishment of Companies and Mergers & Acquisitions

The Competition Law stipulates that a transaction is subject to state control if it meets certain thresholds and involves:

- main production (fixed) assets or intangible assets that are located in Russia;
- voting shares, participatory interests or rights in Russian commercial and non-commercial legal entities;
- voting shares, participatory interests or rights in foreign companies supplying goods to the Russian Federation worth more than RUB1 billion (approx. USD17.8) during the year preceding the transaction; or
- the assets of Russian financial organizations.

6.5.1 Establishment of Companies

The founders must obtain consent from FAS prior to the establishment of a new company (be it Russian or foreign) if its charter capital is paid in kind with the shares or property of a Russian legal entity and the new company acquires in that payment more than 25%/50%/75% of the shares in a Russian joint stock company or more than ⅓ / 50% / ⅔ of the participatory shares in a Russian limited liability company, or where the company acquires more than 20% of the main production (fixed) assets or intangible assets located in Russia (exclusive of most types of buildings and land plots) of another legal entity, and where the thresholds set in the Competition Law are met.

According to specific conditions provided by the Competition Law, the establishment of a company whose charter capital is paid using the shares or property of a Russian financial organization may be subject to mandatory FAS notification requirements. The relevant filing must be made before the new company is established.
6.5.2 Mergers and Acquisitions

6.5.2.1 Mergers

The consolidation or merger of legal entities (save for financial organizations) is subject to the prior approval of FAS if the aggregate asset value of these entities and their “group of persons” exceeds RUB7 billion (approx. USD124.5 million) or the aggregate revenue earned by the entities and their “group of persons” from the sale of goods during the past calendar year exceeds RUB10 billion (approx. USD177.8 million) or if either of the entities is included in the FAS register of entities with a market share exceeding 35% in the relevant market. The procedures for obtaining such approval are similar to the procedures used for acquisitions.

The thresholds for consolidations or mergers involving financial organizations are set by the Russian Government depending on the type of financial organizations involved.

Intra-group consolidations or mergers may be exempt from the requirement to obtain prior FAS approval, provided certain conditions are met, but a limited number of these transactions may require post-transaction notification to FAS, subject to certain additional requirements being applied (outlined in more detail below).

The following constitutes a “group of persons”:

- a company (partnership) and an individual or legal entity, if such individual or legal entity, by virtue of participation in this company (partnership), or in accordance with authority received from other persons, including on the basis of written agreement, has more than 50 percent of the total number of votes carried by voting shares/participation interest in the charter capital of this company (partnership);

- a company (partnership) and an individual or legal entity, if such individual or legal entity exercises the functions of the sole executive body of this company (partnership);
- a company (partnership) and an individual or legal entity, if such individual or such legal entity on the basis of the constituent documents of this company (partnership) or a contract made with this company (partnership), is entitled to issue mandatory instructions to this company (partnership);

- companies (partnerships) in which the same individuals make up more than half of the management council and (or) the board of directors (supervisory board, fund’s council);

- a company (partnerships) and an individual or legal entity, if the sole executive body of such company (partnerships) has been appointed or elected at the proposal of such individual or legal entity;

- a company and an individual or legal entity, if more than half of the members of the management council or board of directors of such company have been elected at the proposal of such individual or legal entity;

- an individual and his/her spouse, parents (including adoptive), children (including adopted), brothers, sisters and half-brothers and half-sisters thereof;

- persons who, for any of the reasons specified above, belong to a group with one and the same person, as well as other persons belonging to the same group with each of such persons for any of the reasons specified above;

- a company (partnership) and individuals and/or legal entities if such individuals/ legal entities (for any of the reasons specified above) are part of one “group of persons” and at the same time such individuals/legal entities (whether by virtue of participation in this company (partnership) or in accordance with authority received from other persons) jointly have more than 50% of the votes represented by voting shares
(participatory interest) in the charter capital of this company (partnership).

6.5.2.2 Acquisition of Interests, Assets and Rights in a Russian Company

Acquisition of Shares or Participatory Interests in a Russian Company

When an individual, legal entity or “group of persons” acquires more than 25%/50%/75% of voting shares in a Russian joint stock company or more than ⅓ / 50% / ⅔ of participatory shares in a limited liability company, such persons, entities or group must receive prior approval from FAS if:

- The aggregate book value of the assets of the acquirer and its “group of persons” plus the target and its “group of persons” exceeds RUB7 billion (approx. USD124.5 million) and the book value of the total assets of the target and its group exceeds RUB250 million (approx. USD4.4 million); or

- The aggregate revenue earned by the acquirer and its “group of persons” plus the target and its “group of persons” from the sale of goods over the past calendar year exceeds RUB10 billion (approx. USD177.8 million) and the balance sheet value of the total assets of the target and its group of persons exceeds RUB250 million (approx. USD4.4 million); or

- Either the acquirer, or any of the entities belonging to its “group of persons”, or the target, or any of the entities belonging to its “group of persons”, is included in the FAS register of entities with a market share exceeding 35% in the relevant market.

Acquisition of Assets Located in Russia

When an individual, legal entity or “group of persons” acquires the right of ownership or the right to use the main production (fixed) assets located in Russia or intangible assets of a Russian or foreign entity (subject to certain exceptions provided in the Competition
Law), if the acquired assets account for more than 20% of the aggregate book value of the main production (fixed) assets and intangible assets of the transferring entity, such persons, entities or a group of entities involved in the acquisition must receive prior approval from FAS if:

- The aggregate book value of the assets of the acquirer and its “group of persons” plus the target and its “group of persons” exceeds RUB7 billion (approx. USD124.5 million) and the book value of the total assets of the target and its group exceeds RUB250 million (approx. USD4.4 million); or
- The aggregate revenue earned by the acquirer and its “group of persons” plus the target and its “group of persons” from the sale of goods during the past calendar year exceeds RUB10 billion (approx. USD177.8 million) and the book value of the total assets of the target and its group exceeds RUB250 million (approx. USD4.4 million); or
- Either the acquirer, or any of the entities belonging to its “group of persons”, or the target, or any of the entities belonging to its “group of persons”, is included in the FAS register of entities with a market share exceeding 35% in the relevant market.

For the purposes of the above calculation, the main production (fixed) assets or intangible assets of an entity to be transferred should not include land plots and non-industrial buildings, constructions, premises and parts thereof or unfinished construction objects.

**Acquisition of Rights in a Russian Company**

When an individual, legal entity or “group of persons” acquires rights conferring the ability to determine the commercial behavior of the target company (including as a result of change of indirect control over a Russian target company) or the right to perform the functions
of its executive bodies, such persons, entities or group of persons must receive prior approval from FAS if:

- The aggregate book value of the assets of the acquirer and its “group of persons” plus the target and its “group of persons” exceeds RUB7 billion (approx. USD124.5 million) and the book value of the total assets of the target and its group exceeds RUB250 million (approx. USD4.4 million); or

- The aggregate revenue earned by the acquirer and its “group of persons” plus the target and its “group of persons” from the sale of goods over the past calendar year exceeds RUB10 billion (approx. USD177.8 million) and the book value of the total assets of the target and its group exceeds RUB250 million (approx. USD4.4 million); or

- Either the acquirer, or any of the entities belonging to its “group of persons,” or the target, or any of the entities belonging to its “group of persons,” is included in the FAS register of entities with a market share exceeding 35% in the relevant market.

**Mergers and acquisitions made outside of Russia which require Russian anti-trust approval**

When an individual, legal entity or “group of persons” acquires more than 50% of the voting shares of, or any right of control over, a legal entity incorporated outside Russia, or the right to perform the functions of its executive bodies, the acquirer must receive prior approval from FAS if:

- Such target foreign legal entity controls a Russian subsidiary, or such target foreign legal entity supplied goods to the Russian Federation worth more than RUB1 billion (approx. USD17.8 million) during the year preceding the transaction; and
• The aggregate book value of the assets of the acquirer and its “group of persons” plus the target and its “group of persons” exceeds RUB7 billion (approx. USD124.5 million) and the book value of the total assets of the target and its group exceeds RUB250 million (approx. USD4.4 million); or

• The aggregate revenue earned by the acquirer and its “group of persons” plus the target and its “group of persons” from the sale of goods over the past calendar year exceeds RUB10 billion (approx. USD177.8 million) and the book value of the total assets of the target and its group exceeds RUB250 million (approx. USD4.4 million); or

• Either the acquirer, or any of the entities belonging to its “group of persons,” or the target, or any of the entities belonging to its “group of persons,” is included in the FAS register of entities with a market share exceeding 35% in the relevant market.

In determining the threshold for asset and revenue values, FAS takes into consideration not only the acquirer and the target company, but also all persons (individuals or legal entities) in the acquirer’s and target’s “group of persons.”

Where a merger or acquisition takes place between entities in the same “group of persons” that are related to each other through other than a shareholding of over 50% (e.g., through management control, contractual control or other de facto control), the Competition Law permits a 45-day post-transaction notification of FAS, provided the group structure is submitted to FAS no later than one month before the transaction and the group structure does not change until after the transaction.

The Competition Law contains separate conditions and thresholds for the acquisition of an interest, asset or right in a financial organization subject to pre-acquisition FAS notification; these acquisitions should be considered on a case-by-case basis.
6.6 Procedures and Timing

If FAS determines that an establishment of a company or a merger or acquisition may restrict competition or strengthen a dominant position, it may request additional information and documentation. FAS may also require the parties to take measures to ensure competition.

After all documents have been submitted, FAS has 30 days to review the application or notification. If FAS believes that the transaction may lead to restriction of competition, the review period may be prolonged for an additional two months, during which time FAS places information about the transaction on its official web-site and invites all interested parties to voice their opinions on the transaction.

6.7 Unfair Competition and Advertising

Unfair competition is prohibited in Russia. Aside from unfair competition rules FAS also enforces the rules on unfair advertising. In general, unfair competition is considered to be an action committed by a legal entity or individual, that (i) is aimed at acquiring a competitive advantage in a commercial activity, (ii) is contrary to the Competition Law, business customs, or the requirements of good-faith, reasonableness and fairness; and (iii) has caused or may cause losses to other competing legal entities or damage their business reputation.

Specifically, a commercial entity may be liable for unfair competition if it:

- disseminates false, inaccurate or distorted information that may cause losses to another commercial entity or damage the entity’s business reputation;
- misleads consumers about the nature, methods and place of production, as well as consumer characteristics and quality, of goods;
• incorrectly compares the goods produced or sold by another commercial entity with the goods of other commercial entities;

• sells goods that illegally use another’s intellectual property or means of individualization to identify a commercial entity, products, or services, such as trademarks, logotypes and other objects of intellectual property; or

• receives, uses and discloses commercial, official or other secrets without the consent of the commercial entity to which this information belongs.

6.8 Agreement on the Eurasian Economic Union

Russia is party to the Agreement on the Eurasian Economic Union dated 29 May 2014 along with Belarus, Kazakhstan, Armenia and eventually Kyrgyzstan (the “Agreement”). The Agreement is effective as of 1 January 2015 and concerns numerous legal matters in the member states, including antitrust. The Eurasian Economic Commission is the main enforcement authority dealing with antitrust issues.

The Agreement contains antitrust prohibitions similar to those outlined in the Competition Law. These include unfair competition, abuse of dominant positions, anticompetitive agreements and coordination of economic activities. Anticompetitive agreements with state bodies, tenders and price quotations, as well as establishment of companies and mergers and acquisitions do not fall within the scope of the Agreement. The main criterion to be met in order for the Agreement to cover a particular violation is that such violation occurs on a cross-border market. No distinct definition of cross-border markets is set in the Agreement, and it is expected to be determined later by a decision of the Eurasian Economic Commission.
The Eurasian Economic Commission has enforcement powers similar to those of FAS, including the right to request information from companies, initiate and investigate antitrust cases and impose fines. In addition it is entitled to request national competition authorities to conduct antitrust inspections and share the information gathered during inspections.
7. Corporate Compliance

7.1 Overview of the Key Provisions Anti-Bribery Laws of Russia

7.1.1 General Comments

On 1 January 2013 Russia’s first comprehensive anti-corruption law, Federal Law No. 273 “On Combatting Corruption,” was amended to require companies to take enhanced measures to prevent corruption. Specifically new Article 13.3 requires all organizations to develop and implement measures to prevent bribery and specifically recommends the following:

- designating departments and structural units and officers who will be responsible for the prevention of bribery and related offenses;
- cooperating with law enforcement authorities;
- developing and implementing standards and procedures designed to ensure ethical business conduct;
- adopting a code of ethics and professional conduct for all employees;
- means for identifying, preventing and resolving conflicts of interest;
- preventing the creating and use of false and altered documents.

An official guide as to how legal entities should take these measures has been prepared by the Russian Ministry of Employment in cooperation with several public associations and was released in November 2013. This comprehensive guide includes clarifications of the legal framework in terms of Russian, international and foreign
laws and practical recommendations for implementing the requirements of the aforementioned Article 13.3.

The enforcement practice at the moment includes an increasing number of prosecutors’ actions and court cases in connection with inspections of Russian entities for noncompliance with the requirements of current anticorruption laws.

A number of other developments in Russia’s regulatory framework have prompted increased efforts by state authorities in combating corruption. Federal Law No. 230 “On control over the correlation between the expenses and earnings of state public officials” was passed on 3 December 2012 followed by Federal Law No. 79 of 7 May 2013 which effectively prohibits public officials (and their family members) from owning property and having funds on bank accounts outside of Russia. The government also issued a sequence of rulings in 2013 which envisage more stringent reporting procedures for profits and ownership of public officials. On 9 January 2014 the detailed procedures were introduced by ruling of the Russian government on reporting the gifts received by public officials, evaluating such gifts and possible repurchase of the gifts by the public officials.

Amendments anticipated in 2015 include criminalization of the transfer of non-material benefits as a bribe and leniency for a legal entity reporting bribes on its behalf. However, the amendments are still draft bills and their future is uncertain.

7.2 Administrative Offenses

In Russia, there is no criminal liability for legal entities. When a legal entity is held responsible for unlawful conduct, such an entity is ordinarily subjected to administrative liability, such as administrative fines.
7.2.1 Active Public and Commercial Bribery on Behalf of a Legal Entity

Article 19.28 of the Code of Administrative Offenses provides for administrative liability of a legal entity for unlawful provision, offer or promise of anything of pecuniary value to a Russian or foreign public official, an official of a public international organization as well as officers in a commercial company for any actions or omissions to act in the interests of this legal entity.

Definitions of a Russian public official, a foreign public official, an official of a public international organization as well as a person performing managerial functions in a commercial or other organization are the same as for the corresponding criminal offenses (see sections on Active Public Bribery and Active and Passive Commercial Bribery below).

7.2.2 The Concept of Fault as a Qualified Defense

For legal entities and individuals in Russia, administrative liability is fault-based. Article 2.1 of the Code of Administrative Offenses defines fault of a legal entity as a failure to take all measures within its power to comply with the Code’s requirements. Therefore, a legal entity may raise as a defense the measures it has taken to prevent bribery on its behalf.

Recent enforcement practice confirmed that a legal entity may avoid liability under Article 19.28 of the Code of Administrative Offenses if it proves that it has taken all reasonable measures to prevent corruption, including those recommended by Article 13.3 of Federal Law No. 273 “On Combatting Corruption.”

7.2.3 Sanctions

The sanctions under Article 19.28 of the Code of Administrative Offenses vary depending on the amount of the unlawful remuneration, i.e. the bribe. The minimum sanction for a bribe up to RUB1 million (approx. USD18,000) is a fine of up to 3 times of the amount of the
bribe, but not less than RUB1 million. The maximum sanction for a bribe over RUB25 million (approx. USD445,000) is a fine of up to 100 times of the amount of the bribe, but not less that RUB100 million (approx. USD1.8 million). In all cases, the bribe or its equivalent value may be confiscated.

A legal entity may be held liable under Article 19.28 of the Code of Administrative Offences irrespective of liability of a particular individual involved in the giving of a bribe.

7.2.4 Extraterritoriality

Russian authorities will also have jurisdiction over any legal entity located in Russia if a bribe is directed at a foreign official or an official of a public international organization.

7.2.5 Liability of Legal Successors

According to Article 2.10 of the Code of Administrative Offenses, legal entities succeeding to the rights of other legal entities as a result of various corporate reorganizations, mergers, etc. are liable for the administrative offenses committed by the legal predecessors regardless of whether the succeeding entities knew of such administrative offenses.

7.3 Criminal Offenses

Russian criminal law prohibits active and passive bribery in both the public and private sectors.

7.3.1 Active Bribery of Public Officials

Article 291 of the Criminal Code prohibits provision of a bribe to Russian public officials, foreign public officials and officials of public international organizations. This Article also covers provision of a bribe through intermediaries.
Russian public officials are defined in Article 285 of the Criminal Code as persons who permanently, temporarily or pursuant to a specific authorization perform the function of a representative of state power as well as persons who perform organizational or administrative functions in the state and municipal bodies, state or municipal establishments, as well as in the Russian military and other armed forces.

A foreign public official is defined in Article 290 of the Criminal Code as any person who is appointed or elected to an office in the legislative, executive or judicial body of a foreign state, including a public administration or enterprise. An official of a public international organization is an international civil servant or any person authorized by such an organization to act on its behalf.

7.3.2 Sanctions

The sanctions under Article 291 of the Criminal Code vary depending on (a) whether the person giving a bribe has acted alone or in conspiracy with others, (b) whether the bribe is given for the commission of a lawful or an unlawful act (omission) and (c) the amount of the bribe. The minimum sanction – for a bribe not exceeding RUB25,000 (approx. USD445) – is a fine from 15 to 30 times the amount of the bribe, or forced labor for the period of up to 3 years or imprisonment for up to 2 years with a fine of 10 times the amount of the bribe. The maximum sanction – for a bribe exceeding RUB1 million (approx. USD18,000) – is a fine from 70 to 90 times the amount of the bribe or imprisonment for from 7 to 12 years and a fine 70 times the amount of the bribe.

A person who has given a bribe may be relieved of criminal liability if he actively aids detection and prosecution of the crime or reported himself after the commission of the crime to the criminal law enforcement authorities or was solicited by a particular public official to give a bribe.
7.3.3 Confiscation

According to Article 104.1 of the Criminal Code, property obtained as a result of a criminal offense and any property into which such criminally obtained property has been subsequently transformed as well as any proceeds from the use of such property may be subject to confiscation. If criminally obtained property or proceeds from its use have been commingled with other property, confiscation will be proportional to the value of the criminally obtained property and the proceeds from its use. Criminally obtained property transferred to another person may be confiscated only if this person knew or should have known that such property was obtained as a result of a criminal act.

According to Article 104.2 of the Criminal Code, a court may decide to confiscate the value of the criminally obtained property if, by the time the court issues a judgment, confiscation of this property as such becomes impossible due to this property having been used, sold or for other reasons.

7.3.4 Active Commercial Bribery

Article 204 of the Criminal Code defines commercial bribery as the unlawful provision of anything which has pecuniary value (including property rights, services, etc.) to a person who performs managerial functions in a commercial or other organization for an act or omission in connection with such person’s official position in the interests of the provider.

Moreover, the same conduct may be prosecuted under Article 201 of the Criminal Code which prohibits abuse of authority, i.e. the use by a person who performs managerial functions in a commercial or other organization of his authority contrary to the lawful interests of this organization for the purpose of obtaining an advantage not only for himself but also for other persons as well as for the purpose of causing damage to other persons.
A person who performs managerial functions, according to Article 201 of the Criminal Code, can be an individual executive officer or a person who is a member of a collective executive body or the board of directors. In addition to the top management, relevant persons include those who perform organizational or administrative functions, i.e. engage in the management of at least some personnel or at least some property of the organization. As a practical matter, it should be noted that Article 204 of the Criminal Code also covers conspiracies to engage in commercial bribery which expands the reach of this Article beyond persons with managerial functions.

7.3.5 Sanctions

The sanctions under Article 204 of the Criminal Code vary depending on whether the person giving a bribe has acted alone or in conspiracy with others as well as on whether the bribe is given for the commission of a lawful or an unlawful act (omission). The minimum sanctions are a fine from 10 to 50 times the amount of the bribe and prohibition from holding certain positions or engaging in certain professional activity for a period of up to 2 years, or a limitation of freedom for a period of up to 2 years, or forced labor for a period of up to 3 years, or imprisonment for a period of up to 3 years. The maximum sanctions are a fine from 40 to 70 times the amount of the bribe and prohibition from holding certain positions or engaging in certain professional activity for a period of up to 3 years, or forced labor for a period of up to 4 years, or an arrest for a period from 3 to 6 months, or imprisonment for a period of up to 6 years.

A person who has committed an offense covered by Article 204 of the Criminal Code, regardless of whether that person has provided or received a bribe, may be relieved of criminal liability if he actively aided in detecting or prosecuting this offense, or the bribe was extorted from him, or he voluntarily reported the bribe to criminal law enforcement authorities.
7.3.6 Aiding and Abetting Public Bribery

Article 291.1 of the Criminal Code makes aiding and abetting public bribery a separate criminal offense. Aiding and abetting is defined as the physical giving of a bribe on the instructions of the person either giving or receiving a bribe as well as any other assistance to either of these persons in reaching or executing an agreement between them to give and take a bribe. This Article applies only to bribes with a value exceeding RUB25,000 (approx. USD445). This Article also applies to offers or promises of assistance in public bribery regardless of the value of the bribe. The sanctions are comparable to those for active public bribery.
8. Taxation

8.1 Introduction

Over the past 16 years Russia has been engaged in a significant reform of its tax system, which has been implemented in phases. This reform has improved procedural rules and made them more favorable to taxpayers, has reduced the overall number of taxes, and has reduced the overall tax burden in the country.

Part I of the Tax Code of the Russian Federation (the “Tax Code”) came into effect in 1999, dealing largely with administrative and procedural rules. More recent amendments to Part I clarified certain administrative and procedural issues raised by over 10 years of practice of the application of Part I of the Tax Code (in particular, regarding tax audit procedures, procedural guarantees for taxpayers, operations with taxpayer bank accounts and bank liability).

The provisions of Part II of the Tax Code regarding excise taxes, VAT, individual income tax, and the unified social tax (currently replaced by social security contributions) came into force in 2001, followed by the profits tax and mineral extraction tax provisions of the Tax Code in 2002. In 2003 further amendments introduced a simplified system of taxation, a single tax on imputed income, a new Chapter on transportation tax, and established a special tax regime for production sharing agreements in Russia. A Chapter on corporate property tax came into effect as of 1 January 2004. In 2005 the water tax, land tax, and state duty Chapters came into effect. On 1 January 2013 a Chapter on a patent system of taxation and on 1 January 2015 a Chapter on trade levy took effect. Most of these Chapters of the Tax Code replaced and significantly updated or improved tax laws that were initially enacted as far back as 1991. On 1 January 2015 the remaining Chapter of the Tax Code covering the property tax on individuals came into force, replacing the old 1991 legislation. In 2006 the inheritance and gift tax that had been in existence since 1991 was repealed. In addition, over the last several years, various amendments have been made to the Tax Code, including several
recent key changes largely intended to address the economic downturn in Russia.

Recent major changes include the adoption of the so-called “Deoffshorization Law” introducing fundamentally new rules on taxation of profits of controlled foreign companies (CFC rules), tax residency of foreign companies and beneficial ownership rules in Russia. These rules substantially change the way businesses operate in Russia, affect most of the wealth management and private holding structures for Russia and mean that immediate review and action may be required. Certain other changes include entry into force of the Russia-Malta Tax Treaty and exclusion of Malta from the blacklist of off-shore jurisdictions, ratification of the OECD-Council of Europe Convention on Mutual Administrative Assistance in Tax Matters, increase of the tax rate on dividends distributed to individuals and legal entities that are Russian tax residents, introduction of the tax monitoring regime for major taxpayers, new interest deductibility caps rules for Russian legal entities, a new mineral extraction tax formula for determining the tax rate for crude oil, and the introduction of investment tax deductions for individuals who are Russian tax residents. Thus, tax reform continues to be an ongoing process.

8.2 Types of Tax

The Tax Code sets forth three levels of taxation: federal, regional and local. Currently, federal taxes include VAT, excise taxes, profits tax, individual income tax, mineral extraction tax, state duty, special tax regimes, and several other taxes. Regional taxes include corporate property tax, transportation tax, and gambling tax, while local taxes include land tax, individual property tax, and the trade levy. Social security contributions are payable to the State Pension Fund, Social Security Fund, and Federal Mandatory Medical Insurance Fund.

There are five types of special tax regimes that may be applicable to certain activities and/or categories of taxpayers: single agriculture tax, simplified system of taxation, single tax on imputed income from certain kinds of activity, taxation of production sharing agreements,
and the patent system of taxation. These special tax regimes have the status of a federal tax and may provide exemptions from certain federal, regional, and local taxes.

8.3 Tax Audits

The Russian tax authorities may conduct chamber and on-site tax audits of taxpayers. The tax authorities may audit several different taxes simultaneously as part of an on-site tax audit. However, except in cases of a liquidation or reorganization, when a higher tax authority inspects the activities of a lower tax authority that conducted an on-site audit, or when a taxpayer files an amended tax return claiming a lower level of taxation, a tax for a given period may only be audited once. The taxpayer may also be repeatedly inspected for the same tax period upon a decision of the Head of the Federal Tax Service of Russia. In the event that during a repeated tax audit the tax authorities find an underpayment that was not found during a previous tax audit, a penalty for such underpayment would not be applied to the taxpayer, except for cases where the undetected violation resulted from a conspiracy between the taxpayer and the tax authorities.

In exceptional cases provided by the Tax Code, the Russian tax authorities may suspend an on-site tax audit. However the overall term of suspension may not exceed nine months. The results of a tax audit relating to taxes reviewed may only be reconsidered by the supervising tax authorities. In any case, however, the tax authorities may only audit the three calendar years preceding the year of the tax audit. As a general rule a three-year statute of limitations applies to the imposition of penalties for tax violations, although this term could be extended if the taxpayer impeded a tax audit by the tax authorities.

Also, the tax authorities may levy for outstanding taxes, late payment interest and penalties unilaterally without a court decision (except against individuals). If the taxpayer does not settle its tax liabilities within two months after expiry of the term for payment provided in a tax demand the tax authorities are required to forward the file to the Russian Ministry of Internal Affairs for review. In certain
circumstances the amount of outstanding taxes (that the taxpayer failed to pay within a three-month period) may be collected from the taxpayer’s affiliated companies. This may be possible if the taxpayer, instead of paying the outstanding tax amounts, made payments to the bank accounts of such affiliated companies.

Transfer pricing audits are performed by a special department in the Federal Tax Service separately from the regular tax audit process. The audits will be performed in-house only and may not be performed as part of on-site regular tax audits. A transfer pricing audit for 2013 may be initiated not later than 31 December 2015; the term for initiation of a transfer pricing audit for 2012 expired in 2014. For 2014 and future periods a transfer pricing audit may be initiated for the three calendar years preceding the year when it was initiated.

As of 1 January 2014, taxpayers and tax agents that wish to challenge a non-normative act of the Russian tax authorities or action/inaction of their officials are required to use a pre-trial administrative appeal procedure (the only exception is for acts adopted directly by the Federal Tax Service). A decision on the results of a tax audit that has not yet entered into force may be appealed within one month after issue of the decision. All other non-normative acts of the tax authorities or decisions on results of a tax audit that have already entered into force may be appealed within one year of issue or from the moment when the taxpayer found out that his or her rights had been violated by the decision.

8.3.1 Tax Monitoring

Starting from 1 January 2015, certain Russian major taxpayers are permitted to apply for a tax monitoring regime conducted by the Russian tax authorities.

Under the new tax monitoring regime a taxpayer, at its choice, will provide tax accounting documents and information to the tax authority in electronic format, or grant the tax authorities access to its accounting systems. In return, the taxpayer will have an opportunity to agree its tax position with the tax authorities by obtaining a “reasoned
opinion of a tax authority” and the taxpayer will be exempt from almost all chamber and on-site tax audits for the period of tax monitoring. The period of tax monitoring is one calendar year following the year when a taxpayer applied for the tax monitoring regime.

Taxpayers can switch to the new regime voluntarily if they meet all of the following conditions:

- total annual amount of value added tax, excise taxes, corporate profits tax and mineral extraction tax payable to the federal budget for the previous calendar year is not less than RUB300 million (approx. USD5.3 million);
- total annual income for the previous calendar year according to the accounting records is not less than RUB3 billion (approx. USD53.3 million);
- total value of assets as of 31 December of the year preceding the year of application according to the accounting records is not less than RUB3 billion (approx. USD53.3 million).

The application to switch to the new regime must be submitted before 1 July of the year preceding the year of tax monitoring, i.e., the regime will be first officially applied only in 2016. Members of a consolidated taxpayers group may apply for this regime only in 2016.

8.4 Transfer Pricing Rules

Prior to 2012 the Tax Code contained several rules related to transfer pricing. Specifically, it set forth the presumption that the contractual price agreed to by the parties, including related parties, is the “market price”.

Section V.1 of the Tax Code introduced completely new transfer pricing rules, which came into force on 1 January 2012. The new rules require taxpayers to notify the tax authorities of controlled
transactions that are performed in a given calendar year. Controlled transactions include any transactions between related parties (domestic or cross-border). Among other criteria, parties are considered related if one directly or indirectly owns more than 25% of another or can control the formation of at least 50% of the board of directors or the executive body of such other party. The courts may also determine that parties are related if the relationship between the parties could affect the results of transactions between them or their economic activities even in the absence of the statutory criteria. In addition, the following transactions are subject to transfer pricing control, provided that the total revenues under these transactions exceed RUB60 million (approx. USD1.1 million) in total in a given calendar year:

- Cross-border transactions with oil and gas products, ferrous and nonferrous metals, mineral fertilizers, precious metals and stones;
- Transactions of an operator or a license holder of a new offshore hydrocarbon deposit with third parties;
- Cross-border transactions with foreign entities registered in certain low-tax jurisdictions according to a list established by the Russian Finance Ministry. The list of low-tax jurisdictions is the same as currently established by the Russian Finance Ministry for applying for the dividend participation exemption (Cyprus and Malta have been removed from this list);
- Transactions of qualifying participants in regional investment projects in the Russian Far-East Region with third parties.

With certain exceptions, the following domestic transactions are not subject to transfer pricing control:

- transactions between related parties not exceeding RUB1 billion (approximately USD17.8 million) in total in a given calendar year;
transactions where both parties are registered and conduct all operations in the same region and do not have tax losses, including loss carry-forwards.

Russian taxpayers forming a consolidated taxpayer group are not subject to the transfer pricing control for profits tax purposes.

The new rules provide for five transfer pricing methods (comparable uncontrolled price, resale, cost plus, comparable profits, and profit splits). The comparable uncontrolled price method is the primary method to be applied. In all other cases, the best method rule generally applies.

The new rules provide detailed guidance on selecting and adjusting comparables. There is a broad list of permitted data sources on comparables. The rules prohibit the tax authorities from using any outside comparables if the taxpayer has comparable transactions with unrelated parties. Adjustments are permitted with respect to the following taxes: profits tax, VAT (if one of the parties does not pay VAT), mineral extraction tax (if paid on an ad valorem basis), and individual income tax (if paid by the individual entrepreneurs). In certain cases taxpayers are permitted to make true-up adjustments for previous tax periods. Corresponding adjustments (i.e., in case a transfer pricing adjustment is made to another party of a controlled transaction) are allowed for Russian corporate taxpayers only. In a cross-border context such adjustments are not allowed.

There are also special transfer pricing rules for securities, which differ for those traded on the organized securities market and those which are not.

Taxpayers having controlled transactions (with certain exceptions) are required to maintain transfer pricing documentation and provide it to the tax authorities within 30 days of the relevant request. The transfer pricing documentation may be requested no earlier than 1 June of the year following the calendar year in which the relevant transactions took place. Starting from 1 January 2014 the provision that the
transfer pricing documentation and notification requirements and transfer pricing audit rules apply only if the total value of controlled transactions with a given party exceeds a certain threshold does not apply.

Taxpayers that are regarded as major taxpayers under the Tax Code are permitted to enter into unilateral or multilateral advance pricing agreements ("APAs") with the Russian Federal Tax Service of up to three years with a possibility to extend to five years. The new rules enable taxpayers to conclude APAs covering cross-border transactions with a party resident in a state having a double tax treaty with Russia under the competent authority’s procedures with the participation of the relevant foreign tax authority. In the event of changes in the Russian rules covering APAs, the terms of the concluded APAs are grandfathered.

8.5 Corporate Profits Tax

The maximum corporate profits tax rate is 20%, which is currently payable at a rate of 2% to the federal budget and 18% to regional budgets. The regional authorities may, at their discretion, reduce their regional profits tax rate to as low as 13.5%. Thus, the overall tax rate can vary from 15.5% to 20%. For taxpayers participating in investment projects in the Russian East Siberia and Far-East regions\(^5\) the corporate profits tax rate may be reduced for a certain stability period (down to 0% in certain cases).

In the course of ongoing reforms significant changes were made to dividend taxation. Effective 1 January 2015, the tax rate on dividends received from Russian and foreign companies by Russian shareholders increased from 9% to 13%. To promote Russian holding companies,

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starting from 1 January 2008 dividends payable by foreign and Russian entities qualifying as “strategic investments” to Russian companies are exempt from profits tax. The exemption applies provided that on the day the corporate decision to pay the dividends is taken the following three tests are met:

1. The recipient of the dividends has held the shares continuously for not less than 365 days;
2. The recipient of the dividends owns not less than 50% of the shares in the company paying the dividends; and
3. The company paying dividends is not located in a jurisdiction included in a blacklist of off-shore jurisdictions adopted by Order No. 108n of the Russian Ministry of Finance, dated 13 November 2007 (the blacklist includes most off-shore low-tax jurisdictions and territories).

Starting from 1 January 2011 Russian holding companies are no longer required to meet the RUB500 million (approx. USD8.9 million) investment threshold to apply the dividend exemption, which has substantially increased the use of Russian holding companies.

As of 1 January 2015, the following tax rates apply to dividends:

- 0% withholding tax on dividends payable by Russian and foreign companies qualifying as “strategic investments” (50% or more shareholder with 365 days or longer holding period);
- 13% withholding tax on dividends payable by Russian and foreign companies to Russian shareholders in all other cases; and
- 15% withholding tax on dividends payable by Russian companies to foreign legal entities.
Chapter 25 also introduced special tax rates on income earned from Russian state securities and on the profits of the Central Bank of Russia (the “Bank of Russia”).

Under the rules promoting the creation of an international financial center in Russia, Russian companies received a full tax exemption on income from the sale or redemption of shares in Russian companies (acquired starting from 1 January 2011) provided that:

- they have continuously held those shares for more than 5 years (the “holding period”); and
- the income has been derived from the sale or redemption of participation interests or shares in Russian companies, provided that (a) the interests or shares have not been publicly traded on a securities market during the holding period, or (b) the interests or shares are of Russian companies operating in the high-tech (innovative) sector of the economy throughout the holding period.

Taxable profit is defined as income less deductible expenses. A taxpayer is generally permitted to deduct economically justified and documentarily confirmed business expenses, however, deduction of certain types of expenses is subject to restrictions (e.g., certain advertising costs and representational, including business entertainment, and travel costs). As of 1 January 2009, some of these restrictions were repealed, in particular, taxpayers are now entitled to deduct per diems (previously only within the limits set by the Russian Government) and expenses on the education of employees in Russia and certain voluntary insurance expenses. Expenses on research and development (including those that failed to yield a positive result) falling into the list approved by Resolution of the Russian Government No. 988, dated 24 December 2008, are deductible in the reporting period at a rate of 150% of their actual amount.
The tax consolidation rules came into force on 1 January 2012. The tax consolidation regime allows qualifying Russian groups to use the losses of a member against the profits of other group members in a manner similar to that available to branches of a Russian company. Moreover, transactions between the members of a consolidated group of taxpayers (the “Group”) will be exempt from transfer pricing control. Importantly, consolidation only applies for profits tax purposes and may not be used with respect to other tax obligations of the taxpayer (such as VAT).

Under the current rules a Russian holding company can consolidate its Russian subsidiaries for profits tax purposes if it directly or indirectly holds at least 90% of the shares in such subsidiaries. Cross-border consolidation as well as consolidation with companies in certain industries is not allowed (i.e., banks, insurance companies, non-state pension funds or professional traders on the securities market can consolidate only with like companies). In order to form a Group the consolidating companies must jointly meet the following high requirements:

- the total amount of federal taxes for the Group (except for taxes paid in connection with cross-border transfers) paid for the previous year is not less than RUB10 billion (approx. USD177.8 million),
- the combined turnover for the previous year is not less than RUB100 billion (approx. USD1.8 billion), and
- the combined net book value of assets on the first day of the year of consolidation is not less than RUB300 billion (approx. USD5.3 billion).

The consolidating companies form the Group by signing a Tax Consolidation Agreement outlining the group members, responsible participant and the consolidation period (minimum two years), etc. The Tax Consolidation Agreement must be registered with the tax inspectorate. The Group can be created from the beginning of a
calendar year provided the necessary documents are submitted to the tax authorities before 30 October of the previous year. Currently the entry into force of Tax Consolidation Agreements concluded in 2014 is postponed till 1 January 2016.

The Group’s tax base is calculated by the responsible participant by summing up all income (excluding dividends and other income subject to tax withholding) and all expenses of the Group members. Effectively this allows the offsetting of losses incurred by one or several group members against the profits of other Group participants. Pre-consolidation losses cannot be used against the profits of the Group, but are kept for when the loss-making company leaves the Group.

Due to the high financial thresholds the tax consolidation rules are available only for a very limited number of large Russian groups.

As of 1 January 2014 a new special corporate profits tax regime was introduced for taxpayers that are the operators or license holders of new offshore hydrocarbon deposits. The new regime provides separate rules for calculating the tax base and for a separate 20% tax rate. The special corporate profits tax will be paid to the Russian federal budget with no regional component to the tax payments.

8.5.1 Interest Deductibility and Thin Capitalization Rules

As of 1 January 2015, historic interest deductibility caps based on the Bank of Russia refinancing rate were eliminated in favor of applying transfer pricing rules and, upon the taxpayer’s choice, new safe harbor interest rates that are mostly based on the Bank of Russia “key rate” (currently 15%), which is higher than the refinancing rate (which is still fixed at 8.25%).
The safe harbor interest rates are summarized in the table below (including temporary, more beneficial ranges).

<table>
<thead>
<tr>
<th>Currency</th>
<th>Safe-Harbor Range for Interest Rates on Debt Obligations between Related Parties</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Minimum</td>
</tr>
<tr>
<td>RUB (for loans granted from 1 to 31 December 2014)</td>
<td>0%</td>
</tr>
<tr>
<td>RUB (for 2015)</td>
<td>0%(^6) of the key rate</td>
</tr>
<tr>
<td></td>
<td>75%(^7) of CBR</td>
</tr>
<tr>
<td>RUB (as of 2016)</td>
<td>75% of the key rate</td>
</tr>
<tr>
<td>EUR</td>
<td>EURIBOR + 4%</td>
</tr>
<tr>
<td>Yuan</td>
<td>SHIBOR + 4%</td>
</tr>
<tr>
<td>GBP</td>
<td>GPB LIBOR + 4%</td>
</tr>
<tr>
<td>CHF</td>
<td>CHF LIBOR + 2%</td>
</tr>
<tr>
<td>JPY</td>
<td>JPY LIBOR + 2%</td>
</tr>
<tr>
<td>USD and other currencies</td>
<td>USD LIBOR + 4%</td>
</tr>
</tbody>
</table>

Taxpayers may not rely on or deduct interest under the safe harbor rule when the interest rate on a controlled loan is outside the applicable minimum and maximum thresholds in the range; in such cases they must prepare and use the transfer pricing study.

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\(^6\) 0% of the key rate — applicable to ruble loans concluded between the related Russian entities.

\(^7\) 75% of the CBR — applicable to ruble loans concluded with related foreign entities or offshore companies.
In addition, there is a specific provision with respect to “thin capitalization.” The Tax Code introduces a 12.5/1 debt-to-equity ratio limit for banks and leasing companies, and a 3/1 ratio limit for all other companies. If the ratio of the Russian borrower company’s internal capital to its outstanding debt owed to a foreign shareholder holding more than a 20% interest in the Russian borrower company (including debt owed to a Russian affiliate of the foreign shareholder and debt guaranteed by the foreign shareholder or its Russian affiliate) exceeds these limits, the Tax Code restricts the deductibility of interest paid on the excess debt. Non-deductible interest is also considered to be a dividend payment to the foreign shareholder and hence is subject to a 15% withholding tax, unless the latter is reduced or eliminated by an applicable tax treaty. The limitation is recalculated at the end of each quarter.

Because of the drastic ruble devaluation in 2014–2015, many Russian borrowers having foreign currency denominated loans from related parties faced thin capitalization issues, even on loans that were previously within the 3 to 1 debt-to-equity ratio and were extended on the arm's-length terms. The Russian authorities came up a quick and temporary solution by fixing an artificial ruble exchange rate. The fixed ruble exchange rate apply (and no exchange rate differences are considered) to calculating deductible interest accrued in the period from 1 July 2014 to 31 December 2015 on loans concluded before 1 October 2014. The ruble exchange rates for thin capitalization purposes are based on the Central Bank rates set on 1 July 2014 (USD1 — RUB33.8434; EUR1 — RUB46.1827).

Since 2011 Russian Arbitrazh Courts have reversed the existing court practice and broadly applied thin capitalization rules without regard for non-discrimination provisions in tax treaties. In certain cases Russian courts supported the tax authorities and extended application of thin capitalization rules to loans from foreign affiliated companies not holding directly or indirectly more than a 20% interest in the Russian borrower, e.g., foreign sister company loans which were formally considered to be outside the limitations. The current controversial court practice significantly increases the burden for
taxpayers trying to prove observance of the arm’s length condition on intercompany debt financing.

8.5.2 Asset Depreciation and Carrying Forward Losses

Assets with a value exceeding RUB40,000 (approx. USD711) and a useful life of more than 12 months are subject to depreciation starting from the first day of the month following the month this asset was put into operation. Chapter 25 allows taxpayers to split assets into ten groups, depending on the type of asset and its useful life, and to apply accelerated depreciation rates; for example, the useful life for buildings is 30 years. Under Chapter 25, taxpayers are able to choose between a linear method (somewhat similar to the old method of asset depreciation) and a non-linear method. The depreciation of assets under the non-linear method is performed by groups of assets (rather than on a stand-alone basis for each individual asset) and under a formula prescribed by the Tax Code. Effectively, taxpayers can deduct approximately half of the depreciation value of assets for 25% of their useful lifetime (certain limitations on the application of the non-linear method must be observed). Land, subsoil, and natural resource assets are not subject to depreciation and hence do not reduce the tax base for profits tax.

Starting from 1 January 2006, a lump-sum deduction in the amount of 10% of the initial book value of newly acquired fixed assets was allowed for profits tax purposes in the period when the fixed assets were acquired. Effective from 1 January 2009, for capital assets with a useful life of from more than 3 to 20 years this special investment incentive is increased from 10% to 30%. A claw-back rule applies to recapture the investment incentives deduction if the taxpayer alienates any capital asset to a related party during the first five years of its use. This provision applies both to the 10% and 30% investment incentive deductions. Russian information technology companies (“IT companies”) having proper accreditation are entitled to write off the full value of computer equipment at the time it is put into service.
Losses may be carried forward for 10 years. There are separate tax baskets for certain expenses e.g. for expenses on acquisition of certain securities. Also, there is no requirement to spread the loss over the entire carry-forward term. Starting from 1 January 2007, there is no limit on the amount of taxable profit that can be reduced by a loss carry-forward in a particular year. In addition, capital losses may be offset against operating income; this deduction, however, must be evenly spread over the residual useful life of the capital asset for which the loss was incurred.

8.5.3 Investment Benefits

Russian companies enjoyed various regional and local tax concessions under the 1991 Corporate Profits Tax Law, and under the relevant regional and/or local laws of several territories (particularly Chukotka, Kalmykia, Mordovia, and Evenkia). Chapter 25 of the Tax Code abolished all tax incentives, including the capital investment allowance. Some types of tax benefits (including investment benefits) were grandfathered, although they ceased to be effective as of 1 January 2004. Presently, regional and local legislative bodies are no longer authorized to provide tax concessions, except for regional authorities, which may reduce their regional profits tax rate by 4.5% and thus reduce the overall tax rate to 15.5%. However, the effective tax rate could be even lower under the special tax regimes referred to in Section 8.2 above or under the special economic zone regime.

There is a continuous development of various tax benefits for business in Russian regions. In 2005 Federal Law No. 116-FZ “On Special Economic Zones in the Russian Federation,” dated 22 July 2005, introduced a new concept for the provision of investment benefits. Federal Law No. 267-FZ, dated 30 September 2013, introduced new special tax incentives for qualifying participants of regional investment projects in the Russian Far-East that apply as of 1 January 2014. In 2013, in order to stimulate the development of hydrocarbons on the Russian continental shelf, special tax incentives were introduced for taxpayers that are operators or license holders of new offshore hydrocarbon deposits. Federal Laws No. 380-FZ, dated
29 November 2014, and No. 473-FZ, dated 29 December 2014, introduced a new concept of territories of priority socio-economic development in Russia for the provision of investment and tax benefits for certain parts of Russian regions.

8.6 Taxation of Foreign Companies

Russian legislation taxes profits derived from a “permanent establishment” in Russia, as well as certain other types of income derived without a permanent establishment in Russia. Importantly, whether a permanent establishment exists under Russian tax law is unrelated to whether a foreign company’s office has been registered in Russia. A permanent establishment may exist even if the office is not registered, and the existence of a registered office may not necessarily give rise to a taxable permanent establishment. Profit derived by foreign legal entities from their permanent establishments in Russia is generally taxed at the same profits tax rates applicable to Russian taxpayers. As of 1 January 2012, a new rule was included in the Tax Code requiring that the income of a permanent establishment be determined taking into account the functions performed in Russia, the assets used and commercial risks assumed, which is generally in line with the OECD approach.

Chapter 25 sets forth a limited list of Russian source income not connected with a permanent establishment in Russia that is subject to Russian withholding tax. The list includes mainly passive types of income, such as royalties, interest, dividend income, and rentals. Starting from 1 January 2015 capital gains on the sale of shares in a company (either Russian or foreign), if more than 50% of the assets of the company directly or indirectly consist of real property located in Russia, are subject to Russian corporate profits tax. Other income received by non-Russian residents that is not specified in the list is not subject to any withholding tax.

Unless an applicable double taxation treaty provides for a lower rate, dividends payable by Russian companies to foreign shareholders are subject to a 15% withholding tax. Other listed income received by
foreign legal entities from Russian sources is subject to either a 20% withholding tax (for most categories of income, including royalties and most types of interest) or a 10% withholding tax (for income from freight and lease of transportation vehicles), subject to any reduction available under an applicable double taxation treaty.

The corporate profits tax is payable and reported on a quarterly basis based on actual results for the first three months, the first six months, the first nine months and the year or on a monthly basis based on actual results for the previous month. The annual tax return and a report on a foreign legal entity’s activity in Russia must be submitted to the tax authorities by 28 March of the year following the close of the taxable year.

8.6.1 Controlled Foreign Companies Rules

On 24 November 2014 the President of the Russian Federation signed Federal Law No. 376-FZ (the “Deoffshorization Law”) introducing fundamentally new rules on taxation of profits of controlled foreign companies (CFC rules) in Russia. These new rules fundamentally affect most of the wealth management and private holding structures for Russia and mean that immediate review and action may be required. The new rules are effective as of 1 January 2015.

The Deoffshorization Law provides for an obligation of Russian tax residents (individuals and legal entities) to assess, report and pay taxes on undistributed profits of foreign companies and “foreign unincorporated structures” (unincorporated vehicles: funds, partnerships, trusts, and other forms of collective investment vehicles, that may engage in business activities on behalf of their partners/beneficiaries) where they own, directly or indirectly (through other Russian or foreign companies) (1) more than 25% of the shares, or (2) more than 10% of the shares if Russian persons in total own more than 50%, or which they otherwise control, subject to certain exemptions and temporary rules.

Russian CFC rules are very broad and cover not just companies in traditional low tax jurisdictions (e.g. BVI, Panama), but also
companies in tax treaty jurisdictions (Cyprus, Luxembourg, Netherlands, USA), whose effective tax rate is less than 3/4 of the weighted average Russian corporate profits tax rate (composed of 20% standard rate and 13% rate for dividends based on the structure of the CFC’s income). The new rules could also cover certain types of trusts and other popular wealth management tools.

Russian taxpayers that are controlling persons are required to report a pro rata share of the CFC’s profits in their tax returns by the end of the year following the year for which the CFC prepared its financial statement (i.e., the first reporting campaign would be for 2016). CFC profits are subject to ordinary tax rates in Russia: 13% for individuals; 20% for legal entities.

A CFC’s profits are determined according to audited financial statements if the CFC is subject to mandatory audit under applicable domestic rules (e.g., for Cypriot companies), otherwise the tax base is determined under the Russian tax rules i.e., Chapter 25 (for typical offshores). CFC profits are reduced by the amount of interim and annual dividends distributed by a CFC and related to the period of the financial statement. A foreign tax credit for the amount of foreign and Russian taxes paid on the CFC’s profits is available.

Importantly, Russian tax residents are not taxed on the CFC profits of active business companies, i.e., companies established in tax treaty jurisdictions exchanging tax information with no more than 20% of income being passive income. “Passive income” is broadly defined to include dividends, interest, royalties, capital gains, leases, certain services, etc. As another exemption Russian tax residents are also not taxed on the profits of small CFCs (for 2015 the threshold is RUB50 million (approx. USD889,000)).

Russian taxpayers are required to file separate notifications with the Russian tax authorities on (1) owning more than 10% of the shares in foreign companies and (2) participation in CFCs:
• Notification on owning shares in foreign companies: must be filed within one month of the acquisition date or by 1 April 2015 for existing shareholdings.

• Notification on participation in CFCs: due by 20 March of the year following the year for which the CFC’s profits are included in the tax base of the controlling person (i.e., the first notification will be due by 20 March 2017).

The CFC Law provides an exemption from tax penalties arising in connection with tax underpayments on CFC’s profits for 2015–2017. There is an exemption from criminal liability for 2015–2017 provided all tax amounts (including tax assessed and late payment interest) are paid to the budget.

Failure to file a notification on owning shares in foreign companies or a notification on participation in CFCs is subject to penalties of RUB50,000 (approx. USD889) and RUB100,000 (approx. USD1,778), respectively, for each company.

8.6.2 New Tax Residency Rules for Foreign Companies Based on Effective Management

Starting from 1 January 2015 foreign companies may be recognized as Russian tax residents (and become fully taxable in Russia on their worldwide income) if they are effectively managed in Russia. The company is deemed effectively managed in Russia if at least one of the following criteria is met: (1) the majority of board of directors’ meetings are in Russia; (2) management of the day-to-day activities takes place in Russia, or (3) executive bodies’ management decisions are made in Russia.
There are also certain secondary criteria which may impose an even higher compliance burden in order to avoid Russian tax residency. The secondary criteria for foreign companies to be recognized as Russian tax residents include: (1) accounting and management accounting is performed in Russia, (2) document (records) management is performed in Russia, or (3) operational HR management is performed from Russia.

There is an exemption for companies with strong substance, i.e., local qualified staff and assets in a state which has a tax treaty with Russia. This may be helpful to protect bona fide companies registered in tax treaty jurisdictions.

8.6.3 New Beneficial Ownership Rules

The Deoffshorization Law introduces the concept of a beneficial owner into the domestic tax legislation, and it is drafted broadly (and focuses more on anti-conduit company rules) and seems to be more onerous than the latest accepted OECD interpretation. Withholding tax exemptions or reduced tax rates under tax treaties concluded with Russia are only available to beneficial owners of income (exercising functions and risks with respect to such income and determining its “economic fate”) and should not be provided to foreign companies having limited authority to dispose of income and exercising intermediary functions. Russian tax agents are encouraged to obtain additional beneficial owner status confirmations from recipients. The form of such confirmation is currently unclear. This is likely to result in more uncertainty and tax risks for many cross-border payments. Conservatively, the beneficial ownership requirement may apply even if a particular tax treaty does not contain the beneficial ownership clause. The new rules are effective as of 1 January 2015.

As of 1 January 2014 Russian depositories acting as tax agents are required to apply the 30% withholding tax on income distributed to foreign legal entities acting in the interest of non-disclosed third parties on the following securities held on nominal holder accounts,
foreign authorized holder accounts and (or) depository program accounts:

- securities with mandatory centralized custody (e.g., bonds) of the Russian Government, federal subjects and municipalities of Russia;
- corporate securities with mandatory centralized custody (e.g., bonds) issued after 1 January 2012;
- other issuable securities of Russian companies (except for corporate securities with mandatory centralized custody issued before 1 January 2012 and shares in Russian joint stock companies).

A foreign legal entity is deemed to be acting in the interest of non-disclosed third parties with respect to payments, and is subject to the 30% withholding tax (15% withholding tax with regard to dividends from shares in Russian joint stock companies), unless it provides aggregate information on the persons exercising rights to these securities and (or) on the persons represented by trustees/asset managers (except for investors in collective investment vehicles), which includes a number of securities and (or) depository receipts representing Russian securities, jurisdictions where the beneficial owners of income (“fakticheskiye poluchateli dokhoda”) have their tax residency and other relevant information on applicable tax benefits.

8.7 Double Taxation Treaties

Russia has signed 87 double taxation treaties (although seven tax treaties have not yet entered into force), which can provide for the reduction of the withholding tax rate on dividend income to as low as 5% and generally provide for a 0% withholding rate on other income (e.g. interest, royalties, and capital gains). For example, the 1998

8 The exemption for dividends on Russian shares applies as of 1 January 2015.
Russia-Cyprus Double Taxation Treaty provides for a 0% withholding tax rate on interest, royalties, capital gains, and other income not related to a permanent establishment; a 5% withholding tax rate on dividends payable to Cypriot shareholders who have contributed over EUR100,000 to the charter capital of a Russian subsidiary responsible for paying out these dividends; and a 10% withholding tax rate on dividends payable to all other Cypriot shareholders. Many other tax treaties provide for similar withholding tax rates, although some have higher rates (please see the charts below).

Chapter 25 includes a provision that explicitly states that, in the event of a conflict, double taxation treaties override the Tax Code. Chapter 25 contains more beneficial rules than had existed under previous laws governing tax treaty relief for a foreign legal entity. Under Chapter 25 of the Tax Code, taxpayers can obtain tax treaty relief from tax withholding in Russia without any filings with the Russian tax authorities by presenting documents evidencing the tax residency and the beneficial owner statuses of the taxpayer to the tax withholding agent (usually the Russian payer).

As of 1 January 2014 in case of dividend payments from shares of Russian joint stock companies tax withholding agents (i.e., Russian depositaries) may only apply ordinary withholding tax rates based on aggregate information (e.g., 10% rate on dividends under the Russia-Cyprus Double Taxation Treaty), not considering reduced tax rates imposing additional requirements (e.g., investment thresholds). Effectively, Russian tax agents would over-withhold taxes and foreign investors would need to claim refunds for tax overpayments from the Russian budget according to the procedure set forth in the Russian Tax Code.

On 4 November 2014 Russia ratified the OECD-Council of Europe Convention on Mutual Administrative Assistance in Tax Matters. The convention is expected to enter into force in 2015 and will have effect for administrative assistance related to taxable periods beginning on or after 1 January 2016.
Russia has entered into the following bilateral treaties for the avoidance of double taxation which are currently in force:

<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Dividends Individual Companies</th>
<th>Dividends Qualifying Companies</th>
<th>Interest&lt;sup&gt;9&lt;/sup&gt;</th>
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<td>8.</td>
<td>Belarus</td>
<td>15</td>
<td>15</td>
<td>10</td>
<td>10</td>
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</table>

<sup>9</sup> Many treaties provide for exemption for certain types of interest e.g. interest paid to local state authorities, central bank export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.

<sup>10</sup> The rate applies if the recipient company (other than a partnership) directly owns at least 25% of the capital in the company paying the dividends.

<sup>11</sup> The rate applies if the recipient company directly owns at least 25% of the capital in the company paying the dividends.

<sup>12</sup> The rate applies if the recipient company directly owns at least 25% of the capital in the company paying the dividends.

<sup>13</sup> The rate applies if the recipient company (other than a partnership) directly owns at least 10% of the company paying the dividends, and if the value of the holding is at least AUD700,000, and the dividends to be paid by the Russian company are exempted from Australian taxes.

<sup>14</sup> The rate applies if the recipient company directly owns at least 10% of the capital in the Russian company and the value of the holding exceeds USD100,000.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Dividends</th>
<th>Interest</th>
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<tr>
<td>11.</td>
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<tr>
<td>12.</td>
<td>Canada</td>
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<td>Chile</td>
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<td>Cyprus</td>
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<td>5\textsuperscript{23}</td>
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</tbody>
</table>

\textsuperscript{15} The rate applies if the recipient company owns at least 25% of the capital in the company paying the dividends.

\textsuperscript{16} The rate applies if the recipient company owns at least 10% of the capital or voting power in the Russian company, as the case may be.

\textsuperscript{17} The lower rate applies to computer software, patents, know-how and copyright royalties.

\textsuperscript{18} The rate applies if the recipient company owns at least 25% of the capital in the company paying the dividends.

\textsuperscript{19} The lower rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.

\textsuperscript{20} The rate applies if the recipient company owns at least 25% of the capital in the Russian company and the value of the holding is at least USD100,000.

\textsuperscript{21} The rate applies if the recipient company (other than a partnership) owns at least 25% of the capital in the company paying the dividends.

\textsuperscript{22} The lower rate applies to copyright royalties.

\textsuperscript{23} The rate applies if the value of the holding is at least EUR100,000.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Dividends</th>
<th>Interest</th>
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<td>Indonesia</td>
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</table>

<sup>24</sup> The rate applies if the recipient company directly owns at least 30% of the capital in the Russian company and the value of the holding exceeds USD100,000.

<sup>25</sup> The 5% rate applies if the French company: (1) has directly invested at least EUR76,225 in the Russian company; and (2) is subject to tax in France, but is exempt with respect to dividends (i.e. participation exemption). The 10% rate applies if only one of the requirements is fulfilled.

<sup>26</sup> The rate applies if the German company owns at least 10% of the capital in the Russian company and the value of the holding is at least EUR80,000.

<sup>27</sup> The rate applies if the Greek company (other than a partnership) owns at least 25% of the capital in the company paying the dividends.

<sup>28</sup> The rate applies if the recipient company directly owns at least 25% of the capital in the company paying dividends and the value of the holding exceeds USD100,000.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Dividends</th>
<th>Interest</th>
<th>Royalties</th>
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<td>5&lt;sup&gt;33&lt;/sup&gt;</td>
<td>5&lt;sup&gt;34&lt;/sup&gt;</td>
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</table>

<sup>29</sup> The rate applies if the recipient company directly owns at least 25% of the capital in the Russian company.

<sup>30</sup> The rate applies if the recipient company directly owns at least 10% of the capital in the Russian company and the value of the holding is at least USD100,000.

<sup>31</sup> The lower rate applies to copyright royalties.

<sup>32</sup> The rate applies if the recipient company (other than a partnership) directly owns at least 30% of the capital in the company paying the dividends and the value of the holding is at least USD100,000.

<sup>33</sup> The rate applies if the recipient company (other than a partnership) directly owns at least 25% of the capital in the company paying the dividends and the value of the holding exceeds USD75,000.

<sup>34</sup> The 5% rate applies to loans between financial institutions.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Dividends</th>
<th>Interest</th>
<th>Royalties</th>
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<td>-/15&lt;sup&gt;39&lt;/sup&gt;</td>
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<td>46.</td>
<td>Malta</td>
<td>10&lt;sup&gt;42&lt;/sup&gt;</td>
<td>5&lt;sup&gt;43&lt;/sup&gt;</td>
<td>5</td>
</tr>
</tbody>
</table>

<sup>35</sup> The rate applies if the recipient company (other than a partnership) directly owns at least 25% of the capital in the company paying the dividends and the value of the holding exceeds USD100,000.

<sup>36</sup> The lower rate applies to the royalties for the use of industrial, commercial, and scientific equipment.

<sup>37</sup> The rate applies if the Luxembourg recipient directly owns at least 10% of the capital in the Russian company and the value of the holding is at least EUR80,000 or its equivalent in national currency.

<sup>38</sup> The 15% rate applies to profits of joint ventures. Otherwise, the domestic rate applies; there is no reduction under the treaty.

<sup>39</sup> The 15% rate applies to profits of joint ventures. Otherwise, the domestic rate applies; there is no reduction under the treaty.

<sup>40</sup> The lower rate applies to industrial royalties.

<sup>41</sup> The rate applies if the value of the holding is at least FRF1 million.

<sup>42</sup> The rate shall not exceed the rate established for Maltese income tax purposes if the recipient company is a Russian resident.

<sup>43</sup> The rate applies if the recipient company (Maltese resident) directly owns 25% in the capital of the Russian company and the foreign capital invested is at least EUR100,000.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Dividends</th>
<th>Interest</th>
<th>Royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Individual Companies</td>
<td>Qualifying Companies</td>
<td></td>
</tr>
<tr>
<td>47.</td>
<td>Mexico</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>48.</td>
<td>Moldova</td>
<td>10</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>49.</td>
<td>Mongolia</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>50.</td>
<td>Morocco</td>
<td>10</td>
<td>5(^{45})</td>
<td>0/10(^{46})</td>
</tr>
<tr>
<td>51.</td>
<td>Namibia</td>
<td>10</td>
<td>5(^{47})</td>
<td>10</td>
</tr>
<tr>
<td>52.</td>
<td>Netherlands</td>
<td>15</td>
<td>5(^{48})</td>
<td>0</td>
</tr>
<tr>
<td>53.</td>
<td>New Zealand</td>
<td>15</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td>54.</td>
<td>Norway</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>55.</td>
<td>Philippines</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
<tr>
<td>56.</td>
<td>Poland</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>57.</td>
<td>Portugal</td>
<td>15</td>
<td>10(^{49})</td>
<td>10</td>
</tr>
<tr>
<td>58.</td>
<td>Qatar</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
</tbody>
</table>

\(^{44}\) The domestic rate applies, there is no reduction under the treaty.

\(^{45}\) The 5% rate applies if the value of the holding exceeds USD500,000.

\(^{46}\) The lower rate applies to interest on foreign currency deposits.

\(^{47}\) The rate applies if the recipient company owns at least 25% of the capital in the Russian company and the value of the holding is at least USD100,000.

\(^{48}\) The rate applies if the Netherlands company directly owns at least 25% of the capital in the Russian company and has invested in it at least EUR75,000 or its equivalent in national currency.

\(^{49}\) The rate applies if the Portuguese company has owned directly at least 25% of the capital in the Russian company for an uninterrupted period of at least 2 years prior to the payment.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Dividends</th>
<th>Interest</th>
<th>Royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Individual Companies</td>
<td>Qualifying Companies</td>
<td></td>
</tr>
<tr>
<td>59.</td>
<td>Romania</td>
<td>15</td>
<td>15</td>
<td>10</td>
</tr>
<tr>
<td>60.</td>
<td>Saudi Arabia</td>
<td>5</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>61.</td>
<td>Serbia and Montenegro</td>
<td>15</td>
<td>5&lt;sup&gt;51&lt;/sup&gt;</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>62.</td>
<td>Singapore</td>
<td>10</td>
<td>5&lt;sup&gt;52&lt;/sup&gt;</td>
<td>7.5</td>
</tr>
<tr>
<td>63.</td>
<td>Slovakia</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>64.</td>
<td>Slovenia</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>65.</td>
<td>South Africa (Rep.)</td>
<td>15</td>
<td>10&lt;sup&gt;53&lt;/sup&gt;</td>
<td>10</td>
</tr>
<tr>
<td>66.</td>
<td>Spain</td>
<td>15</td>
<td>5/10&lt;sup&gt;54&lt;/sup&gt;</td>
<td>0/5&lt;sup&gt;55&lt;/sup&gt;</td>
</tr>
<tr>
<td>67.</td>
<td>Sri Lanka</td>
<td>15</td>
<td>10&lt;sup&gt;56&lt;/sup&gt;</td>
<td>10</td>
</tr>
</tbody>
</table>

<sup>50</sup> The Yugoslavia-Russia Tax Treaty is applied by both Serbia and Montenegro.

<sup>51</sup> The rate applies if the recipient company owns at least 25% of the capital in the Russian company and the value of the holding is at least USD100,000.

<sup>52</sup> The rate applies if the recipient company owns at least 15% of the capital in the company paying the dividends and the value of the holding is at least USD100,000.

<sup>53</sup> The rate applies if the recipient company directly owns at least 30% of the capital in the Russian company and the value of the holding is at least USD100,000.

<sup>54</sup> The 5% rate applies if: (1) the Spanish company has invested at least EUR100,000 in the Russian company; and (2) the dividends are exempt in Spain. The 10% rate applies if only one of the conditions is met.

<sup>55</sup> The lower rate applies to long term loans (minimum 7 years) granted by credit institutions resident in a contracting state.

<sup>56</sup> The rate applies if the company in Sri Lanka owns at least 25% of the capital in the Russian company.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Individual Companies</th>
<th>Qualifying Companies</th>
<th>Interest</th>
<th>Royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>68.</td>
<td>Sweden</td>
<td>15</td>
<td>5&lt;sup&gt;57&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>69.</td>
<td>Switzerland</td>
<td>15</td>
<td>5&lt;sup&gt;58&lt;/sup&gt;</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>70.</td>
<td>Syria</td>
<td>15</td>
<td>15</td>
<td>10</td>
<td>4.5/13.5/18&lt;sup&gt;59&lt;/sup&gt;</td>
</tr>
<tr>
<td>71.</td>
<td>Tajikistan</td>
<td>10</td>
<td>5&lt;sup&gt;60&lt;/sup&gt;</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>72.</td>
<td>Thailand</td>
<td>15</td>
<td>15</td>
<td>10&lt;sup&gt;61&lt;/sup&gt;</td>
<td>15</td>
</tr>
<tr>
<td>73.</td>
<td>Turkey</td>
<td>10</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>74.</td>
<td>Turkmenistan</td>
<td>10</td>
<td>10</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>75.</td>
<td>Ukraine</td>
<td>15</td>
<td>5&lt;sup&gt;62&lt;/sup&gt;</td>
<td>10</td>
<td>10</td>
</tr>
</tbody>
</table>

<sup>57</sup> The rate applies if the Swedish company owns 100% of the capital in the Russian company (or in the case of a joint venture, at least 30% of the capital in such a joint venture) and the foreign capital invested is at least USD100,000.

<sup>58</sup> The rate applies if the Swiss company owns at least 20% of the capital in the Russian company and the value of the holding exceeds CHF200,000.

<sup>59</sup> The 4.5% rate applies to cinema movies and TV and radio broadcasting programs, the 13.5% rate applies to literature, art, and science products, and the 18% rate applies to computer software, patents, trademarks, and know-how.

<sup>60</sup> The rate applies if the recipient company owns at least 25% of the capital in the company paying the dividends.

<sup>61</sup> The 10% rate applies to loans granted by Russian banks.

<sup>62</sup> The rate applies if the value of the holding is at least USD50,000.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Dividends</th>
<th>Interest</th>
<th>Royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Individual Companies</td>
<td>Qualifying Companies</td>
<td></td>
</tr>
<tr>
<td>76.</td>
<td>United Kingdom of Great Britain and Northern Ireland</td>
<td>10</td>
<td>10</td>
<td>0</td>
</tr>
<tr>
<td>77.</td>
<td>United States of America</td>
<td>10</td>
<td>5(^{63})</td>
<td>0</td>
</tr>
<tr>
<td>78.</td>
<td>Uzbekistan</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>79.</td>
<td>Venezuela</td>
<td>15</td>
<td>10(^{64})</td>
<td>5/10(^{65})</td>
</tr>
<tr>
<td>80.</td>
<td>Vietnam</td>
<td>15</td>
<td>10(^{67})</td>
<td>10</td>
</tr>
</tbody>
</table>

In addition to the above, Russia has entered into the following tax treaties for the avoidance of double taxation which do not yet apply (e.g., have not been ratified, the exchange of ratification instruments process is pending):

---

\(^{63}\) The rate applies if the recipient company holds at least 10% of the capital or voting power in the Russian company as the case may be.

\(^{64}\) The rate applies if the recipient company (other than a partnership) directly owns at least 10% of the capital in the company paying the dividends and the value of the holding is at least USD100,000.

\(^{65}\) The 5% rate applies to bank loans.

\(^{66}\) The lower rate applies to the fees for technical assistance.

\(^{67}\) The rate applies if the Vietnamese company has invested at least USD10 million directly in the capital of the Russian company.
<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>Dividends</th>
<th>Interest</th>
<th>Royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Individual Companies</td>
<td>Qualifying Companies</td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Brazil</td>
<td>15</td>
<td>10</td>
<td>15</td>
</tr>
<tr>
<td>2.</td>
<td>Estonia</td>
<td>10</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>3.</td>
<td>Ethiopia</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>4.</td>
<td>Georgia</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>5.</td>
<td>Laos</td>
<td>10</td>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>6.</td>
<td>Mauritius</td>
<td>10</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>7.</td>
<td>Oman</td>
<td>10</td>
<td>5</td>
<td>0</td>
</tr>
</tbody>
</table>

**8.8 Value Added Tax (“VAT”)**

VAT is imposed on all goods imported into Russia and is also applied to the sale of goods, work and services. According to recent

---

68 Many treaties provide for an exemption for certain types of interest, e.g. interest paid to state local authorities, central bank export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.

69 According to Letter of the Russian Ministry of Finance No. 03-08-06/5641, dated 12 February 2014, the Brazil-Russia Tax Treaty, ratified by Russia, is not in force.

70 The rate applies if the recipient company directly owns at least 20% of the capital in the company paying the dividends.

71 The rate applies if the recipient company (other than a partnership) owns at least 25% of the capital in the company paying the dividends and the value of the holding is at least USD75,000.

72 The 5% rate applies if the value of the recipient company’s holding is at least USD500,000.

73 The rate applies if the value of the recipient company’s holding is at least USD500,000.
amendments to the Tax Code the same VAT regime applies to goods and services that are sold in or imported into territories under Russian jurisdiction e.g., artificial islands and drilling platforms on the continental shelf. Under the new rules, certain types of works (services) provided for the purposes of geological study, exploration and development of hydrocarbons on subsoil plots located on the continental shelf, exclusive economic zone of the Russian Federation and (or) the Russian sector of the Caspian Sea bed are subject to Russian VAT.

The tax period for VAT for all taxpayers and tax withholding agents is a calendar quarter. Starting from 1 January 2015, as a general rule taxpayers must pay VAT in equal installments not later than the 25th day of each month following the reporting quarter. Current legislation imposes a VAT rate of 18% on the sale of most goods, work and services. A lower 10% rate is applied to limited types of goods, such as pharmaceuticals, medical equipment, and certain food products and periodicals. The export of goods is subject to 0% VAT. In addition, certain types of goods, work, and services are exempt from VAT including, but not limited to, the following:

- land plots, dwelling houses and apartments, lease of office space to accredited representative offices and branches of foreign legal entities from jurisdictions which apply reciprocal benefits;
- certain medical goods and services;
- the sale of shares, derivatives and repo transactions;
- certain operations provided by financial services businesses (registrars, depositaries, dealers, brokers, securities management businesses, investment, mutual and private pension fund management companies, clearing organizations, trade organizers);
the assignment of exclusive IP rights (e.g., patents, know-how), with the exception of trademarks, and rights to use the results of these IP rights (e.g., a software use license) based on licenses (including non-exclusive licenses).

An import VAT exemption applies to technological equipment that is not produced in Russia according to a list adopted by Resolution of the Russian Government No. 372, dated 30 April 2009 (as amended).

Generally, VAT paid on the acquisition of goods, work and services may be offset against VAT collected from customers. Russian buyers are not required to postpone offsetting input VAT on advance payments until the goods, work and services are delivered and can take an offset on special advance VAT invoices. Russian VAT legislation allows recognition of retroactive discounts in the current tax period through issuing corrective VAT invoices (however, if a discount does not change the price set in a contract, the taxpayer does not need to issue a corrective VAT invoice). The form of a corrective VAT invoice and the standards for its completion became effective as of 1 January 2012. Starting from 23 May 2012 new e-invoicing regulations came into force. E-invoicing requires a digital signature and data transfer via authorized operators and is subject to agreement of the counterparties.

Therefore, an enterprise ends up transferring to the state only the difference between input VAT paid and VAT collected. As a general rule, however, a taxpayer may not offset input VAT if such VAT is incurred on goods, works or services used by the taxpayer for the sale of goods or the provision of services that are exempt from VAT. In this case, the taxpayer will be required to maintain separate accounting for its VATable and non-VATable transactions and include such input VAT relating to non-VATable sales into its production costs and will effectively lose this input VAT for future recovery. In those cases where only a portion of certain input costs was used for the production of goods or the provision of services subject to VAT, the corresponding input VAT may be offset only on a pro-rata basis. Hence, for example, careful planning will be required
to maintain full recovery if part of a newly constructed building is to be directly leased to representative offices or branches of foreign legal entities accredited in Russia for which a VAT exemption applies.

For barter transactions, taxpayers are not required to transfer VAT to each other in cash and remit VAT under general rules. Effective from 1 October 2011, a taxpayer must restore input VAT previously recovered and pay it to the Russian budget on goods, works, and services, including fixed and intangible assets used for activities subject to 0% VAT (e.g., export of acquired goods or producing goods to be exported). This VAT may be offset in the future when the tax base has been determined e.g., a full set of documents confirming export operations is prepared.

In order to claim a refund of input VAT paid in relation to goods that were subsequently exported and subject to 0% VAT, the taxpayer is required to file various supporting documents with the Russian tax authorities. The VAT refund is granted only following a chamber tax audit of the respective VAT return and documents, which should be conducted within three months. A taxpayer may refund VAT before the end of a tax audit if it meets one of the following requirements: (i) the taxpayer has existed for not less than three years, and the total amount of VAT (except import VAT), excise taxes, corporate profits tax and mineral extraction tax paid over the three preceding calendar years is not less than RUB10 billion (approx. USD177.8 million); or (ii) the taxpayer provided a bank guarantee from an authorized Russian bank covering the full amount of the reclaimed VAT. The list of the authorized banks is maintained by the Russian Ministry of Finance. In capital construction, the input VAT paid to suppliers of goods, work and services may be offset under the general procedure as the construction progresses.

Foreign legal entities having more than one representative office and/or branch registered in various locations in Russia may consolidate all VAT accruals and offsets on a company level. For that purpose a foreign legal entity must choose a particular representative office or branch to be responsible for VAT reporting on a company
level and notify the local tax authorities responsible for each representative office and branch registered in Russia of its decision.

A Russian customer of a foreign company that is not registered with the tax authorities and is active (making sales or providing services) in Russia must withhold either 9.09% or 15.25% reverse charge VAT (depending on the applicable underlying VAT rate of 10% or 18%, respectively) from the amounts transferred to the foreign company and must itself remit such reverse charge VAT directly to the state budget.

As of 1 January 2014 VAT tax returns may be filed with the tax authorities only in electronic form.

8.9 Mineral Extraction Tax

Prior to 2002, licensed subsoil users had to pay, inter alia, a tax on the restoration of the mineral resource base and subsoil use payments. The tax base was calculated as a percentage of the value of the minerals actually extracted. Chapter 26 of the Tax Code introduced a new mineral extraction tax, which came into effect on 1 January 2002. The mineral extraction tax has replaced the tax on restoration of the mineral resource base and the subsoil use tax payable on the value of minerals extracted.

The mineral extraction tax is generally calculated from the value of the mineral resources extracted from the subsoil based on the prices (excluding VAT and excise taxes) at which the extracted minerals were sold, subject to the transfer pricing provisions of the Tax Code, and effectively not lower than the market price. Taxpayers are required to calculate the tax base separately for each type of mineral resource extracted and pay it on a monthly basis. In particular, Chapter 26 sets out a tax rate of 6% for gold and 6.5% for silver.

As of 1 January 2014 taxpayers qualifying as participants of regional investment projects (the requirements are set under a separate complicated procedure) could enjoy tax holidays for the extracted mineral resources except for mineral water, oil and gas.
Starting from 1 July 2014 a completely new formula for determining tax rates for natural gas and gas condensate is used, which is a progressive step in reforming the taxation of the mineral resource sector. The new formula is similar to the formula used for determining the tax rate for crude oil and reflects the average market price of gas and other factors including the complexity of gas recovery.

The new tax rate for natural gas is RUB35 (approx. USD0.6) per 1,000 cubic meters of gas multiplied by the basis value of the unit of standard fuel ($U_{sf}$) (which is determined according to the formula prescribed by the Tax Code) and adjusted by a multiplier reflecting the complexity of natural gas and gas condensate recovery ($C_c$) plus the relevant gas transportation expenses ($T_e$) (starting from 1 January 2015 $T_e$ is determined according to the formula prescribed by the Tax Code).

The $C_c$ multiplier equals the minimum value of one of the following multipliers: multiplier reflecting the depletion of a gas deposit, regional multiplier reflecting the regional characteristics of the deposits, multiplier reflecting the depth of the development of natural gas and gas condensate, multiplier reflecting the attribution of the subsoil plot to the regional gas supply system, coefficient reflecting the particularities of developing certain subsoil plots. The $C_c$ varies from 0.1 to 1.

Starting from 1 January 2015 the tax rate for gas condensate is determined by a similar formula.

\[
\text{Tax rate} = \text{RUB42 for 1 ton of condensate (approx. USD0.7)} \times U_{sf} \times C_c \times F_{ad}
\]

where the adjustment multiplier ($F_{ad}$) equals 4.4 in 2015.

At the same time taxpayers received a long-awaited tax exemption with respect to natural gas that is injected into a formation in order to maintain formation pressure when gas condensate is extracted. Subsoil users that simultaneously meet the following requirements: (i) have prospected and explored an oilfield at their own expense and (ii) were exempt from the tax on the restoration of the mineral resource base.
confirmed in the relevant license issued before 1 June 2001, are entitled to pay 70% of the tax normally due for the natural resources extracted from the relevant licensed oilfield. Subsoil users include the mineral extraction tax paid to the state budget in their deductible expenses, decreasing the taxable base for corporate profits tax. Chapter 26 does not provide any special concessions for subsoil users.

As of 1 January 2015 the mineral extraction tax for crude oil is determined by multiplying the extracted quantity of dewatered, desalted and stabilized oil by the tax rate determined in accordance with the following new formula:

\[
\text{Tax rate} = \text{RUB766 for 1 ton of crude oil (approx. USD13.6)} \times M - E_r.
\]

The multiplier reflecting fluctuations in world prices for Urals crude (M) is determined monthly under the following formula:

\[
M = (P - 15) \times E / 261
\]

where P is the average price for Urals crude in USD on international oil markets (Mediterranean and Rotterdam oil markets) per barrel for the prior month, and E is the average RUB/USD exchange rate determined by the Central Bank of Russia over the calendar month. Starting from 1 January 2009, the non-taxable crude oil price minimum was increased from USD9 to USD15, which effectively was intended as an incentive for oil companies.

The figure representing oil extraction factors (E_f) is calculated under the following formula:

\[
E_f = F_{\text{met}} \times M \times (1 - RD \times AR \times F_c \times F_{cd} \times F_r)
\]

where the mineral extraction tax multiplier (F_{met}) equals 530 in 2015 (559 from 2016).

The reserves depletion rate (RD) multiplier applies if the reserves depletion rate for an oil field equals or exceeds 80%. The reserves depletion rate is calculated as the accumulated volume of crude oil
produced from the field (including mining losses) based on the information in the state balance of mineral reserves \((N)\) divided by the total volume of reserves \((\text{sum of reserves in categories A+B+C1+C2}) \ (V)\): \(RD = 3.8 - 3.5 \times \frac{N}{V}\). The RD multiplier effectively reduces the mineral extraction tax rate for depleted fields. The minimum coefficient is 0.3 for oilfields with a depletion rate above 100%. In other cases not mentioned above the RD multiplier is 1.

The amount of reserves rate \((AR)\) multiplier applies if the total volume of reserves of a field \((V)\) is less than 5 million tons and the reserves depletion rate of the field \((RD)\) does not exceed 5%. The AR multiplier is calculated under the following formula:

\[ AR = 0.125 \times V + 0.375, \]

where \(V\) is the total volume of reserves in million tons as described above.

The complexity of produced oil recovery multiplier \((F_c)\) is determined separately for certain types of oil deposits and varies from 0.2 to 1.

The depletion of a particular oil deposit multiplier \((F_{cd})\) is calculated in the same way as RD, but with respect to each oil deposit.

The regional and oil quality multiplier \((F_r)\) as general rule equals 1. For certain types of oil (viscous oil) and for oil produced from oilfields located in certain regions of Russia \(F_r\) equals 0.

Oil companies may enjoy tax holidays for crude oil that is difficult to extract subject to certain conditions (e.g., produced from oilfields located in certain regions of Russia, highly viscous oil).

As of 1 January 2014 special rules apply with respect to taxation of hydrocarbons developed from new offshore hydrocarbon deposits. The mineral extraction tax is calculated by multiplying the value of hydrocarbons (developed from a new offshore hydrocarbon deposit) that first meet applicable quality standards by the applicable tax rate during the indicated stability periods. The value of the hydrocarbons is
determined (1) based on the taxpayer’s sale prices for hydrocarbons for the relevant month less VAT, excise taxes and transportation costs or as a calculated price, provided that the resulting hydrocarbons unit price is not less than the minimal unit price or (2) as the minimal unit price. Tax rates vary from 1% to 30% depending on the location of a new offshore hydrocarbon deposit.

8.10 Taxation under Production Sharing Agreements

Pursuant to Chapter 26.4 of the Tax Code, effective as of 10 June 2003, companies extracting minerals under production sharing agreements (“Investors”) are subject to a special (and, in comparison with the mineral extraction tax, entirely different) tax regime. For instance, an Investor pays 50% of the mineral extraction rate for oil and gas condensate until it reaches a certain level of commercial production, specified in the Production Sharing Agreement (“PSA”). Once an Investor has reached this level it pays the full mineral extraction rate for oil and gas condensate.

At the same time, Investors may be exempted from regional and local taxes (assuming applicable legislation at the regional levels of government), corporate property tax, and transportation tax, the latter with respect to fixed assets and vehicles used directly for the purposes of oil and gas extraction under the PSA. In addition, depending on the conditions of the PSA, Investors may secure a further refund of VAT, subsoil use payments and water tax, state duties, customs fees and duties, land tax, excise tax, and the ecological tax previously paid to the budget within the terms of the PSA.

The PSA taxation regime introduced by Chapter 26.4 of the Tax Code has increased the number of tax law requirements for, and taxes payable by, Investors. These amendments are unlikely to make PSA’s an attractive proposition to Investors, especially since Russia has only three PSA’s (all concluded prior to the enactment of Chapter 26.4 and, therefore, grandfathered from being covered by Chapter 26.4) and has not entered into any new PSA’s since the mid-1990’s.
8.11 Corporate Property Tax

As of 1 January 2004, Chapter 30 of the Tax Code (covering corporate property tax) came into effect, replacing the former 1991 Corporate Property Tax Law. Property tax is a regional tax, i.e. it is regulated by the legislation of the relevant region, with a maximum rate of 2.2%. The tax base includes movable and/or immovable fixed assets owned by the taxpayer in Russia, and is calculated based on the depreciated book value of those assets determined according to accounting rules (and not tax accounting rules). Starting from 1 January 2014 the tax base of certain types of real property, such as business and shopping centers, offices, trading premises, catering and consumer services premises as well as property owned by foreign entities with no permanent establishment in Russia or properties that are not used for the activities of such permanent establishments, shall be calculated based on their cadastral value, which is determined by a state cadastral assessment. The maximum tax rate for 2015 calculated under the new rules should not exceed 1.7% for property located in the Moscow region and 1.5% for objects located in all other regions of the Russian Federation.

Taxable assets do not include inventory, any costs or intangible assets recorded on the taxpayer’s balance sheet, land and bodies of water. Starting from 1 January 2013, movable property recorded as fixed assets from 1 January 2013 is not taxed. Managing companies of mutual funds investing in real estate are subject to property tax on the property held in the fund. The corporate property tax is paid by the managing company from the property of the fund and effectively applies to property held for both corporate and individual investors. Effective as of 1 January 2013, the property of natural monopolies is taxed. The maximum tax rate is set for public railroads, pipelines, power lines and items considered an integral technical component of these facilities, and cannot exceed 1% in 2015.

Chapter 30 of the Tax Code further exempts from taxation certain categories of property, such as real property located on the sea bed of the territorial sea, on the continental shelf of the Russian Federation,
in the Russian part (sector) of the Caspian Sea bed and (or) within the exclusive economic zone and used for exploration and development of new offshore hydrocarbon deposits. Furthermore, when imposing property tax the regional governments may fix lower or differentiated rates for different categories of payers and/or types of taxable property.

Corporate property tax is payable on an annual basis, with advances due every quarter. However, regional governments in the Russian Federation may exempt certain categories of payers, including both Russian and foreign organizations, from the obligation to assess and make such advance payments, and sometimes provide property tax exemptions or investment incentives.

The Deoffshorization Law referred to in Section 8.6.1 above introduced a new requirement for foreign companies (and “foreign unincorporated structures”) holding real property in Russia to disclose direct and indirect owners (full ownership chain including individual beneficiaries) along with filing property tax returns.

8.12 Social Security Contributions

Effective as of 1 January 2010, the Unified Social Tax, which previously combined payments to the various Russian social funds, was replaced by separate contributions to the State Pension Fund, the Social Security Fund, the Federal Mandatory Medical Insurance Fund and the Territorial Mandatory Medical Insurance Funds (the latter were excluded from the list of recipients as of 1 January 2012).

As of 1 January 2015, the social security contributions apply at an aggregate rate of 30% (the same rate as for 2014) of an employee’s annual salary of up to the following thresholds (“social contributions thresholds”):

a) for contributions to the State Pension Fund – RUB711,000 (approx. USD12,640, RUB624,000 in 2014);
b) for contributions to the Social Security Fund – RUB670,000 (approx. USD11,910);

c) for contributions to the Federal Mandatory Medical Insurance Fund – no threshold.

The social security contributions are payable as follows: (i) to the State Pension Fund at a rate of 22% of the amount not exceeding the threshold and 10% of the excess, (ii) to the Social Security Fund at a rate of 2.9% of the amount not exceeding the threshold and 0% of the excess, (iii) to the Federal Mandatory Medical Insurance Fund at a rate of 5.1% of the amount with no limit.

The social security contributions apply to all payments to individuals (including individuals applying the simplified system of taxation) even if made from net income. The social security contributions period is a year, and the social security contributions are paid on a monthly basis.

During a transition period from 2011 to 2027 reduced rates of social security contributions will apply to certain categories of payers, e.g. IT companies, agricultural goods producers, certain companies applying the simplified system of taxation and patent system of taxation, companies that are residents of certain special economic zones and of territories of priority socio-economic development, budgetary scientific institutions and other categories of social contributions payers listed in the law will pay social security contributions at various reduced rates from 0% to 30%74.

As of 1 January 2015, salaries or other payments to foreign citizens temporarily staying in Russia and working under employment contracts regardless of the term of the employment contract are

74For example, the following social security contribution rates apply depending on the category of employees: 0% - to remuneration of the employed crew members of vessels registered in the Russian International Register of Ships; 13.8%-14% to remuneration of employees of IT companies in 2015; etc.
subject to social security contributions paid (i) to the State Pension Fund at a regular rate of 22% on amounts not exceeding the State Pension Fund contributions threshold and 10% on the excess and (ii) to the Social Security Fund at a rate of 1.8% not exceeding the Social Security Fund contributions threshold and 0% of the excess. An exemption applies to compensation paid to so-called “highly-qualified foreign specialists”, i.e. as a general rule foreign employees earning at least RUB2 million (approx. USD35,560) annual salary under their employment contracts in Russia.

8.13 Individual Income Tax

Individuals who are defined as “Russian tax residents,” i.e. those who have been in the country for 183 days or more during any 12 consecutive months, are subject to individual income tax on all their income, both that earned in Russia and that earned elsewhere. Individuals who do not meet this criterion are subject to tax on any income received from Russian sources. From 1 January 2001, Russia has enacted various income tax rates, including: a 13% flat rate applicable to most types of income received by Russian tax residents, including dividend income; a 35% rate applicable to income from gambling, lottery prizes, deemed income from low-interest or interest-free loans (except loans directed at new construction or acquisition of a residence) and excessive bank interest; a 30% rate applicable to Russian-source income received by non-residents; and to income from certain types of securities held on foreign nominal holder and similar accounts (and not on an owners account) if the relevant foreign nominee receiving such income fails to provide appropriate aggregate information to the Russian depository in a timely fashion. As of 2011, foreign nationals who have not yet obtained Russian tax resident status but are recognized as highly qualified foreign specialists for the purposes of Russian employment legislation (i.e., receiving a salary of at least RUB2 million per year (approx. USD35,560)) enjoy 13% Russian individual income tax on their Russian salary.
As part of the legislative initiative to create an international financial center in Russia, from 1 January 2010 new rules have applied to individuals recording financial results on transactions with different categories of securities and derivatives for tax purposes. Also, individual investors were granted the right to carry forward losses on tradable securities and tradable derivatives for ten years. Detailed provisions regarding the determination of the tax base on repo transactions for individuals were included into the Tax Code effective from 1 January 2011. Similarly to companies, Russian individuals also received a full tax exemption on income from the sale or redemption of shares in Russian companies (acquired after 1 January 2011) satisfying the requirements discussed in Section 4 above. Starting from 1 January 2015 new investment tax deductions have been introduced in the Russian Tax Code that are designed to attract long-term investments in securities (listed on Russian stock exchanges) by Russian individuals (tax residents).

By 30 April of the following year, a taxpayer who received income on which no income tax was withheld at the source of payment must file a tax return based on his/her actual income for the previous year, and settle tax obligations for that year by 15 July of the following year. Foreign individuals are required to file annual tax returns with the tax authorities by 30 April of the year following the reporting year only if they receive income from non-Russian sources, or income where no income tax was withheld at the source of payment. Those foreign individuals who leave the country during a calendar year should file a tax return for the relevant taxable period no later than one month prior to leaving Russia.

8.14 Regional and Local Taxes

Regional and local legislative bodies may, at their discretion, introduce various tax incentives and credits with regard to regional and local taxes. Regional taxes currently include corporate property tax, transportation tax, and gambling tax. Local taxes currently include property tax on individuals, land tax and the trade levy. Although these taxes are set regionally and locally the federal legislature has
enacted limits on their overall rates. The trade levy may be enacted no earlier than 1 July 2015 only in Cities of Federal Significance (Moscow, St. Petersburg and Sevastopol). All other municipalities located in other Russian regions may introduce the trade levy only upon adoption of the relevant federal law.
9. Customs, Trade and WTO Aspects

9.1 Introduction

Customs legislation in Russia is based on the unified rules of the Customs Union (the “CU”) that started to operate as of 1 January 2010, and the main legislative framework of which gained shape on 1 July 2011, as well as on the rules of the Eurasian Economic Union (the “EEU”) that was launched on 1 January 2015. Therefore, currently all Russian foreign trade regulations are primarily based on rules established by agreements and decisions taken at the level of the CU and EEU. Moreover, Russia is a member of the World Customs Organization and participates in the International Convention on Harmonized Commodity Description and Coding System, the Convention on Temporary Admission and the International Convention on the Simplification and Harmonization of Customs Procedures (the “Kyoto Convention”).

9.2 Accession to the World Trade Organization

On 22 August 2012 Russia officially became the 156th member of the World Trade Organization (the “WTO”). Russia’s commitments and obligations are established in the Protocol of Accession of Russia to the WTO dated 16 December 2011 (the “WTO Accession Protocol”) and the Working Party Report on the Accession of Russia to the WTO dated 17 November 2011, which are publicly available.

9.2.1 Market access for goods — tariff and quota commitments

On average the final legally binding tariff ceiling for the Russian Federation by 2017 will be 7.8% compared with a 2011 average of 10% for all products:

- The average tariff ceiling for agriculture products will be 10.8%, lower than the average of 13.2% on the date of accession;
The ceiling average for manufactured goods will be 7.3% vs. the 9.5% average on the date of accession.

Russia has agreed to lower its tariffs on a wide range of products. Average duties after full implementation of tariff reductions will be:

- 14.9% for dairy products (tariff on the date of accession 19.8%);
- 10.0% for cereals (tariff on the date of accession 15.1%);
- 7.1% for oilseed fats and oils (tariff on the date of accession 9.0%);
- 5.2% for chemicals (tariff on the date of accession 6.5%);
- 12.0% for automobiles (tariff on the date of accession 15.5%);
- 6.2% for electrical machinery (tariff on the date of accession 8.4%);
- 8.0% for wood and paper (tariff on the date of accession 13.4%);
- USD223 per ton for sugar (tariff on the date of accession USD243 per ton).

By 2015 tariffs were bound at zero for cotton and information technology (ITA) products.

It should be noted, however, that 90% of the rates of the import customs duties listed in the Common Tariff of the CU that was applied as of the date of accession were lower than the rates of import duties under the WTO Accession Protocol. This means that Russia retains the right to increase import duty rates for certain types of goods, which, however, is unlikely at the moment.
The final bound rate was implemented on the date of accession for more than one third of the national tariff lines with another quarter of the tariff cuts to be put in place during a transition period of 3–7 years provided for each particular item. The longest implementation period is eight years for poultry (i.e. 2020), followed by seven years for motor cars, helicopters and civil aircraft (i.e. 2019).

Tariff rate quotas (TRQs) have been established for beef, pork, poultry and some whey products. Imports entering the market within the quota will face lower tariffs while higher duties will be applied to products imported outside the quota.

The in-quota and out-of-quota rates are listed below with the out-of-quota rates in parentheses:

- For beef 15% (duty rate out of quota 55%);
- For pork zero (duty rate out of quota 65%). The TRQ for pork will be replaced by a flat top rate of 25% as of 1 January 2020;
- 25% (duty rate out of quota 80%) for some selected poultry products;
- 10% (duty rate out of quota 15%) for some whey products;
- Some of these quotas are also subject to member-specific allocations.

9.2.2 Export duties

At the date of accession to the WTO, export duties were binding for over 700 tariff lines, including certain fish and crustaceans, mineral fuels and oils, raw hides and skins, wood, pulp and paper, and base metal products.
9.2.3 Market access for services

Russia made market access commitments in 11 services sectors and 116 sub-sectors. No market access restrictions were provided for 30 sectors, including advertising, market research, consulting and management services. At the same time, Russia did not make any commitments for 39 sectors, including pipeline, railroad and internal water transport, medical services and scientific research activities, i.e., market access for foreign companies would still be restricted in these areas.

Russia maintained certain limitations on market access and national treatment with respect to various types of services that are provided in the Russia’s WTO Accession Protocol. For example, priority is provided for Russian entities acting as contractors, suppliers and carriers that participate in production sharing agreements for exploration, development and production of mineral raw materials.

Foreign insurance companies will be allowed to establish Russian branches nine years after Russia joined the WTO, i.e. in 2021.

Foreign banks have been allowed to establish subsidiaries in Russia. There is no cap on foreign equity in individual banking institutions, but the overall foreign capital participation in the banking system of the Russian Federation is limited to 50% (not including foreign capital invested in banks that may potentially be privatized). In order to control the foreign quota in the Russian banking sector the prior authorization of the Russian Central Bank is required for the establishment/increase of the charter capital of credit organizations with foreign participation and alienation of shares in favor of non-residents. Starting from the date of accession to the WTO Russia should allow 100% foreign-owned companies to be engaged in professional services and business services, including legal, architecture, accounting, engineering, health care, advertising, and market and management services, audio-visual services, distribution services including express delivery and wholesale and retail services.
Additional market access obligations were undertaken for foreign providers of energy services, computer and computer-related services.

9.2.4 Other commitments

Russia made a commitment to gradually decrease domestic support for the agricultural sector from USD9 billion in 2012 to USD4.4 billion by 2018. In 2015 domestic support will not exceed USD7.2 billion.

Russia has maintained the right to impose strict limitations on market access and national treatment for foreign persons in such sectors as energy, telecommunications and education. On telecommunications, the foreign equity limitation (49%) would be eliminated during the four years following accession. The Russian Federation also agreed to apply the terms of the WTO’s Basic Telecommunications Agreement.

Russia did not sign the WTO Government Procurement Agreement (the “GPA”) and did not make any obligations in this sphere, but agreed to become an observer to the GPA and initiate negotiations for GPA membership within four years. Thus, the Russian Government has preserved the right to restrict the access of foreign companies and goods with a foreign country of origin to its biggest market.

On 3 September 2013 Russia joined the WTO Information Technology Agreement aimed at liberalizing trade in the IT sphere, which includes reducing import customs tariffs to zero and reducing non-tariff requirements with respect to specified IT products.

9.2.5 Dispute Settlement in the WTO

WTO members can initiate disputes over any trade-related issue. Any WTO member may initiate a dispute against any other WTO member if it believes that this member violates: (i) any provisions of the WTO Agreements, or (ii) its commitments within the WTO.
Starting from 22 August 2012, any trade measures applied by Russia with respect to any other WTO member state must be in compliance with Russia’s commitments within the WTO and the WTO rules. When any WTO member state considers that Russia is not observing any of its commitments within the WTO, or is applying regulations that do not comply with the WTO rules, it can impose reverse measures or bring a case to the WTO Dispute Settlement Body. Vice versa, Russia can challenge any inconsistent measures applied by WTO members against Russia. Despite acceding to the WTO, Russia is still able to impose immediate measures of protection provided that: (i) the measure is aimed against measures of another WTO member state that are inconsistent with the WTO rules and (ii) it was impossible to predict the adverse consequences for/economic damage to the Russian economy at the moment of Russia’s accession to the WTO.

Disputes within the WTO are settled by the Dispute Settlement Body (the “DSB”). Between January 1995 and September 2011 WTO members initiated more than 427 disputes. The right of the WTO members to initiate disputes is based on a presumption that violation of the WTO rules and commitments has an adverse impact on other WTO members.

The DSB is a special institution of the WTO, located at the WTO headquarters and specifically designated for the resolution of all disputes between WTO members. The DSB is made up of all member governments, usually represented by ambassadors or the equivalent, and is headed by the chair.

Disputes are often resolved at the pre-dispute stage by means of consultations of the interested WTO members performed under the patronage of the DSB. Only WTO member countries can participate in the disputes, private companies do not have this right.

The WTO dispute settlement procedures include four stages: (i) consultations (60 calendar days), (ii) consideration of a complaint by the panel (9 months), (iii) appellate procedures (90 days) and
(iv) implementation of the decision in the form of either removal of a measure, or compensation, or retaliation (15 months). In practice these terms might be extended.

If the respondent loses a dispute it will be bound by the final decision of the DSB (i.e., the panel or appellate body) and should inform the DSB of its intentions and measures to implement the DSB ruling. When the respondent is unable to comply with the decision immediately it must be provided with a “reasonable time” to do so.

The DSB should supervise performance of its rulings and issue official reports on their implementation. If a losing respondent fails to comply with the DSB ruling within a reasonable period of time the complainants are entitled to apply temporary measures including (i) request compensation or (ii) suspension of concessions (retaliation). If a losing respondent fails to implement a DSB decision within a reasonable period of time established by the DSB, the respondent shall enter into consultations with the complainant and agree on mutually acceptable compensation (a benefit, no monetary payments).

In cases when no satisfactory compensation has been agreed within 20 days after the expiry of the reasonable period, the complainant may request the DSB to unilaterally suspend its concessions or other obligations (for example, increase tariff rates) in order to compensate for the damage. Priority should be given to the subject of the dispute (i.e., the relevant goods, services, or affected IP rights).

According to statistics, the most probable areas for disputes between Russia and its WTO counterparts include: subsidies, sanitary and phytosanitary measures, technical barriers to trade, trade-related investment measures, anti-dumping, countervailing and special safeguard measures, rules of origin, customs valuation, and import licensing in such sectors as: oil and gas, agriculture, the automobile and motor industry, aircraft, beef, steel and the pipe industry, air transportation services, energy (electricity) tariffs, etc.
The first WTO claim involving Russia was initiated by the European Union (the “EU”) in 2013 regarding the imposition by Russia of a “utilization fee” on motor vehicles that, in the view of the EU, discriminated against imported vehicles that were subject to the utilization fee when locally produced vehicles were exempt from the fee. In October 2013 the DSB established a panel (case No. DS462), after which Russia annulled the discriminating regulations and the case was discontinued.

In the course of 2014 Russia was involved in a number of disputes within the DSB initiated by the EU. In particular, the EU challenged the following measures applied by Russia which, in the view of the EU, were inconsistent with the WTO regulations:

- statutory limitations on the importation into Russia of live pigs and their genetic material, pork, pork products and certain other commodities from the EU, purportedly because of concerns related to cases of African Swine Fever (case No. DS475);

- anti-dumping duties on light commercial vehicles from Germany and Italy levied by Russia pursuant to Resolution No. 113 of 14 May 2013 of the Collegium of the Eurasian Economic Commission (case No. DS479);

- tariff regulation that Russia applies to certain goods in both the agricultural and manufacturing sectors (case No. DS485).

Russia also acted as a third party in disputes involving the EU, China, USA and Japan in eight cases.

9.3 CIS Free Trade Agreement

On 18 October 2011 CIS countries signed the Free Trade Agreement of the Commonwealth of Independent States (the “CIS FTA”), which came into force for Russia, Belarus and Ukraine on 20 September 2012. By mid December 2012 the CIS FTA was ratified and came into force
for Armenia, Kazakhstan and Moldova. Azerbaijan and Turkmenistan did not sign the CIS FTA.

Uzbekistan did not sign the CIS FTA, but on 28 December 2013 Uzbekistan ratified the protocol “On Application of the CIS FTA dated 18 October 2011 between the CIS FTA Member States and the Republic of Uzbekistan” (the “Protocol”). According to the Protocol, Uzbekistan and other member states of the CIS FTA that have ratified the Protocol would be mutually bound by the general rules of the CIS FTA with certain significant exemptions set forth in the Protocol.

The CIS FTA was ratified by Kyrgyzstan in 2014. As of December 2014 Tajikistan was the only member that had not ratified the CIS FTA.

The CIS FTA provides for the free movement of goods within the territory of the CIS, no import customs duties, non-discrimination, gradual decrease of export customs duties and abolishment of quantitative restrictions in mutual trade between the CIS FTA member states. The CIS FTA covers goods originating from the signee states, and among other points provides that:

- goods originating from the CIS FTA member states are not subject to import customs duties in the country of import except for certain cases (i.e. sugar originating from Ukraine);

- the CIS FTA fixes the maximum rates of export customs duties that for Russia primarily cover raw materials and agricultural products (i.e., cellulose – 10%, vegetables – 7%, oil, coal etc.); there are four positions for Ukraine and 76 for Russia;

- the signees agree not to apply quantitative limitations in trade;

- free transit is established (an exception is made for pipeline transit, which should be separately agreed between the signees).
The CIS FTA establishes that the WTO rules will govern customs transit of goods, application of special safeguard, anti-dumping and countervailing measures, technical barriers to trade, as well as the provision of subsidies and other measures applied in trade between its signees.

Disputes between the member states of the CIS FTA should be settled at the Economic Court of the CIS. At the discretion of a member state, a dispute arising out of the WTO rules can also be settled under the WTO dispute settlement procedures.

It is expected that the member countries will resolve certain important mutual trade issues within the legal framework of the CIS FTA (i.e. transit of gas, export customs duties for certain products, access to government procurement, etc.).

The CIS FTA provides for certain exemptions, including import customs duty and withdrawal from national treatment for certain products and allows subsidies in certain circumstances. In addition, the CIS FTA does not prevent the signees from applying non-tariff measures.

It should be noted that in 2014 two members of the CIS FTA, Moldova and Ukraine, ratified agreements of association with the EU. Since the statutory requirements of association with the EU are likely to create collisions with the CIS FTA, the conditions of membership of Moldova and Ukraine in the CIS FTA could be subsequently adjusted. These countries are likely to be excluded from the CIS FTA.

9.4 Eurasian Economic Union and Customs Union

In 2010 Russia, Belarus and Kazakhstan launched the Customs Union, which is a unified customs territory with free movement of goods, unified customs tariff and non-tariff regulations and regulations on application of indirect taxes. Once goods have been imported and released in any of the CU member state, such goods may be freely moved within the whole CU territory, except for certain specific types
of goods not yet covered by the unified rules of the CU (for example, medicinal preparations, medical devices, dual use products). The CU also adopted unified technical regulations, rules for veterinary and phytosanitary control, etc.

Starting from 1 January 2015 Russia and other member states of the CU launched the Eurasian Economic Union. The CU and its regulations became an integral part of the EEU. The EEU establishes a unified set of rules governing the most important economic sectors that should cover all its member states by 2020. In particular, in addition to the unified customs territory of the CU that has already been in place since 2010, the EEU provides for free trade in services, including market access to natural monopolies (e.g. railways, energy), access to financial services, including free movement of capital and workforce, unified competition laws, macroeconomic policy, and unified regulations for taxes and intellectual property. This should also include unified regulations for circulation of medicinal preparations and medical devices etc. Since the CU and EEU have the same regulations, below they are referred to jointly as “CU/EEU.” Starting from 1 January 2015 the CU/EEU comprises the territories of Russia, Belarus, Kazakhstan and Armenia. Kyrgyzstan may join the EEU by the end of 2015.

The main regulatory body of the EEU and CU is the Eurasian Economic Supreme Council. The Eurasian Economic Commission retains its status of executive body of the CU/EEU and is also authorized to issue implementing regulations of the CU/EEU.

9.5 Unified Tariff Regulations of the Customs Union

The classification of goods for customs purposes in Russia is carried out in accordance with the Unified Customs Tariff of the CU/EEU, which is based on the International Convention on the Harmonized Commodity Description and Coding System, dated 14 June 1983 (the Harmonized System), providing that all the goods crossing the customs territory of the CU are assigned customs classification codes (HS codes) determined in accordance with the general rules of
interpretation of the Harmonized System. Customs authorities control the correctness of the classification of goods.

The Unified Customs Tariff of the CU/EEU has undergone periodic revision since 2011 with the rates of import customs duties set in accordance with Russia’s obligations within the WTO, which were outlined in the WTO Accession Protocol.

9.6 Preliminary Classification Decisions

At the discretion of importers of record, the Russian customs authorities may take preliminary decisions on classification of goods (“a preliminary classification decision”) which is equivalent to binding tariff information used in the USA and the EU.

Information and documents provided by applicants for the preliminary classification (such as technical descriptions, pictures, samples, etc.) should be exhaustive and should contain all the data required for proper determination of a HS classification code. Preliminary classification decisions are issued in the name of the applicants (i.e. importers of record) and may only be used by them (for more information please refer to the section “Importer of Record” below). The timing for issuance of a preliminary classification decision is 90 calendar days from the date of filing an application, which may be extended for a number of reasons provided by law. Preliminary classification decisions are valid for three years and are mandatory for all Russian customs authorities with respect to the classified goods.

9.7 Sanitary-Epidemiologic Measures

Unified sanitary measures of the CU/EEU are applied in order to confirm that goods imported and distributed in CU territory comply with all safety requirements and do not pose any threat to life and health. The unified sanitary rules are applied at the external border and within the whole territory of the CU and include three lists of goods:
• The list of goods that are subject to sanitary-epidemiologic control (includes almost all food products and consumer goods). Goods falling under this list must comply with the established sanitary and safety requirements;

• The list of goods that are subject to state registration, which is required in order to confirm compliance with sanitary-epidemiologic and hygiene requirements and applies to food products, cosmetic and household chemical products, certain clothing items, mineral water, alcoholic beverages, etc. The state registration must be carried out prior to the goods’ importation into the CU;

• The list of exemptions from state registration (for example, when goods subject to state registration are imported for exhibition purposes).

Sanitary-epidemiologic control is performed at CU customs entry points when goods cross the CU customs border as well as within CU territory. State registration certificates for the controlled goods, if any, must be issued prior to the goods’ importation into CU territory.

9.8 Technical Regulations (Confirmation of Compliance)

Confirmation of compliance is designed to confirm that goods conform to the statutory quality and consumer characteristics requirements. Confirmation of compliance in Russia is based on the Russian national regulations and on the legislation of the CU/EEU. The technical rules of the CU/EEU establish a unified list of goods that are subject to mandatory confirmation of compliance in the form of (i) certification or (ii) declaration of compliance, as well as unified forms for the (i) certificate and (ii) declaration of compliance that are issued by the accredited agencies and laboratories of the CU/EEU member states and are valid throughout the CU/EEU.
In addition to the CU/EEU unified list of goods that are subject to mandatory confirmation of compliance, the technical rules of the CU/EEU envisage adoption of a number of technical regulations with requirements for goods on the unified list, including 47 priority CU technical regulations. As of December 2014, about 35 technical regulations have already been issued including regulations on the safety of machinery and equipment, elevators, low-voltage equipment, clothes, grain, food, juices, perfume and cosmetics, toys, pyrotechnics, packaging, electromagnetic compatibility, etc. Some of the approved technical regulations of the CU will come into force in 2015 (for example, regulations on the safety of wheeled vehicles, agricultural equipment and tractors, public roads etc.) and some are scheduled to be issued in 2015 or later (for example, on the safety of materials coming into contact with food products, oil intended for transportation or use, poultry meat etc.).

Once the CU or EEU technical regulations come into force they prevail over the relevant Russian national requirements for the same products. Starting from 1 January 2015 the CU/EEU member states should not be authorized to issue any additional technical requirements at the national level for any products that are not included in the unified list of goods of the CU/EEU.

It should be noted that currently the technical rules of the CU are still being elaborated and national (i.e. local) standards and national lists of products that are subject to mandatory confirmation of compliance may still exist separately in Russia, Belarus, Kazakhstan and Armenia. Therefore, currently two different systems of compliance confirmation co-exist in the CU/EEU, i.e., the unified system of the CU/EEU and separately applied national (local) technical rules of Russia, Belarus, Kazakhstan and Armenia. Prior to importation of goods into any of the CU/EEU member states it is important to ensure that the goods comply with both systems.

In order to facilitate and improve the Russian system of technical regulation a Federal Accreditation Service was established at the end of 2011, which should be a common body responsible for the
accreditation of certification bodies and testing laboratories, maintenance of registers and state supervision (http://fsa.gov.ru/).

Mandatory technical regulations of Russia and the CU/EEU together with the Russian laws on protecting consumer rights apply the following requirements with respect to the controlled goods:

1. Minimum technical safety requirements;
2. Mandatory certification/declaration of compliance;
3. Mandatory marking and labeling requirements;
4. Use of specific signs, including the use of a market circulation mark.

Additionally, certain specific certification requirements may apply with respect to goods in the fire safety regulations sphere (i.e., various construction products and goods specifically designated for fire safety), as well as hardware and software products in the sphere of protection of personal data and other types of confidential information.

Starting from 2014, the Russian customs authorities should no longer require certificates or declarations of compliance to be submitted in hard or in electronic copies during customs clearance of imported goods. The importer of record needs to indicate the relevant details of such certificates or declarations (if any) in the import customs declaration. Despite that fact, in practice sometimes the importers of record are required to provide certificates or declarations of compliance in hard copies (for example, in case of additional customs control for certain shipments).

9.9 Phytosanitary and Veterinary Control

Importation into Russia of certain types of products, such as living animals, animal foods, meat, meat products, seafood, plants, etc. are subject to special supervision (control) in accordance with the unified
veterinary and phytosanitary rules of the CU/EEU. Thus, a consignment with controllable goods can be imported into Russia in accordance with the unified veterinary requirements of the CU/EEU and with special permission (a veterinary or phytosanitary certificate) issued in the established procedure by the Russian Federal Service on Veterinary and Phytosanitary Supervision (Rosselkhoznadzor), which is responsible for monitoring controllable goods and maintaining the register of foreign companies authorized to export certain goods into Russia, as well as lists of certain products banned for importation into Russia from third countries. Note that Russia still applies certain local rules on veterinary and phytosanitary control in addition to the supranational regulations effective in the CU/EEU (for example, such requirements are applied to the importation of seeds).

9.10 Import and Export Licensing

The legal basis for the import licensing system is the CU/EEU legislation on non-tariff measures. The purpose of the licensing measures is to monitor and control imports and exports of goods which are classified as sensitive by the CU/EEU member states or by the international community. Import/export licenses are required: (i) in the event of temporary quantitative restrictions on imports of certain types of goods; (ii) to regulate the importation of certain goods for reasons of national security, health, safety or environmental protection; (iii) to grant an exclusive right to import or export certain goods; or (iv) to carry out international obligations. A unified list of goods to which import and export limitations and prohibitions are applied was established on the level of the CU/EEU, based on which certain categories of goods (e.g., fertilizers; rare animals and plants; goods with a high level of cryptographic protection, hazardous waste, drugs, items of cultural value, precious stones and metals, etc.) require an import or export license for their movement across the CU border. In Russia licenses are issued by the Ministry of Industry and Trade in accordance with the unified licensing rules of the CU/EEU. Products containing any cryptographic devices or functions and not requiring an import license (which covers the majority of IT hardware and software goods, such as electronics; phones; computers; laptops;
modems; software, etc.) are subject to mandatory notification with the Russian Federal Security Service. A Russian licensee may import licensed goods into Russia only and has the right to transit such goods through the territory of the other CU/EEU member states. In 2013 the Eurasian Economic Commission issued regulations on the procedure for providing licenses and notifications.

It should be noted that in accordance with the WTO requirements on non-discrimination in foreign trade, the import licensing of medicinal preparations was abolished in the CU in 2011. The import licensing of alcohol products was also abolished automatically in the CU as of the moment when Russia became a member of the WTO.

9.11 The Russian Customs Authorities

The introduction of the CU/EEU has not affected the internal structure of the Russian customs service, which remains as follows:

- The Federal Customs Service;
- Regional customs administrations;
- Customs-houses; and
- Customs posts.

Importantly, together with the formation of the CU, a new concept of customs clearance of goods at the Russian external state border is currently being implemented, which should entail a significant reorganization of the Federal Customs Service and the whole local customs clearance infrastructure. Under this concept it was expected that the customs clearance of goods transported by road should be performed at the external border of Russia starting from 1 January 2012, however, this term was re-scheduled due to the considerable infrastructure changes needed. It is expected to happen in 2013. The customs clearance of goods transported by rail should be performed at the external border of Russia starting from 1 January 2020. It is expected that when this reorganization is completed, physical
shipment of goods into Russia will often coincide with their release for free circulation.

As a result of implementation of the concept it is expected that a large number of regional customs administrations and customs houses situated far from the customs border of Russia will be closed or considerably reduced in staff and functionality. The concept would require significant economic and infrastructural development of the Russian border regions in order to provide sufficient customs, logistic and warehousing resources to process clearance and control of almost all the traffic and goods crossing the Russian border. At the same time considerable governmental and private investment is still required for successful implementation of the concept by 2020.

On 28 December 2012 the Russian Government issued a Resolution on the Strategy for Development of the Russian Customs Authorities up to 2020 (the “Strategy”) which establishes key priorities for the Russian customs authorities for each type of activity, including: customs payment collection, law enforcement activities, increasing the quality of services provided to Russian importers and support to the integration processes within the CU/EEU.

According to the Strategy, before 2020 the Russian customs authorities should significantly simplify and speed up customs clearance procedures. Thus, all the services rendered by the customs should be in electronic form by 2014 against 1% in 2012. The number of documents required to cross the customs border should be decreased from 10 in 2012 to 4 by 2018 and the maximum clearance time for goods imported for internal consumption should be decreased from 96 hours in 2012 to 2 hours in 2018. It was planned to increase the total number of customs declarations filed electronically without provision of documents in hard copy from 40% in 2012 to 100% by 2014 (except for potentially risky supplies/hazardous goods) and this was achieved by the customs authorities as of December 2014.

At the same time, the Russian customs authorities should increase their performance indicators for collection of customs payments,
performance of customs controls and in general law enforcement practice. For example, the amount of customs payments reimbursed to the importers of record as a result of challenging claims against actions (inaction) of the Russian customs authorities should not exceed 5% of the total amount of customs payments collected on an annual basis. The total amount of convictions in administrative cases initiated by customs authorities should be increased from 82% in 2012 to 89% by 2020. Customs audits that result in detecting customs violations should reach 85% by 2020, against 72% in 2012. This means that as well as making efforts to simplify customs clearance procedures and increase the quality of services rendered, the Russian customs authorities would still scrutinize shipments imported into Russia and perform extensive clearance and post-clearance customs control over the imported goods and importers’ foreign trade activities.

Importantly, in mid 2014 the Russian customs authorities were instructed by the Government to increase collections of customs payments in order to meet budget revenue targets. This means that the majority of Russian importers and exporters of record, particularly the largest ones, are likely to be subject to more scrutiny during customs clearance.

9.12 Declarant (Importer of Record)

The resident principle applies in the CU, i.e. only companies that are local residents of a CU member state and are parties to cross-border supply agreements may act as importers of record before the customs authorities. Generally, in order to act as the importer of record, a person must have a direct interest in goods imported under a foreign trade transaction (i.e. the right to own, or possess, or dispose of imported goods).

As a general rule, foreign entities may not act as importers of record, except for a limited number of cases when goods may be imported by representative offices or branches of foreign legal entities accredited in Russia.
9.13 Registration of Importer of Record with Local Customs Authorities

Russian customs regulations do not require importers/exporters of record to be registered with the Russian customs authorities. However, a clearing customs post must open a file for every importer/exporter of record that clears goods through customs. The file should contain a standard set of documents that must be filed with the clearing customs post together with the first customs declaration and usually includes: an application together with documents confirming legal name/address/tax ID, certified copies of statutory documents, and a certified letter from the bank confirming a valid bank account (note: this list of documents is not exhaustive and might be somewhat different depending on the requirements of a particular customs house). In order to avoid any possible delays importers/exporters of record prefer to submit the above-mentioned documents before customs clears the goods.

The Russian customs authorities have started applying a unified electronic database of all documents, including the files of importers of record. Thus, once an importer of record opens a file at any Russian clearing customs post such importer of record would only need to provide the same electronic file of its statutory documents in order to start customs clearance formalities at another customs post. Hard copies are no longer required, but may still be used at the discretion of the importer of record.

9.14 Customs Brokers (Representatives/Agents)

A declarant may clear goods through a customs broker (in accordance with the Customs Code of the CU the term “customs agent” is used) — an intermediary legal entity fulfilling customs clearance formalities on behalf and in the name of, and as instructed by, the declarant or another person who is authorized to perform customs operations. The customs agent may pay customs duties and taxes on declared goods. Every customs agent should be included by the CU Commission in the official list of customs agents. A customs agent is jointly and severally
liable together with the declarant for the observance of the customs legislation.

9.15  **Authorized Economic Operator**

Authorized economic operator (AEO) is a special status granted by the Russian customs authorities to Russian importers and exporters that is based on the Kyoto Convention and is similar to the already established concept in the European Union. AEO status ensures certain procedural simplifications, including but not limited to:

- Temporary storage and release of imported goods at the premises of the AEO;
- Release of imported goods for free circulation prior to their declaration to the Russian customs authorities;
- Simplified customs transit procedure;
- Other customs benefits that could be provided to AEO by the CU/EEU customs regulations.

As of December 2014 AEO status had been granted to some 125 Russian legal entities.

9.16  **Customs Clearance**

Goods that are moved into Russia through Kazakhstan and Belarus are placed under the transit customs regime at the external border of the CU and are finally released for free circulation by the Russian customs authorities. In Russia imported goods are legally released for free circulation after the Russian customs authorities confirm this by notifying the declarant electronically that the goods have been released. Imported goods are normally cleared at customs either before their shipment to Russia or when the goods reach the designated customs house/post (and are placed in a special temporary customs warehouse if necessary).
Customs clearance is normally completed by the importer of record (or a customs agent acting on its behalf) filing the customs declaration (the main document) and the required set of documents. The list of documents required for customs clearance in each particular case depends on the type and characteristics of the goods and terms of their importation (e.g. the customs regime chosen).

The timing for the customs clearance procedure is one business day after the date when a customs declaration was registered by the Russian customs authorities, provided that all the required documentation was submitted. However, in practice the customs clearance process may take longer than the statutory term.

The legislation gives a customs inspector the right to extend that term by up to ten business days at the discretion of the chief of a customs terminal.

9.17 Electronic Declaration

As of 1 January 2010 the Russian customs authorities have started to carry out customs clearance operations with the use of electronic declarations (the “e-declarations”), which should significantly speed up customs clearance formalities for declarants and customs agents. Currently customs clearance in Russia is performed electronically. Starting from 1 January 2014 almost all customs declarations have been submitted in electronic form (i.e., without any documents in hard copies), except for certain cases, for example goods sent by international mail. Customs posts are equipped with the technical facilities for performing “electronic declaration”, which makes it possible to (i) inform the customs authorities in advance over the Internet, (ii) file a customs declaration and other supporting documents in electronic form and (iii) electronically release the goods. E-declaration also makes it possible for importers located far from clearing customs posts to perform customs clearance formalities and release goods at the Russian border remotely, i.e. without being physically present and without the need to provide documents in hard copies.
9.18 Customs Regimes

9.18.1 Introduction

Goods may be placed under any of the applicable customs regimes (i.e. “customs procedures”) established by the Customs Code of the CU/EEU that are based on the International Convention on Harmonized Commodity Description and Coding System. Below is a brief description of the most commonly used customs regimes.

9.18.2 Internal (Home) Consumption

Importation of goods for internal (home) consumption (usually, the synonymous term “release for free circulation” is used in practice) on Russian territory is the main customs regime for importation with the ensuing free circulation of the goods in Russia without any further customs restrictions or post-clearance customs control, provided that all applicable customs duties and taxes have been paid.

9.18.3 Temporary Import

Temporary import is considered to be a special “economic” customs regime, pursuant to which foreign goods are used for a certain period of time (the term of the temporary import) on Russian customs territory with full or partial exemption from import customs duties and taxes (i.e., import VAT and excise taxes, where applicable). Temporarily imported goods must remain unchanged, except for changes due to natural wear and tear or natural loss given normal transportation, shipment, storage, and use conditions. Russian importers are allowed to perform operations with temporarily imported goods required for their preservation, maintenance of the consumer features of products, and keeping the products in the condition they were in before they were cleared at customs for temporary importation into Russia.

Certain products (e.g., pallets and other types of returnable packaging for goods temporarily imported to further international trade, tourism, science, culture, cinema and sporting relations, etc.) may be
temporarily imported with full exemption from import customs payments.

Where partial (rather than full) exemption from import customs payments is granted, the temporary import regime contemplates that 3% of the total amount of import customs payments (that would have been paid if the goods had been fully imported for free circulation) must be paid for each month the goods stay in Russia under this regime.

However, the generally permitted term for temporary import is only two years. There are some statutory requirements that should be met in order to be eligible for exemption from customs duties. In particular, temporarily imported goods may not be sold or otherwise transferred to any third party. The customs authorities could also request security for import customs payments (most likely a bank guarantee or cash deposit) from the importer of record before applying the temporary import regime.

9.18.4 Bonded Warehouse

Under the bonded warehouse customs regime, goods imported into the CU are stored at special places (bonded warehouses) under customs control without an obligation to pay import customs duties and taxes, and without regard to domestic quota restrictions or other economic measures. Storage at a bonded warehouse is subject to regular non-refundable storage fees as contractually agreed with the bonded warehouse’s owner. Goods so imported and put under this customs regime (pursuant to the permission of the customs authorities) have the status of foreign goods.

The maximum term for the storage of imported goods at a bonded warehouse is three years, with an option to extend this term with the permission of the customs. Goods with a shorter useful life and/or sale terms must be assigned to other customs regimes and shipped from such bonded warehouses at least 180 days prior to expiration of such term (except for products subject to accelerated deterioration with
respect to which the term for storage at a bonded warehouse could be reduced).

The importer of record or other interested parties having placed imported goods in a bonded warehouse can sell or otherwise transfer them to third parties, with preservation of the same customs status, with the prior consent of the customs authorities, which is followed by a legal substitution of the importer of record by the third party that acquired these goods. Please, however, note that such a sale or transfer might be subject to local Russian taxation, since apart from the special customs regime a bonded warehouse is no different from any other warehouse located in Russian territory.

Goods placed in a bonded warehouse can be further exported, placed under another customs regime, including importation for internal (home) consumption. When sold to Russian customers for free circulation on the local market, such goods should be declared for the “internal consumption” customs regime with payment of the relevant import customs duties and taxes.

9.18.5 Transit

Under the customs transit regime goods cross the customs border of the CU and are under customs control during their movement across Russian customs territory without an obligation to pay import customs duties and taxes, and without regard to domestic quota restrictions or other economic measures. Only foreign goods can be subject to this customs regime, which is granted only based on the permission of the customs authorities. The regime is normally granted either to a carrier or an expediter if it is a Russian legal entity or an entity of the CU. The transit customs regime is terminated when the goods are actually shipped out of Russia. A special transit customs declaration is required for declaration of the transit customs regime.

Security for payment of customs duties and taxes is usually required before the goods are placed under the customs transit procedure. However, TIR carnets are still accepted by Russian customs as an exemption from the obligation to provide such security until
28 February 2015. After that date the Russian customs authorities will no longer accept TIR carnets and importers of record will have to provide security (for example, a deposit, bank guarantee etc.).

9.18.6 Destruction

Products having the status of foreign goods can be declared for destruction before the customs authorities, which would imply that such destruction must be completed under customs control and the importer would not be subject to import customs duties and taxes with respect to such destroyed products. However, the cost of destruction must be fully covered by the importer claiming the regime. Moreover, the waste generated as a result of such destruction would be subject to customs clearance requirements and import customs duties and taxes under general rules.

9.18.7 Abandonment to the State

Foreign goods imported into Russia may be abandoned to the Russian state, which is a special customs regime that can be selected by the importer of record. Under this regime the title to the imported goods is gratuitously transferred to the state without an obligation of the importer to pay any import customs duties and taxes, including the customs processing fee. Imported products may be cleared under this regime with a permit from the customs authorities. This regime may be a convenient way to avoid unreasonable customs clearance costs if they become applicable to goods for any reason (e.g., customs have classified the goods under a code entailing a substantially higher import duty than the importer is ready to pay, or the customs request a permit / license that the importer does not possess, and it is too costly / burdensome to ship the goods back from Russia).

9.18.8 Export

Export of goods is the main customs regime for definitive exportation of goods out of the customs territory of Russia. Export of certain types of goods is subject to export customs duties. Export of any goods is also subject to Russian VAT with a special 0% rate (see below).
9.18.9 Re-export

Re-export is the customs regime when goods initially delivered into Russian territory may be taken out with the return of customs duties and fees (if any were paid) and without application of any economic restrictions provided by Russian laws. Generally, the re-export regime applies only to “foreign goods,” i.e. goods that were delivered into Russian territory but have not undergone the entire customs clearance procedure and have not been released under a particular customs regime. Thus, generally, the re-export customs regime is not applicable to goods that were imported into Russia and released for free circulation in Russia. The re-export regime can be applied to goods released into free circulation in relation to which it has been established that when they crossed the Russian customs border they had defects or in some other way did not conform to the provisions of the foreign trade contract in terms of quality, quantity, description or packaging, and for this reason were returned to the supplier or another nominated person. Such goods may be placed under the customs regime of re-export, if they (i) were not used or modified, except if such use or modification was required for detection of the defect; (ii) may be identified by the Russian customs authorities (iii) were re-exported within six months from the date of release into Russia.

9.18.10 Re-import

Re-import is the opposite of the re-export customs regime and is designed to exempt goods that were initially exported from the customs territory of Russia from the payment of import customs duties and taxes, without the application of any economic restrictions provided by Russian laws and laws of the CU/EEU.

9.19 Customs Valuation Rules

The customs value of goods imported into the CU, which is used as a basis for calculation of import customs duties and taxes, includes the cost of goods, insurance costs and costs on transportation of the goods to the CU customs border. Depending on the actual circumstances, including contractual arrangements, an importer of record may in
addition have to include royalties (payable for the right to use trademarks and other IP rights in order to resell the goods) or other income (e.g. freight charges, insurance costs, etc.) into the customs value of those goods, provided that the importer must directly or indirectly (e.g. via third parties) pay those royalties, other license fees and/or other income as a direct consequence of importation of the goods being valued at customs.

It should be noted that the Russian customs authorities often increase the customs value of imported goods and the importers of record have the right to challenge such adjustments in court. Court practice shows that in the majority of cases the courts supported the importers of record.

9.19.1 Customs Payments

Customs payments applied in Russia include the following types:

- import/export customs duties;
- taxes;
- customs clearance (processing) fees;
- utilization fee.

9.19.2 Import Customs Duties

Customs duties are imposed on top of the declared customs value confirmed and accepted by the Russian customs authorities. The rates of import customs duties in Russia normally range from 0% to 25% based on the Unified Customs Tariff of the CU/EEU. The unified rates of import customs duties apply to goods originating from all countries outside the CU/EEU except when tariff preferences or the free trade regime are applied (e.g. the CIS FTA).
Starting from 1 July 2010 the import customs duties are paid to the unified budget of the CU and are subsequently distributed among the members of the CU. As mentioned above, the rates of import customs duties are based on Russia’s commitments to the WTO.

9.19.3 Export Customs Duties

Even after the formation of the CU, setting export customs duties still remains within the competence of the member states. Generally, Russian mineral resources and raw materials (such as oil, petrochemicals, gas, wood, metals, etc.) are subject to export customs duties. There is no unified list of export customs duties and the Russian Government separately establishes the export customs duties for particular types of products. The Russian Government establishes the rates of export customs duties for oil and petrochemicals at 2 month intervals. Export customs duties may be deducted for corporate profits tax purposes. Oil supplied to Belarus starting 1 January 2011 is duty free and the export customs duties are levied when it leaves the external border of Belarus.

9.19.4 Import VAT

Starting from 1 July 2010 payments of import VAT and distribution of the VAT between member states are performed based on a special agreement signed by the member states. The customs VAT applies to the sum total of the customs value and the customs duty. Import of goods is generally subject to Russian customs VAT levied at the same rates as Russian sales VAT (i.e. 18% and 10%). VAT is imposed on all goods imported into Russia and also applies to the sale of goods, works and services in Russia. The general VAT rate is 18% and applies to most goods, works and services. The 10% VAT rate applies to limited categories of goods, e.g., pharmaceuticals, children’s products, some food products, while some other medical equipment and medical goods, art and cultural goods, etc. may be VAT exempt. Import VAT may generally be offset against output VAT collected from local customers.
Pursuant to a direct provision of the Russian Tax Code the importation of products that do not have analogues manufactured in Russia and are included in the list approved by the Russian Government is VAT exempt. This exemption came into effect from 1 July 2009.

9.19.5 Export 0% VAT

Exportation of goods from Russian customs territory is subject to 0% VAT. There is a special statutory procedure that Russian exporters of record must comply with in order to apply the 0% VAT rate to exports. Generally, they must provide the Russian tax authorities with the following documents:

- The contract for the exportation of goods;
- A customs declaration bearing a mark of the Russian customs authorities evidencing the actual export of goods out of Russia; and
- Copies of shipping documentation (transfer and acceptance statements, waybills, invoices, etc., confirming the transport of the goods out of Russia).

Additional requirements are provided for the exportation of goods that were previously imported into Customs Union countries. The taxpayer must submit these documents within 180 days after the export of the goods. If the taxpayer does not meet the requirements outlined above, the taxpayer loses the right to apply the 0% VAT rate on exports and the usual VAT rates (10% or 18%) apply depending on the type of goods.

Exportation of goods from Russia to the other CU/EEU member states is also subject to 0% VAT. The procedure for confirming the 0% rate in this case is established at the level of the CU/EEU and has certain peculiarities (for example, the list of confirmation documents should include an application on the importation of goods and payment of indirect taxes, an extract from the bank confirming the receipt of funds paid for the exported goods, etc.).
9.19.6 Import Excise Taxes

Excise taxes apply to Russian imports of limited categories of products, like tobacco products, spirits and alcohol, beer, cars, petroleum products, diesel and motor oil.

9.19.7 Utilization Fee

Starting from 1 September 2012 Russia introduced a utilization fee on wheeled vehicles. A utilization fee should be paid for all imported or locally manufactured vehicles. Certain types of vehicles are exempt from the utilization fee including vehicles imported (i) as personal belongings of refugees and certain categories of immigrating persons, (ii) by diplomatic and consular missions and international organizations, and (iii) that are over 30 years old and are not designated for commercial transportation (i.e. “retro-vehicles”). The utilization fee is calculated as a base rate that is RUB20,000 for cars (approx. USD355) and RUB150,000 (approx. USD2,665) for commercial vehicles that should be multiplied by increasing coefficients, which depend on certain technical characteristics of the vehicle (e.g., engine capacity and age).

In addition to the utilization fee on vehicles, starting from 1 January 2015 the Russian Government introduced an ecological fee. Importers and manufacturers of certain goods are obliged to utilize waste from such goods in accordance with utilization limits. If such manufacturers and importers fail to utilize the waste they will have to pay an ecological fee calculated on the basis of a specific formula. The list of goods subject to such utilization (including their packaging), as well as the applicable rates of utilization fees and utilization limits should be adopted by the Russian Government in 2015. The ecological fee for the first nine months of 2015 should be paid before 15 October 2015. Thus as soon as the Government issues the relevant implementing regulations it will become clear in which cases importers are subject to the ecological fee.
9.20 In-Kind Contribution

Importation of goods as an in-kind contribution into the charter capital of a Russian legal entity is duty free. After importation of the goods, the importer of record is required to prove that the goods were recorded on its balance sheet and were not disposed of.

Goods imported with no import duty as in-kind contributions into charter capital are treated as conditionally released and if the goods are alienated by the importer in any manner, the importer will be required to pay the import customs duties and import VAT plus interest for the whole term during which the duty exemption applied to the goods.

The agreement “On the Eurasian Economic Union” provides that provisions on tariff preferences for in-kind contributions should be established at the level of the Eurasian Economic Commission (until this issue is regulated in Russia at the local level by Government decree).

9.21 Customs Inspection and Liability

Customs authorities are allowed to carry out customs inspections within 3 years after clearance of the respective goods. During a customs inspection the customs authorities verify the fact of release of imported goods and the accuracy of information stated in the customs declaration and other documents submitted to the customs authorities in the process of customs clearance. Please note that the customs authorities may check not only the declarant of the goods, the customs brokers, owners of temporary-storage and/or bonded warehouses, customs carriers, but also the legal entities authorized to dispose of the imported goods in the customs territory of Russia (e.g. the local downstream wholesalers and retailers of the imported goods).

A customs inspection may be either a documentary or on-site inspection. When the customs authorities reveal a customs legislation breach during a documentary inspection (which is performed
internally at the customs house based on the documents filed by the importer of record at the time of customs clearance of goods) a targeted on-site inspection may be carried out. An on-site inspection should be performed within two months. However, in certain cases it may be extended by one month. The customs authorities may use documents and information provided by Russian banks, as well as inventory and audit conclusions, and the conclusions made by other state authorities.

9.21.1 Arrest of Goods during Customs Inspection

The customs authorities are authorized to arrest goods during a special customs inspection, if they reveal that:

- The goods were imported without any special marks, symbols, or other elements applied in accordance with Russian legislation certifying the legality of their import;

- The customs declaration does not contain the “Release for free circulation” or other applicable stamp of the corresponding customs regime, or the customs authorities deem such stamps fictitious or the documents on which such entries are made are missing;

- Conditionally released goods were utilized and/or disposed of for purposes other than those permitted by customs.

Arrested goods should be returned to their owner on the final day of the customs inspection if a breach of the customs legislation was not confirmed.

9.21.2 Seizure of Goods during Customs Inspection

During customs inspections goods may be seized for a term that does not exceed one month if the import of such goods into the Russian market is directly prohibited or a simple restriction on moving the goods is not sufficient to detain the goods. Such seizure can only last for the period of the customs inspection. Generally, seized goods are
removed to a temporary storage warehouse. The goods should be released on the final day of the customs inspection if a breach of the customs legislation was not confirmed. Goods may only be confiscated based on a court ruling.

9.21.3 Administrative Sanctions

Based on the results of the customs inspection, the customs authorities may hold the inspected company administratively responsible for breach of the customs rules. Chapter 16 of the Russian Administrative Code provides such sanctions as administrative fines and/or confiscation of the imported goods. Note that in the case of confiscation, this sanction may be applied not only to the actual violator (the importer of goods) but also to the bona fide downstream owner of the goods if the goods were involved in a customs law violation. Depending on the type of violation committed, the sanction against the companies could amount to fines of up to 200% of the goods’ value or the amount of customs duties and import VAT that were not paid with respect to the cleared goods in question and may also include confiscation of those goods.

In the course of 2014 the Russian Government launched an initiative to liberalize administrative liability, including in the sphere of customs regulations. At the beginning of 2015 the Russian Parliament adopted a law that provides Russian importers of record the possibility of avoiding administrative sanctions in cases of self-disclosure of violations related to inaccurate declaration of goods resulting in underpayment of import customs duties and taxes, provided that the importers prove that they acted in a bona fide fashion and immediately reported such violations to the customs and took all possible measures to comply with the law. In addition, in 2014 other draft laws were issued aimed at liberalization of administrative liability in the sphere of customs regulation. However, the prospects for adoption of such draft laws are still unclear.
There is a 2-year limitation period established for customs violations. Normally it runs starting from the moment of commitment of the violation. However, in the case of lasting/repeated violations, this 2-year period runs from the date of discovery of the violation by the Russian customs authorities. Importantly, customs payments can not be enforced after expiration of the statute of limitations term established for customs audits, i.e. more than 3 years after customs clearance of the respective goods.

Please note that the administrative sanctions (i.e., confiscation of goods, fines) may be imposed only on the basis of a court decision; the customs authorities may not confiscate the goods ex officio.

9.21.4 Criminal Sanctions

Russian law does not have the concept of corporate criminal liability. Only individuals (i.e., the managers of an importer of record or a customs broker) responsible for a particular crime can face criminal penalties in Russia. Importantly, Russian law does not limit the application of criminal liability for corporate crimes only to employees of the relevant corporate entity that committed the offence. Relevant crimes could constitute evasion of customs payments, tax evasion and bribery.

The maximum liability for evasion of customs payments is 12 years of imprisonment or a fine of up to RUB1 million (approx. USD18,000) or the amount of the salary or other income of the convicted person for a period of up to 5 years. The maximum statute of limitations for this crime is 15 years.

9.22 Safeguard Measures

In order to protect its internal market and national manufacturers from the adverse effect of foreign competitors and neutralize losses caused by dumping, or subsidized or increased imports of goods, Russia applies certain safeguard measures.
Starting from 1 January 2015 the main provisions in this sphere are provided by the agreement “On the Eurasian Economic Union” which nullified the CU agreement “On Application of Special Safeguard, Anti-dumping and Countervailing Measures with Respect to Third Countries” dated 25 January 2008. At the same time, any anti-dumping, countervailing and safeguard measures imposed within the CU/EEU are generally based on WTO regulations and may be imposed by the Eurasian Economic Commission based on the results of special investigations. Starting from 1 January 2015 safeguard investigations are conducted and measures are imposed by the Eurasian Economic Commission in accordance with the procedure outlined by the agreement “On the Eurasian Economic Union.”

Russia can impose safeguard measures against other countries, including WTO members, if dumping, or subsidized or increased import of products causes or threatens to cause serious damage to a Russian national industry.

A safeguard measure can be imposed based on the results of a special investigation that confirms the serious damage or negative impact caused by a particular country. The CU/EEU regulations on safeguards and the WTO rules set special procedures and terms for conducting investigations and their review, provision of evidence, as well as special measures against circumvention of the imposed safeguard measures. Any facts and evidence should be supported and confirmed by independent expert review based on thorough economic analysis and evaluation.

Information on all safeguard measures imposed by the CU and investigations conducted is publicly available on the CU official website in the Russian language at: http://www.eurasiancommission.org/ru/act/trade/podm/Pages/default.aspx. As of December 2014 the CU had applied 10 measures of protection, among them eight anti-dumping duties imposed on some products made of steel and polyamide and originating from China, Taiwan and Ukraine, as well as light commercial vehicles from Germany, Italy and Turkey, graphite electrodes from India; two special safeguard
measures on porcelain dishes and harvesters originating from all third countries.

If an imposed safeguard measure does not correspond to the WTO rules, the exporting WTO member can bring a case to the DSB of the WTO and claim for removal of such measures, compensation or retaliation.

9.23 Export Control

Russia is a party to the 1998 Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, but still has certain peculiarities.

Should the products fall under the Russian lists of products subject to export control (the “Russian Dual-Use List”), exportation of such products out of Russia would be subject to a special export control clearance (i.e. an export control license or permit issued by the Russian Federal Service for Technical and Export Control (the “FSTEC”)). In certain cases importation of dual-use products might be subject to export control requirements.

If a product by its HS code, description, or designation, may potentially fall under Russian export control regulations, it must undergo a special export control identification and testing in order to determine whether a special export control clearance is required (i.e. export control license, or permit, or end-use certificate issued by the FSTEC for the importation/exportation of the products). In certain cases the Russian importers/exporters of record need to undergo an independent identification export control testing performed by testing laboratories accredited by the FSTEC.

Currently, the members of the CU/EEU are considering the establishment of unified rules on export control at the supranational level. Draft regulations are already in place, however, the date of adoption at the CU/EEU level has not yet been selected.
10. Sanctions

10.1 Introduction

In the course of 2014 the US, EU, Canada, Australia, Switzerland and Japan (the “implementing countries”) introduced sanctions targeting certain Russian and Ukrainian entities and individuals, as a result of the political situation in Ukraine. Primarily the sanctions were adopted by the US and EU, while other countries followed them by introducing similar sanctions. The imposed sanctions target specially-designated nationals (persons) as well as key sectors of the Russian economy.

10.2 Sanctions targeting individuals and legal entities (SDN and DP Lists)

In the first stage the implementing countries introduced sanctions targeting individuals and legal entities. The US issued a list of “specially-designated nationals” (“SDN’s”) and the EU and other countries established lists of “designated persons” (“DP’s”). Generally, the sanctions introduced with respect to SDN’s and DP’s are similar in nature and require the assets of the sanctioned persons to be blocked (“frozen”) and that the listed individuals be banned from entering the implementing countries. The sanctions affect not only the SDN’s and DP’s, but also assets and property that are directly or indirectly controlled or 50% or more owned by the SDN’s and DP’s.

10.3 Sectoral sanctions

The majority of implementing countries introduced sanctions targeting certain sectors of the Russian economy, primarily in such spheres as finance, energy and defense. The sectoral sanctions prohibit the provision of debt exceeding 30 or 90 days to maturity, as well as the supply of certain listed products and financial or technical assistance relating to such products. Furthermore, the sectoral sanctions have affected the Crimea region, which has been almost completely isolated from business relations with the implementing countries. The rules on
sectoral sanctions introduced by certain implementing countries, including on Crimea, provide for certain exemptions, authorizations and licenses that should be considered when doing business with Russia.

10.4 How to comply

Generally, the sanctions are binding for all nationals of the implementing countries or legal entities registered in the implementing countries. Each particular implementing country established specific rules determining which particular persons must comply with the sanctions. In order to determine whether a particular transaction involving Russian counterparties or assets falls under the established sanctions, it is important to undertake a set of precautionary measures that should be determined on a case-by-case basis and may involve screening the ownership structure of the counterparties, including any financial institutions involved, as well as the end-users of the supplied products.

10.5 Russian response to sanctions

In response to the Ukraine-related sanctions introduced against Russia, on 7 August 2014 Russia imposed a 1-year ban on imports of certain agricultural and food products (covering about 52 specified HS positions) originating from the EU, US, Canada, Australia or Norway. Additionally, Russia introduced entry bans against officials from certain implementing countries. Russia also launched some other actions in response to the imposed sanctions, such as certain restrictions on access to the Russian public procurement system for foreign manufacturers.
11. Currency Regulations

11.1 Introduction

The Civil Code states that the ruble is the national currency of the Russian Federation. Although agreements may refer to the ruble value equivalent of foreign currency, all transactions conducted inside the Russian Federation must, as a general rule, be settled in rubles. The Civil Code, however, permits the use of foreign currency in cases provided for by law. Federal Law No. 173-FZ “On Currency Regulations and Currency Control,” dated 10 December 2003, as amended (the “Currency Law”) establishes the basic rules of currency regulation and control.

11.2 Currency Operations

The Currency Law regulates a broad range of currency operations including:

- Payments made in a foreign currency;
- Transfer of foreign securities;
- Ruble transfers between a Russian resident and a non-resident or between two non-residents;
- Transfer of domestic securities between a resident and a non-resident or between two non-residents;
- The import and export of rubles and securities;
- Transfer of funds and securities from the overseas account of a resident into a domestic account, and vice versa;
- Transfer of rubles and securities between the domestic accounts of a non-resident;
- Clearing settlements;
Settlements between commission agents and principals connected with clearing; and

Settlement under derivative transactions.

11.3 Resident vs. Non-resident Status

The Currency Law divides individuals and legal entities into two classes: residents and non-residents. Residents include: Russian citizens and other individuals whose permanent place of residence is the Russian Federation, except for individuals who permanently live outside Russia for more than one year; legal entities established in accordance with Russian legislation; representative offices (branches) of Russian legal entities outside Russia; and the governments of the Russian Federation, constituent entities of the Russian Federation, and municipal units. Non-residents are defined as individuals whose permanent place of residence is located outside Russia; legal entities incorporated outside Russia; enterprises/organizations that are not legal entities, organized and located outside the Russian Federation; and representative offices (branches) of foreign legal entities in Russia.

11.4 Special Currency Control Rules

As of 1 January 2015 there are no substantive currency control requirements (in the form of “consents, authorizations or permits,” etc.) that apply to foreign transactions.

However, certain requirements still apply to Russian residents:

- Russian companies must remit all foreign currency export proceeds to their Russian bank account(s) (“repatriation of currency proceeds”), subject to certain exceptions;

- “Transaction passports” are required for certain transactions (external trade, loans) at Russian banks;
Most Russian residents are prohibited from performing foreign currency transactions with other Russian residents (the Currency Law provides some exceptions);

The purchase and sale of foreign currency may only be performed at authorized Russian banks;

Cash exports are subject to restrictions;

When a Russian company or individual opens an overseas bank account they must notify the Russian tax authorities and present regular reports on the cash flow in such accounts; and

The operation of an overseas bank account by a Russian resident is subject to certain restrictions.

11.5 Repatriation of Currency Proceeds

In accordance with Article 19 of the Currency Law, Russian companies must collect the full amount of payments due under a foreign trade contract on their accounts with Russian banks in accordance with the terms of the relevant foreign trade contract (the so-called “repatriation rule”). At the same time certain goods and services should be paid for in rubles in the proportion set by the Russian Government.

Article 19 of the Currency Law does not expressly allow a Russian supplier to assign or set-off its claims against a foreign buyer under a foreign trade contract. The exceptions to this rule allow for offsetting claims only in limited instances, including for Russian transport and fishing companies as well as under reinsurance contracts.

11.6 Transaction Passport

A Russian counterparty (that is not a bank) must comply with certain requirements in connection with payments to a foreign lender or other counterparty (export/import transactions), including:
To open a transaction passport with its Russian authorized bank; and

To file certain information, including a separate “certificate on currency transaction identification.”

The main requirements in relation to transaction passports are listed in the Currency Law and Instruction of the Central Bank of Russia No. 138-I dated 4 June 2012 (“Instruction No. 138-I”). In particular, Instruction No. 138-I stipulates a list of documents that must be submitted to an authorized Russian bank by a Russian company in order to open a transaction passport. The banks generally require all documents to be translated into Russian. The documents to be filed typically include a certified copy of the agreement documenting the transaction. Furthermore, under Article 23 of the Currency Law, banks may request other supporting documents, such as acceptance certificates, bank statements, customs declarations, etc., although, in practice, only the basic documents are usually required. After receipt of the documents the bank reviews them and opens the transaction passport.

The identification certificate requirement is applicable to settlements between Russian residents and non-Russian residents under various types of financing transactions, including loans. For each payment under the relevant transaction, the resident company has to provide a separate “certificate on currency transaction identification” indicating the transaction passport details (if applicable) and the details of the currency operation, as envisaged by Instruction No. 138-I.

11.7 Liability for Violation

The currency control system is supervised by the Bank of Russia, the Government, and the Federal Service of Financial and Budgetary Oversight. Currency control is executed through agents of the currency control regime, including: authorized banks, professional participants of the securities market, and governmental agencies.
Violation of Russian currency control requirements may entail civil, administrative, or criminal liability. Administrative penalties for violation of Russia’s currency control requirements include various fines, which may be imposed on individuals, legal entities, and company executives. The amount of a fine may be as high as the entire value of a transaction performed in violation of the currency control requirements. Other sanctions include the revocation of licenses (primarily applicable to banks), and imprisonment.

Violation of currency control requirements includes non-compliance with the terms for submission of reports on currency operations to a Russian authorized bank. The currency control legislation provides for differential fines up to RUB5,000 (approx. USD89) for individuals and up to RUB50,000 (approx. USD889) for legal entities depending on the term of the violation.

In addition, failure to comply with the repatriation requirements in respect of foreign currency proceeds may result in imposition of fines in the amount of 1/150 the Bank of Russia refinancing rate (currently 8.25% p.a.) of the amount of proceeds returned with a delay for each day of such delay. In case of non-return of foreign currency proceeds the fine may be up to 100% of the amount of non-returned proceeds. Failure to return foreign currency proceeds in the amount of more than RUB30 million (approx. USD533,000) may also lead to criminal liability of the company’s senior management.
12. Employment

12.1 Introduction

The principal legislation governing labor relationships in the Russian Federation is the Labor Code of the Russian Federation (the “Labor Code”), effective 1 February 2002, as amended through 2014. In addition to this core legislation, labor relationships are regulated by the 1996 Federal Law On Trade Unions, Their Rights and Guarantees of Activity, as amended (currently through 2014), as well as Russian legislation on minimum wages, labor safety and other related laws and numerous regulations.

Russian labor law applies equally to regular employees and top managers, including the CEOs of Russian companies and heads of representative offices and branch offices of foreign companies accredited in Russia. Russian labor law also applies to foreign nationals employed by Russian or foreign businesses in Russia. All employers should comply with special immigration law requirements for foreign employees.

A written employment agreement in Russian setting out the basic terms and conditions of the employment relationship must be entered into with each employee working in Russia. The Labor Code provides all employees with mandatory minimum guarantees and employment-related benefits and compensations, which cannot be superseded by the agreement between the employer and the employee. Accordingly, any provisions in an employment agreement that impair the employee’s position as compared to that set forth by such guarantees will be invalid. As a general rule employment agreements are entered into for an indefinite period of time. A definite term (fixed-term) employment agreement may also be concluded, but such an agreement cannot be enforced for longer than five years, and it may only be concluded when the nature or conditions of work make it impossible for the parties to enter into an indefinite term agreement, in particular in the circumstances specifically provided for by Article 59 of the Labor Code. Recently the Russian Labor Code has been supplemented
with a special chapter regulating the employment of foreign nationals. Now employment contracts with foreign workers should generally be concluded for an indefinite term; fixed-term employment agreements with foreign employees may be concluded only in the cases specifically provided for by Article 59 of the Labor Code.

An employee in Russia cannot be prohibited from holding a second job in addition to his/her full-time employment, with certain limited exceptions and restrictions provided by the Labor Code and other federal laws.

Since 19 April 2013 the law has entitled employers to conclude employment agreements for distance work, where distance work means the performance of job functions by an employee outside the employer’s premises. Specifically, performing job functions and related communication between the parties must be carried out via telecommunication networks, including the Internet, telephone, etc. Concluding a distance work employment agreement provides various benefits to employers, in particular, they may add specific grounds for termination at the employer’s initiative and specific provisions allowing more control over employees. In addition, a distance work arrangement entails fewer work safety obligations for employers and more flexibility. The employment agreement and any addenda to it can be concluded in electronic format by exchange of documents between the parties. In such cases both parties (the employee and the company) have to use approved electronic digital signatures. In certain cases the parties are still obliged to send each other hard copy documents by registered mail with confirmation of delivery (for example, a hard copy of the employment agreement previously signed in electronic format, documents confirming temporary disability, notarized copies of documents submitted upon hiring requested by the employer, etc.).

Under Russian labor legislation the relevant employment duties and obligations must be expressly defined in the employment agreement. It is important that these duties and obligations are defined broadly enough since an employee cannot be required to perform tasks outside
the scope of the job duties expressly described in his/her employment agreement. The employer cannot expand or otherwise modify these unilaterally without the written consent of the employee. Similarly, the employer generally cannot make unilateral changes to the employee’s obligations. In general, employment terms and conditions that have been agreed upon by employer and employee can only be amended by a written agreement of both parties. In the limited cases where an employer is allowed to unilaterally amend the employment terms and conditions agreed upon by the parties the employer must have legal grounds for such changes, must notify the employee two months in advance of any changes, and follow other formalities prescribed by law.

12.2 Employment-related Orders

Employers in Russia are required to issue an internal order each time an employee is hired, transferred to a new job, granted vacation, disciplined or dismissed, and in certain other cases. For example, Article 68 of the Labor Code expressly requires that the order on hiring must be issued and presented to the employee for countersigning no later than three days after the employee has commenced work. When an employment agreement is terminated for any reason an order on termination must be issued and presented to the employee for countersigning on the last day of employment (Article 84.1 of the Labor Code).

In case of a distance work arrangement an employer can provide the employees with internal orders and regulations for acknowledgment in electronic format using an electronic digital signature.

12.3 Labor Books

The labor book is the principal document containing a formal record of a person’s employment history and certain other information. The employer must make a record of employment in its employees’ labor books on any employment exceeding five days. The labor book is vital to each employee because it confirms his/her right to a state pension
and other social benefits. Employers are responsible for keeping their employees’ labor books (if this job at this employer is the employee’s primary employment) and making all records in them in a timely manner and in strict conformity with the required format. The employer must return the labor book, duly completed and stamped, to the employee on the last day of employment. If this is not done, the employee may claim that his/her employment was not properly terminated and, therefore, he/she could not enter into employment relations with a new employer. In this case the employer may be required by a court to pay salary to the employee for the whole period from the date of termination of employment until the date of return of the completed labor book to the employee.

12.4 Mandatory Policies and Procedures

All employers in Russia are required to issue Internal Labor Regulations and other mandatory labor-related policies and procedures. All employees should familiarize themselves with these policies against their signature (except for distant employees who have obtained an electronic digital signature). This procedure is essential for the relevant policies, procedures and other mandatory requirements to become binding on the employees. The employer’s policies and procedures should be issued in the Russian language (or in a bilingual version) and be approved by an internal order of the CEO of the company or head of the representative office/branch office.

12.5 Probationary Period

The employer has the right to establish a three-month probationary period for a newly hired employee. The employer may also set a six-month probationary period for employees hired for certain top executive positions (e.g., head of an organization and chief accountant and their deputies, and head of a branch office, representative office, or other separate structural subdivision of an organization). The imposition of a probationary period must be specifically stated in both the employment agreement and the order on hiring. If during the
probationary period the employer determines that the employee does not meet the criteria established for the role for which he/she was hired, the employee can be dismissed by the employer without payment of severance pay and with only three days’ written notice. Such notice to the employee must state the reasons why the employee is deemed as having failed to pass the probation. The employee is also entitled to resign during the probationary period, without stating any reason, with three days’ written notice to the employer.

12.6 Minimum Wage

Wages for full-time work may not be lower than the minimum monthly wage established by the applicable Russian legislation. The amount of the minimum monthly wage is periodically indexed by the government. The statutory minimum monthly wage on the federal level will be RUB5,965 per month from 1 January 2015 (approx. USD106).

Regional minimum wages are established by regional agreements. They apply to all employers in that region that do not opt out within 30 calendar days of the official publication of the respective regional agreement. Some of the constituent regions of the Russian Federation, including the City of Moscow, have already implemented regional agreements on a minimum wage. Regional minimum wages are always equal to or higher than the federal minimum wage and are tied to the regional minimum standard of living. For instance, the minimum monthly wage in Moscow as of 1 January 2015 is RUB14,500 (approx. USD258), as of 1 April 2015 it will be RUB15,000 (approx. USD267).

12.7 Working Time

Employers are required to keep a record of all the time worked by each employee, including any overtime. The regular working week is 40 hours. Any time worked over 40 hours per week is classified as overtime and may only be demanded by employers in extraordinary circumstances, as specified in Article 99 of the Labor Code, and in
most cases only with an employee’s prior written consent. The Labor Code limits the total amount of overtime for an employee to 120 hours a year, and an employee cannot be required to work more than four hours of overtime over two consecutive days. Overtime must be paid at a rate of 150% of the regular hourly rate for the first two hours of overtime worked in any one day, and at a rate of 200% of the regular hourly rate thereafter. Upon the employee’s written request, the employer can compensate for overtime work by granting the employee additional time off in lieu of payment; the time off should be no less than the time worked as overtime.

It should be noted that certain limitations regarding overtime work apply to certain protected categories of employees, including employees under the age of 18, pregnant women, women with children under the age of three, disabled employees, and some other categories defined by federal laws.

Workers may also be hired on the terms of an open-ended working day. The primary advantage of this is that there is no need to obtain consent whenever the employer asks an employee to work overtime. Moreover, the extra hours worked by employees with an open-ended working day need not be paid as overtime: instead they are entitled to additional paid vacation of no less than three calendar days per year. Nevertheless, it is important to note that employees with an open-ended working day can be required to work overtime only occasionally and upon a specific order of the employer when there is a need for such overtime work. Further, job positions subject to the open-ended working day regime must be approved by the employer and listed in the company’s Internal Labor Regulations.

12.8 Holidays and Non-working Days

There are currently 14 public holidays in the Russian Federation. The official public holidays are as follows:

- 1, 2, 3, 4, 5, 6 and 8 January — New Year’s Holiday;
• 7 January — Christmas;
• 23 February — Defenders of the Motherland Day;
• 8 March — International Women’s Day;
• 1 May — Holiday of Spring and Labor;
• 9 May — Victory Day;
• 12 June — Russia Day;
• 4 November — National Unity Day.

Uninterrupted weekly time off must not be less than 42 hours. As a rule, employees may only be required to work on a non-working day or public holiday in extraordinary circumstances, as specified in the Labor Code, and only with the employees’ prior written consent. As a general rule, employees must receive payment at no less than twice the regular rate for any work performed on a non-working day or public holiday, or be given time off in lieu of extra payment.

Some limitations regarding working on public holidays and non-working days apply to certain protected categories of employees, including employees under the age of 18, pregnant women, women with children under the age of three, disabled employees, and other categories as defined by federal laws.

12.9 Vacations

Employees in Russia are entitled to annual paid vacation of at least 28 calendar days per year of employment. An employee is entitled to use his/her vacation time in full once he/she has worked for the employer for at least six months. The Labor Code requires that the dates of the annual vacation of each employee be indicated in the vacation schedule for the calendar year, which the employer must approve by mid-December of the preceding year. The Labor Code further requires that employers notify their employees in writing at least two weeks before the commencement of the vacation. Each employee’s vacation
allowance should be paid at least three days before a vacation is due to start.

12.10 Sick Leave

Employees are required to submit a doctor’s note for any absence only after their recovery and return to work. Generally, employees cannot be dismissed by the employer while absent on sick leave, and are entitled to receive statutory sick leave compensation. Sick leave compensation for the first three days of sick leave is covered by the employer, the rest of the term of sickness is covered by the Russian State Social Insurance Fund, which is funded by the employer’s mandatory social contributions paid on a year-to-date salary of up to RUB670,000 (approx. USD11,913) in 2015 for each employee per calendar year. Since 1 January 2007, sick leave compensation and maternity leave compensation have been regulated by Federal Law No. 255-FZ “On Obligatory Social Insurance in the Event of Temporary Disability and in Connection with Maternity” (as amended), dated 29 December 2006. Pursuant to this law, sick leave compensation must be paid to an employee in the event of his/her illness or injury (labor-related or other) and when an employee is caring for a sick family member, as well as in some other instances.

The duration of payment and amount of sick leave compensation varies according to the grounds for the sick leave. In cases of labor-related injury or occupational disease, the amount of sick leave compensation is 100% of the employee’s average earnings. In other cases sick leave compensation is determined on the basis of the employee’s average earnings and total term of employment.

The average earnings for the purpose of sick leave compensation should be calculated with reference to the two calendar years preceding the year when an employee takes sick leave. In 2015 the statutory maximum average daily earnings for the purpose of sick leave compensation are RUB1,632.88 per day (approx. USD29), if the employee’s overall employment term exceeds or is equal to eight years.
If the employee’s total term of employment is less than six months, the sick leave compensation cannot exceed the federal minimum monthly wage.

If the employee has more than one place of employment and has been employed with the same employers for the preceding two calendar years, he/she is entitled to sick leave and/or maternity leave compensation at each place of employment and to child care leave compensation at one place of employment at the employee’s choice. If the employee has more than one place of employment and has been employed with different employers for the preceding two calendar years, he/she is entitled to the above compensations only at one of his/her current places of employment at the employee’s choice. If the employee has more than one place of employment and has been employed both with the current and with other employers for the preceding two calendar years, he/she is entitled to the above compensations either at each place of employment or at one of his/her current places of employment at the employee’s choice.

12.11 Maternity Leave

Paid maternity leave consists of 70 (or in the case of multiple pregnancy 84) calendar days prior to a birth, plus 70 calendar days after the birth. Further paid maternity leave is provided in the event of complications while giving birth or in cases of multiple births (86 and 110 calendar days after the birth respectively). Maternity leave is to be provided cumulatively; that is, the employee is entitled to the total amount of her maternity leave days even if she uses less than 70 days of maternity leave before birth.

Just like sick leave compensation, maternity leave compensation is paid by the Russian State Social Insurance Fund, which is funded by the employer’s mandatory social contributions. The amount of the maternity leave compensation is determined on the basis of the employee’s average earnings and total term of employment.
Average earnings are calculated with reference to two calendar years preceding the year when an employee takes maternity leave. In 2015 the statutory maximum average daily earnings for the calculation of maternity leave compensation are RUB1,632.88 per day (approx. USD29).

The maternity leave compensation is to be paid as a single payment. If the employee’s total term of employment is less than six months, the maternity leave compensation cannot exceed the federal minimum monthly wage.

A child’s care provider (the employee who has given birth or who is the father, grandmother, grandfather or other relative who is taking care of the child) may request partially paid childcare leave until the child is three years old. The employee retains the right to return to his/her job during the entire period of paid/unpaid leave, and the full leave period is included when calculating the employee’s length of service.

The procedure for calculation of sick leave, maternity leave and child care leave allowances is rather complicated in Russia; it is highly recommended to verify the procedures and documentary requirements on a case-by-case basis.

12.12 Dismissal

An employment relationship may be terminated by the employer only on the specific grounds provided in the Labor Code, including: a reduction in the workforce, the employee’s repeated failure to perform his/her employment duties without justifiable reasons (if the employee was lawfully disciplined within the preceding 12 months), the employee’s unjustified absence from the workplace for more than four consecutive hours during one working day, and other reasons. Arbitrary termination of an employment relationship by the employer is not allowed, except in the case of the company CEO, who can be dismissed by unilateral decision of the owner provided he/she is paid
adequate severance compensation equal at least to three months’ average earnings.

Employers must strictly comply with specific procedures and documentary requirements provided by the Labor Code when terminating employment for any reason. The Labor Code gives additional protection to a number of categories of employees, including minors, female employees, employees with children, trade union members, and various other categories. Conversely, employees are entitled to terminate their employment at any time, without stating any reason, and, as a general rule, with only two weeks’ written notice to the employer.

12.13 Compensation

Salaries must be paid to employees at least once every fortnight. Employers are obliged to pay salary and other employment-related payments on the dates set by their internal labor regulations and by the individual employment agreement. The employer is required to pay compensation (i.e. interest) for any delay in payment of salary and other employment-related payments in accordance with Article 236 of the Labor Code. In addition, employees have the right, upon prior written notice to their employer, to stop working if their employer delays payment of their salary for more than 15 days. Employees must be paid in the currency of the Russian Federation (rubles). As a general rule, employment-related payments in a foreign currency (both in cash and by bank transfer) are prohibited.

12.14 Employment of Foreigners in Russia

Generally, when hiring foreign national employees employers must obtain: (i) permission to hire foreign nationals, (ii) individual work permits and (iii) work visas, before foreign nationals are employed and/or actually commence work in Russia (except for citizens of Belarus and Kazakhstan). As a precondition for obtaining permission to hire and a work permit, a company must file an application for a quota for work permits.
The above procedure also applies to foreign nationals working in Russia under civil-law agreements for the performance of work or the provision of services (e.g., marketing consultants or sales representatives). Permission to hire, work permits and work visa requirements equally apply to branch offices of foreign firms and, as a general rule, to representative offices of foreign firms. Foreign nationals working at accredited Russian representative offices or branch offices of foreign firms also need to obtain a personal accreditation card from the accrediting body of the representative or branch office. Generally a work permit and work visa are issued for a one year period.

The procedure and required documents vary according to whether or not the foreign national requires a Russian visa. In practice, the process of obtaining permission to hire foreign nationals, individual work permits and work visas in Moscow may take from three to four months to complete. In other regions of the Russian Federation this period may differ. Also employers are required to provide financial, medical and social guarantees in respect of their foreign employees in Russia and comply with the general migration monitoring requirements, including filing notifications of foreign employees’ travel into Russia and within its territory.

Thus, employment of a foreign national in Russia requires advance planning to allow sufficient time for all procedures.

The Russian authorities have adopted a list of quota-exempt professions/positions, which allows employers to hire foreign employees without observing the quota requirement.

From 1 January 2015, in order to obtain work permits foreign nationals are required to provide relevant certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles to the Federal Migration Service of Russia.

Under recent changes effective as of 1 January 2015 employees from countries enjoying a visa-free regime with Russia may obtain a
“patent” (special permission document issued in a standard simplified procedure and in the form prescribed by statute) allowing them to work for both individuals and legal entities.

There is also a special category of foreign employees — the highly qualified foreign specialist (a “Specialist”). A Specialist is subject to a simplified procedure for obtaining a work permit and a work visa. To obtain a work permit for a Specialist his/her employer is not required to obtain a quota to hire foreigners or permission to hire foreign employees. The Specialist’s work permit and work visa procedure is available to Russian companies and accredited branches of foreign commercial companies. This option is also available for representative offices from 1 January 2015. Specialists are not required to provide certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles to the Federal Migration Service of Russia.

The main criterion for recognizing a foreign employee as a Specialist is the salary level paid in Russia. To satisfy this criterion, the salary received by the Specialist under a local employment/civil law agreement should be RUB2 million (approx. USD35,500) per year or more. A work permit and a work visa invitation letter are issued within 14 business days. The Specialist may receive a work permit and a work visa for up to three years.

Following Russia’s joining the WTO, the Russian Parliament has adopted a bill on simplification of migration law requirements for employing key personnel (as a general rule, CEOs and top managers). Such key personnel will be granted Russian work visas for not more than three years on the basis of invitations from representative offices and branches of foreign companies. Also representative offices, branches and subsidiaries of foreign companies will not need permission to hire such employees. Quotas for invitations to enter the country and obtain work permits will also not apply to this category of employees. At the same time, it is proposed to limit the number of such employees at the offices of foreign companies to no more than five employees and in the banking sector to not more than two
employees. This special procedure for employment will apply only to those employees who have worked at least one year in the foreign organization that sent them to Russia.

Russian law provides for severe penalties for non-compliance with the above work permit and work visa requirements. In recent years the Russian government has made it a priority to increase control over the use of foreign employees in Russia. It has considerably extended regulation, tightened up enforcement of the above-mentioned migration law requirements and toughened the penalties for non-compliance.

In addition, recent amendments to the migration law introduced changes into the procedures under which employers report on the work activities of all their foreign hires. In particular, employers are no longer required to inform the tax authorities about the employment of, and/or enlistment of the services of, foreign workers. Also, employers who enlist the services of foreigners (including those who enter Russia with or without visas, and highly qualified foreign specialists) as of 1 January 2015 will have to inform the Federal Migration Service, not the tax authorities, about the conclusion and termination of employment contracts or civil law contracts with foreign citizens and upon granting unpaid vacation to them within three business days from the date of such conclusion or termination or the date of granting such vacation.

Russian migration legislation is still undergoing significant amendment, so the procedures involved could be modified at any time. It is highly recommended to verify the procedures and documentary requirements on a case-by-case basis in advance.

12.15 Trade Secrets (Know-how)

Trade secrets (know-how) can form an important element of an employment relationship. In particular, Federal Law No. 98-FZ On Trade Secrets, which was enacted on 29 July 2004, and Part Four of the Civil Code of the Russian Federation, effective from 1 January
2008, regulate trade secrets (know-how) in an employment relationship context. Under these laws, if an employer wishes to protect its trade secrets (know-how) from unauthorized disclosure by employees it should implement certain statutory procedures under a “commercial secrecy regime.”

In order to implement a commercial secrecy regime, an employer should determine a list of trade secrets (know-how), restrict access to them, keep track of the individuals who have access to trade secrets (know-how) and/or individuals to whom trade secrets (know-how) were transferred, include provisions in the employment agreements regulating trade secrets (know-how), and mark documents constituting trade secrets (know-how) in a special manner set out by the Federal Law On Trade Secrets. Also, the Federal Law On Trade Secrets expressly lists information that may not constitute trade secrets (know-how) and that therefore is not protected under the commercial secrecy regime.

Employees should be notified, against their signature, of the trade secrets (know-how) directly related to their job functions and of their liability for violation of the commercial secrecy regime. Also the employer is required to provide the conditions necessary for employees to observe the commercial secrecy regime.

The participating employees, for their part, must observe the commercial secrecy regime, must not disclose trade secrets (know-how), and must pay damages for a culpable disclosure of protected trade secrets (know-how), if all the statutory procedures were properly implemented by the employer. In accordance with Part Four of the Civil Code of the Russian Federation the protection of trade secrets (know-how) extends beyond the termination of the employment relationship, forbidding employees from disclosing trade secrets (know-how) for as long as the employer has effective exclusive rights to the trade secrets (know-how). However, we recommend concluding a separate civil-law contract on non-disclosure of trade secrets (know-how) with an employee after termination of employment in order to protect trade secrets (know-how).
12.16 Personal Data

Pursuant to Federal Law No. 152-FZ “On Personal Data,” enacted on 27 July 2006 and effective as of 26 January 2007, employers are required to obtain prior consent from employees and other individuals in order to process their personal data. If an employer transfers personal data to any third parties and/or abroad it must obtain formal written consent. These requirements are of importance to transnational companies with subsidiaries and representative offices or branch offices in Russia that generally process the personal data of their Russian employees and individual contractors at a central location abroad. They are also important for all employers who transfer the personal data of their employees to law firms, audit and accounting firms, and other providers of professional services. In the case of transfers of personal data to any third parties, such third parties processing personal data of individuals who are not their employees are required to notify the authorized government agency of their intention to process personal data.

All employers in Russia must keep their information systems in which personal data are processed in compliance with the requirements set by the law “On Personal Data” to ensure due protection of personal data.

In July 2014 the President of the Russian Federation signed Federal Law No. 242-FZ, which created an obligation for all companies that collect and process personal data of Russian citizens to use databases located in Russia, subject to certain limited exceptions. Further the date of the entry into force of the law was changed from 1 September 2016 to 1 September 2015.
13. Property Rights

13.1 Introduction


The Land Code, together with Federal Law No. 101-FZ “On the Circulation of Agricultural Land” of 24 July 2002 as amended (the “Agricultural Land Law”), which entered into force in January 2003, confirmed private land ownership in Russia. In furtherance of the Land Code, Federal Law No. 172-FZ “On Reclassification of Land and Land Plots from One Category to Another” of 28 December 2004, as amended (the “Land Reclassification Law”), detailed the procedures for the reclassification of land and land plots from one category to another. The Land Reclassification Law defines the powers of federal authorities, authorities of the constituent entities of the Russian Federation (see Section 13.3), and local authorities in the procedure for changing the categories of land plots. The uniform mechanism instituted at the federal level for moving land plots from one category to another is a significant development in making the land market in Russia more transparent.

For historical reasons, such as the fact that transactions with real properties (other than land plots) became possible earlier than transactions with land plots, at present Russian law still treats land plots and buildings as separate objects of real estate. Despite this, however, there is a concept of a single object of real estate embodied through provisions that prohibit the disposal of a land plot and a building located on such land plot separately from each other when such properties are owned by one and the same owner. When a building is located on a land plot that is state or municipally owned, and unless there are other buildings or structures on the land plot owned by third parties, the owner of such building has an exclusive right to lease or buy such land plot.
Under Russian law, the most common types of rights to real estate available to investors are the right of ownership and the right of leasehold. However, there are, for the moment, different regulations with regard to land plots and buildings.

13.1.1 Land

The Land Code distinguishes the following rights to land: the right of ownership (by the Russian Federation, constituent entities of the Russian Federation, municipalities, private individuals, and legal entities), leasehold, the right of perpetual (indefinite) use, the right of free use, the right of lifelong inheritable possession, and easements (servitudes). Starting from 1 March 2015 land plots will not be granted with the right of perpetual (indefinite) use and the right of lifelong inheritable possession, although if granted before this date these rights remain effective. Land plots are generally available to investors under the right of ownership and lease.

13.1.2 Right of Ownership

The general principles of land ownership are set forth in the Constitution of the Russian Federation, adopted in December 1993. The Constitution establishes the principle of private ownership of land but does not regulate land relations in detail. The core legislative act governing land relations is the Land Code, which establishes fundamental terms and procedures for land use. The Land Code is further supplemented by other federal laws regulating land issues, often referred to in the Land Code. For instance, the Land Code has limited applicability to agricultural land, as it expressly provides that the circulation of such land is also the subject of a separate law, the Agricultural Land Law. The Land Code is also supplemented by regional laws and other regulations, which the constituent entities of the Russian Federation may issue in compliance with the Land Code. In case of conflict between such laws and the Land Code, the latter enjoys preferential status.
The possession, use and disposal of land plots classed as agricultural land are regulated by the Agricultural Land Law. Not all agricultural land, however, is subject to the Agricultural Land Law and restrictions envisaged in this law. It does not extend, for example, to those land plots that were provided to individuals for the construction of individual homes or garages, for smallholdings or dacha gardens, or land plots underlying buildings and other structures. The circulation of such land plots is governed by the provisions of the Land Code. Agricultural land plots may be held under the right of ownership, perpetual (indefinite) use, lifelong inheritable possession, or free fixed-term use, and such plots may also be leased.

Ownership of municipal or state land plots, where such land plots are free from any buildings or structures, may be granted (for purposes other than development and construction or for the use of an existing building or facility when special rules apply) to individuals and legal entities, as a rule, through bidding in a tender or auction. Such bidding may also be held for the grant of a lease of a land plot. The organization of such tenders or auctions is detailed in Article 38 of the Land Code and regulations providing for the implementation of Article 38 of the Land Code.

Due to changes to the Land Code introduced by Federal Law of 23 June 2014 No. 171 “On Amendments to the Land Code of the Russian Federation and Other Legislative Acts of the Russian Federation” (Law 171), most of them coming into effect from 1 March 2015 and which we refer to in more detail below, from 1 March 2015 ownership or lease of municipal or state land plots will be granted through a public (open) auction except for specific cases the exhaustive list of which is provided in the Land Code. In accordance with the new provisions of the Land Code (and subject to very few exceptions), public land zoned for development can only be granted in lease (through a public auction).

Procedures of preparation, organization and conducting of an auction are described in detail in new Articles 39.11–39.13 of the Land Code. The auction may be held in an electronic form. A procedure to held an
auction in an electronic form is to be determined by a federal law. As of the date of this guide (20 January 2015) such federal law has not yet been adopted.

13.1.3 Foreign Ownership

Although there is no express provision permitting land ownership by foreigners (including stateless persons), the Land Code may clearly be interpreted as allowing such ownership, except in cases where it is specifically prohibited. In 2004, the Constitutional Court of the Russian Federation confirmed this liberal and pro-foreigner interpretation of the Land Code. Foreigners have the right to acquire into lease or ownership vacant land plots (for construction purposes) or land plots under existing buildings, subject to the following restrictions set out in the Land Code:

- Foreigners are specifically prohibited from owning land plots (i) in border areas, a list of which was approved by the President on 9 January 2011 by Presidential Decree No. 26 (the Decree) for the first time since the adoption of the Land Code in October 2001; (ii) in other particular territories of the Russian Federation pursuant to other federal laws. Additionally, the President may establish a list of the types of buildings and other structures the foreign owners of which will not enjoy the pre-emptive right to buy out or lease land underlying such buildings and structures. In accordance with Federal Law No. 137-FZ “On the Entry into Effect of the Land Code of the Russian Federation” of 25 October 2001 (the “Land Code Implementation Law”) as amended, before the adoption of the Decree, the border restrictions applied to all border areas;

- Foreigners are prohibited from owning agricultural land. The Agricultural Land Law further specifies that foreign nationals and foreign legal entities (and stateless persons) may only lease agricultural land plots. This restriction on foreign legal entities also extends to Russian legal entities in which the
equity participation of foreign nationals, foreign legal entities, and/or stateless persons exceeds 50%;

- Foreigners are prohibited from owning land plots located within the boundaries of sea ports.

Under the Decree border territories are defined to include municipal districts and cities (in their geographical entireties) adjacent to the border.

Among the border territories are the city of Sochi (and other near-shore municipalities in the Krasnodarsky Krai), four districts in the Leningrad Oblast (the Lomonosovsky, Kingiseppsky, Slantsevsky and Vyborgsky districts), the Kronshtadtsky District in St. Petersburg, a number of municipal districts in the Bryansk, Tyumen, Rostov, Voronezh and Belgorod Oblasts, most of the municipalities in the Kaliningrad Oblast, a great many municipal districts in the Far East, and others.

Pursuant to the Land Code, the prohibition of land ownership in border territories applies to foreign legal entities (including entities acting in Russia through branches or representative offices), foreign individuals and stateless persons, but, unlike in the case of agricultural land, does not apply to Russian legal entities wholly or partially owned by foreign investors.

The Decree provides neither for a transitional period, nor a clear indication as to what should be done with land plots within restricted border territories acquired by foreigners before the adoption of the Decree. These matters are not addressed by the Land Code or the Land Code Implementation Law either. Arguably, the lack of transitional or implementation rules in the Decree reflects the intention of its authors to prompt foreign owners of lawfully acquired land in border territories to dispose of such land in accordance with general principles envisaged in the Civil Code. In particular, according to Article 238 of the Civil Code, if an owner owns property that may not be owned by that owner by virtue of law such property
must be alienated by the owner within a year from the moment when the ownership right arose unless the law specifies another term for alienation of the property. Court practice (which is very scarce as of the date of this guide (20 January 2015)) uses this general principle when considering disputes with regard to land plots owned by foreign owners or stateless persons in border areas.

In the context of other provisions of the Land Code dealing with the concept of unity of title to land and facilities (buildings) built thereon, in the absence of any exemptions in the Decree for foreign owners of developed land plots, a foreign person will also have to dispose of all the facilities and buildings developed on all such land plots that it owns. As of the date of this guide (20 January 2015) law and court practice are silent on whether this concept will apply and whether a foreign owner should also dispose of the facilities (buildings) located on the land plot or only the land plot.

13.1.4 Lease

Foreign legal entities and individuals may be granted leases to land plots. Such leases for state or municipally owned property are usually based on a standard local form. As of the date of this guide (20 January 2015), neither the Civil Code nor the Land Code stipulates a statutory maximum length for a land lease, the lease term in most cases did not exceed 49 years. However, new Article 39.8 of the Land Code to be effective from 1 March 2015 establishes different lease periods for which land plots may be granted. In particular, a lease period for which a land plot may be granted depends on the permitted use of the land plot and may be determined (i) in years (from 3 to 49 years); (ii) as a period of implementation of an investment project; (iii) as an effective period of certain other agreements (for instance, concession agreements; license agreements); (iv) as a period of reservation of land plots for state and municipal needs; and (v) otherwise in accordance with federal laws. Under the new rules, owners of buildings and structures located on a land plot may be granted a lease for a term of not more than 49 years. A lease for 3 to
10 years may be granted for construction and reconstruction of buildings and structures.

In Moscow, Moscow City Law No. 48 “On Land Use in the City of Moscow” of 19 December 2007, as amended, sets different periods for which leases of Moscow-owned land plots may be obtained. The lease terms for sites free of any buildings, structures or facilities may not exceed five years. Land plots on which such property is located are, however, available for lease for 25–49 years. This term can be reduced upon the parties’ agreement.

The level of rent payments for the majority of land leases granted by the state or municipalities is set by a general local decree. At the same time, rental payments charged by all public lessors should conform to the general principles envisaged in the Land Code as amended by Law 171 and Decree of the RF Government No. 582 dated 16 July 2009, as amended. The general principles require public lessors to adhere either to the market rent rate or a cadastral value-determined rate (where rental payments are calculated as a percentage of the land’s cadastral value). From 1 March 2015, the rent will become an essential term of a land lease agreement.

In Moscow a lessee must pay for the right to lease any land in excess of the area of the existing buildings on that land. In St. Petersburg the level of rent is determined by City Law No. 608-119 On the Method for Determination of Rental Payments for Land Plots Owned by St Petersburg of 5 December 2007, as amended. If the right of ownership to a land plot has not been delimited (i.e., allocated either to the Russian Federation or to its constituent entity), the level of rental payments with regard to such land plot is established by a resolution of the St. Petersburg government. In both cases/cities the lease rates vary depending on the location of the site, the type of land use and status/activity of the lessee, etc.

The Land Code provides a lessee with certain basic rights. As of the date of this guide (20 January 2015) a lessee that properly fulfills its obligations under a lease has a pre-emptive right to renew the lease at
the end of its term. The renewal rights of a lessee under a land lease are to be treated in conjunction with both the pre-emptive right to purchase the land granted to the lessee (where the leased land is state or municipally owned) and the exclusive right of the owners of the existing buildings and structures to purchase or lease the underlying land plot. From 1 March 2015 in accordance with new Article 39.8 a lessee does not have the pre-emptive right to enter into a new agreement without an auction unless the land plot was initially granted to the lessee without an auction (for instance, to owners of buildings and structures located on the land plot) or the land plot was granted at an auction for gardening and country (dacha) activities.

Significantly, the provisions of the Civil Code, in so far as they apply to land leases, are supplemented by the Land Code in a number of areas. In particular, the Land Code sets forth a series of modified rights for land lessees. Their applicability in part depends upon the precise drafting of a lease. For example, the presumption under Article 615 of the Civil Code that a lessee needs the lessor’s consent to sublease has been reversed for lessees of land. Of particular significance is the provision that a lessee of state or municipally owned land (other than state enterprises) under a lease with a term exceeding five years is free to assign its rights under the lease, to mortgage such rights, or grant the land plots for sublease to third parties, subject only to giving notice to the lessor. This rule to give a notice to the lessor also applies to land leases with private lessors (in contrast to the prior-consent requirement established under Article 615(2) of the Civil Code) provided that the assignment and sublease are within the lease term under the land lease agreement. The assignee of a land lease does not need to enter into a new land lease.

The lessor and the lessee may terminate the lease (i) by mutual agreement, (ii) unilaterally - in the circumstances stipulated in the lease, or (iii) by a court order - in the circumstances provided by the Civil Code, the Land Code or in the lease. The Land Code contains provisions that deal with termination of land leases in conjunction
with a court order. For example, the following constitute grounds for termination of a land lease:

- Misuse of the land plot (a more stringent test than under Article 619 of the Civil Code requiring either substantial or repeated violations);

- Use of the land plot that results in a decline in the fertility of agricultural land or, importantly for industrial users, a material deterioration in the environmental situation;

- Failure to correct a range of other intentional environmental violations of applicable land use regulations; and

- Where the designated purpose of the land plot is agricultural production or development - failure to use the land plot for its designated purpose for more than three years.

13.1.5 Other Rights to Land

Until 1 March 2015 the right of perpetual (indefinite) use may be granted to state and municipal institutions, federal treasury-owned enterprises, and state and local authorities. Legal entities that possessed land plots on the right of perpetual (indefinite) use before the introduction of the Land Code and which do not fall under the above categories had to convert and re-register their rights either as lease or ownership by 1 January 2004. This deadline has been extended several times and was finally established as 1 July 2012 as a general rule, and as 1 January 2015 with regard to land plots under transportation, communications and utilities lines. Failure to convert the rights by the established deadlines will trigger an administrative penalty of RUB20,000–100,000 (approx. USD355–1,778). The penalty is established with effect from 1 January 2013. As the civil circulation of land plots held on the right of perpetual (indefinite) use is restricted — e.g., such land plots cannot be sold, leased, mortgaged, or assigned — the disposal of such land plots by legal entities (that do not fall under the above categories) will always require the prior
conversion of the right of perpetual (indefinite) use into another title (e.g., for commercial legal entities - into lease or ownership).

13.1.6 Acquisition of Rights to Land Plots for Construction Purposes (Other than Residential Construction)

Law 171 and Federal Laws No. 217, No. 224 and No. 234, all of 21 July 2014, amended the Land Code significantly in the part of provision of land plots for construction and non-construction purposes. As stated above, amendments to the Land Code as per Law 171 are effective from 1 March 2015. However, in accordance with Law 171, the provisions of the Land Code which existed before 1 March 2015 should apply (until 1 March 2018) to a process of granting land into lease or perpetual (indefinite) use or uncompensated use if it started before 1 March 2015.

As of the date of this guide (20 January 2015), acquisition of state or municipally owned land plots is carried out in accordance with the procedures as they are currently envisaged in the Land Code. In particular, the Land Code distinguishes two kinds of procedure: (1) without preliminary approval for the location of facilities, and (2) with such preliminary approval.

The granting of land plots without preliminary approval for the location of facilities is carried out through bidding by tender or auction (Article 38 of the Land Code, numeration of Articles before amendments as per Law 171).

A land plot which is granted for construction purposes without preliminary approval for the location of facilities must satisfy the following criteria: (i) its boundaries must have been defined for the plot to be eligible for sale or lease, (ii) a cadastral number (indicating the area, location, category, and other essential characteristics of the plot) must have been assigned, (iii) a designated use of the land plot must have been properly defined, and (iv) technical conditions for the connection of the land plot to utilities must have been determined.
Land plots with preliminary approval for the location of facilities can be granted when a land plot meeting the requirements of a particular project does not exist or a new construction project requires a thorough investigation of ecological, sanitary, architectural and other issues, and upon a specific request for granting a land plot for construction from an investor. This may also involve gauging public opinion regarding the planned construction. In accordance with this procedure a land plot is initially granted to legal entities and individuals under a lease only. This, however, does not preclude the owner of the facilities (upon their construction and state registration) from acquiring ownership of the underlying land plot. For construction of facilities of a religious function, religious organizations are granted the right of free-of-charge fixed-term use for the period of such construction. In this case, land plots are granted without holding an auction.

Preliminary approval of the location of facilities is not required for land plots in urban areas if town-planning documentation and zoning plans have been approved for such land plots. Such land plots must be granted through an auction.

From 1 March 2015, in accordance with a new Article 39.1, a right to a state or municipally owned land plot arises on the basis of: (i) a resolution made by a government or local government body; (ii) a sale-purchase agreement if the land plot is granted into ownership; (iii) a land lease agreement if the land plot is granted into lease; and (iv) an uncompensated use contract if the land plot is granted into uncompensated use.

By general rule stated in the Land Code, the land plots are granted into ownership or lease only at public auctions. The Land Code describes in detail how such auctions should be prepared, organized and conducted. The Land Code also provides for cases where the land plots may be granted without an auction. A list of such cases is closed and described in detail. One of such cases where the auction is not required for acquiring a land plot into ownership or lease is provision
of land plots to owners of buildings and structures located on a land plot.

13.1.7 Exclusive Right

As mentioned in Section 13.1 above, the owners of buildings and structures that are located on land plots owned by the state or by a municipality have an exclusive right to acquire the underlying land plots either into ownership or lease (Article 36 of the Land Code, numeration of Articles before amendments as per Law 171). With regard to facilities erected on such land plots after the Land Code had become effective, this rule means that an owner of the facility, upon state registration of title (see Section 13.4 below), may opt either for extension of the lease, extension of the lease and subsequent acquisition of the land plot into ownership, or immediate acquisition of the land plot into ownership. Possession of a valid lease contract does not preclude the owner of the facilities from acquiring the underlying land plot into ownership before the expiry of the lease. The Land Code does not establish a deadline by which the owners of the facilities should exercise their right. With regard to facilities erected before the entry into effect of the Land Code, the rule is generally the same, although in circumstances where the underlying land plots had been granted on the right of perpetual (indefinite) use, then in accordance with the Land Code Implementation Law, as amended, the owners of facilities located on such land plots must purchase or lease such land plots before 1 July 2012 (in the case of land plots under transportation, communications and utilities routes — before 1 January 2015).

Under Russian law, if a land plot is required for state or municipal needs such land plot may be expropriated by state or municipal authorities with compensation to the owner for the land plot. The procedure for expropriation of land plots for state and municipal needs is described in detail in the Civil Code and the Land Code as amended by Federal Law No. 499-FZ of 31 December 2014 with effect from 1 April 2015.
13.2 Other Real Estate

13.2.1 Ownership

Russian legislation permits both Russian and foreign nationals and legal entities to own real estate (apart from land plots) such as buildings, premises (as parts of buildings), structures and other facilities. In general, the rules relating to the use, disposal, and sale of real estate are set forth in the Civil Code, which guarantees the freedom to sell, rent, and carry out other transactions with real estate. Title to real estate is usually acquired through a sale-purchase transaction or by means of new construction. For legal entities formed in the course of privatization of state- or municipally owned enterprises it is usual that title to buildings and structures was obtained as a result of such privatization.

In the past, Russian courts have largely treated sale-purchase transactions with buildings and structures that were incomplete at the moment of execution of a sale and purchase agreement or were not registered in the name of the seller as invalid (on different grounds). In these circumstances parties wanting to buy or sell such “pending” real estate had to enter either into preliminary sale and purchase agreements (to be followed, upon completion of such buildings and structures and registration of seller’s title thereto, by main sale-purchase agreements) or investment agreements, both types of agreements being far from “safe havens” for both parties in terms of enforceability.

However, the Plenum of the Supreme Arbitrazh Court in Resolution No. 54 dated 11 July 2011 “On Certain Matters of Resolving Disputes Arising from Agreements on Real Estate to be Developed or Acquired in the Future,” explicitly confirmed the validity of sale and purchase agreements with regard to such “future real estate.” At the same time, registration of title transfers from the seller to the buyer, i.e., acquisition of ownership rights by the buyer would be possible only after putting a real estate facility into operation (to be evidenced by a commissioning permit issued by the local administration) and state registration of the seller’s title to it. Also the Plenum maintained that
investment contracts executed in the past, if they meet certain criteria, should also be construed as contracts for the sale and purchase of “future real estate”.

In accordance with the Civil Code, property rights arise after their state registration, if such state registration is required by law. State registration of the ownership right to real estate and encumbrances of such right is governed by Federal Law No. 122-FZ “On State Registration of Rights to Real Estate and Transactions Therewith of 21 July 1997,” as amended (the Registration Law). At the request of a legitimate acquirer of title (or at the request of both parties under a sale-purchase agreement), the authority in charge of the state registration of rights to real estate must state register the title and issue an ownership certificate evidencing the registration of title (see Section 13.4 below).

For all owners of real estate, the ownership right has to be state registered in accordance with the procedure set forth in the Registration Law. The exceptions to this rule relate to rights to real estate that were acquired prior to the adoption of the Registration Law. The owner of such real estate is not obligated to state register its rights unless it wishes to enter into any transaction involving its real estate (e.g., lease, mortgage, sale).

Obtaining an ownership certificate is a fairly straightforward, albeit in certain regions of Russia sometimes lengthy, process, as long as an applicant seeking to obtain such a certificate can clearly demonstrate that the real estate in question was purchased, constructed, or privatized in accordance with the procedures established by law. Before an ownership certificate is issued such real estate must be recorded with the State Cadastre of Immovable Property (described in more detail in Section 13.3 below). Recording real estate with the State Cadastre of Immovable Property and state registration of ownership rights with the Register (as defined in Section 13.3 below) are designed as a single (one-window) process.
Title to real estate acquired through privatization sometimes cannot be registered as a result of deficiencies in the underlying privatization documentation. In the past, state-owned real properties were granted to state-owned enterprises for economic management or use. During the privatization process of the early 1990s such real properties were usually transferred into the ownership of those enterprises, which were formed on the basis of Soviet state-owned enterprises that operated and used such real properties on the basis of various “usage”-type rights. A newly privatized enterprise thus “inherited” such real properties from the state-owned enterprise, provided that the real properties as recorded on the balance sheet of the state-owned enterprise were easily identified in the privatization plan of the newly formed (privatized) enterprise. The problem of title registration is not unusual for legal entities that are the legal successors to such Soviet era state-owned enterprises. Such legal entities may, however, register title by virtue of having held and used property for 15 years (acquisitive prescription) on the basis of a court order.

13.2.2 Common Property

Until recently, the regime of common ownership (a situation where real estate properties belong to several owners) was applied only with regard to owners of premises in a multi-apartment building, while the situation for non-residential buildings remained unregulated. Considering disputes between owners of premises in non-residential buildings (i.e., office, warehouse, retail, administrative buildings, etc.) the courts (including the Presidium of the Supreme Arbitrazh Court) frequently refused to apply the law by analogy, and on this basis refused to recognize a claimant’s right of common ownership in non-residential buildings. The Plenum of the Supreme Arbitrazh Court took an entirely different position in Resolution No. 64 dated 23 July 2009 “On Certain Matters Concerning Court Practice Regarding Disputes Between Premises’ Owners with Respect to Their Rights to Common Property in a Building” (Resolution No. 64), expressly indicating that in the absence of direct regulation the owners of premises in a non-residential building must be guided by legal analogy, that is, by the rules governing common ownership in multi-
apartment buildings. Thus, a line was drawn under the long-term lack of clarity.

Pursuant to Resolution No. 64, the owner of separate premises in a non-residential building always has a share in the right of common ownership to common property of the building - independently of whether or not such right is registered in the Register (please refer to Section 13.3 for the definition).

Resolution No. 64 embraces the concept of common property in a non-residential building, including the following: premises designated for serving more than one unit of premises in the building, and also landings, stairs, halls, lifts, lift shafts and other shafts, corridors, technical floors, attics, basements housing engineering communications or other equipment serving more than one unit of premises in the building (technical basements), roofs, supporting and non-structural constructions of the building, mechanical, electrical, sanitary and other equipment located externally or inside the building and serving more than one unit of premises. This definition is an almost verbatim repetition of the description of common property in a multi-apartment building given in the Housing Code of the Russian Federation, with the exception that the Plenum of the Supreme Arbitrazh Court does not directly add the underlying plot of land to the common property of a non-residential building. Applying legal analogy to complex relations lends clarity to a fundamental question, but inevitably leads to the emergence of certain new ambiguities.

It is not clear whether underground car-parks housing engineering communications are deemed to be technical basements (which, in accordance with the definition, are common property).

13.2.3 Lease

Foreign legal entities and individuals may be granted leases to other real properties (apart from land plots). Like leases of state or municipality owned land plots, leases of other real properties in state or municipal ownership are usually based on a standard local form.
The Civil Code provides a lessee with certain basic rights. When a property is leased it must be in the condition stipulated by the lease. Thereafter, unless the lease specifies otherwise, the lessor is liable for the repair of defects of the premises. If the lessor fails to carry out the necessary repairs, the lessee can opt either for a reduction of the rent or termination of the lease and compensation of the losses incurred. A lessee that properly fulfills its obligations under a lease has a preemptive right to renew the lease (i.e., enter into a new lease for the same premises, but not necessarily on the terms of the preceding lease) unless this right is expressly excluded by the lease contract.

The lease survives the change of ownership over the leased property except in the event of some foreclosures that meet certain criteria. The lease of buildings and structures assumes the right to use (either in lease or under another right of usage) the land plot which underlies such buildings and structures and which is necessary for their operation and use. As with the lease of land plots, the lessor and the lessee may terminate the lease (i) by mutual agreement, (ii) unilaterally in circumstances stipulated in the lease, or (iii) by a court order in the circumstances provided by the Civil Code or in the lease.

Lease agreements for one year or longer must be state-registered and are deemed concluded upon such state registration.

Lease agreements for less than a year (that is, less than any 365-day period) do not require state registration and become valid when signed. To avoid the obligation of state registration, which can be a time consuming process, leases are often concluded for less than a year and renewed on a regular basis. If the procedure is properly described in the lease, such renewal of the lease is regarded as conclusion of a new lease for a period of less than a year.

13.3 State Registration of Rights to Real Estate

The right of ownership of, and other proprietary interests in, real properties, their creation, encumbrance (e.g., mortgage, leasehold for a term of one year or more, easement, etc.), transfer and termination are
subject to state registration. Rights to real estate (rights in rem) come into existence only upon their state registration. The Registration Law stipulates procedures for the identification and registration of rights to real estate. In many cases, registration of title is a prerequisite for the validity and enforceability of transactions involving real estate.

Before 1 March 2013, such transactions with real estate as sale/purchase of residential premises, sale/purchase of enterprises, annuity contracts, gift contracts required state registration to be valid and effective. From 1 March 2013, said transactions do not require state registration and are deemed concluded from the moment the agreement is signed by the parties. However, where such transactions provide for a transfer of title (e.g. sale/purchase of residential premises), the acquisition of title must be state registered.

Lease transactions (in addition to rights or titles) with real estate made for a term of one year or longer are subject to state registration, and become effective only upon such registration. The state registration is evidenced by a registration stamp on a lease agreement.

Due to recent amendments to the Registration Law and Cadastral Law (as defined below), an application for state registration of a right to real estate or a real estate transaction and an application to register a real estate property with the State Cadastre of Immovable Property may be submitted electronically from any place within the Russian Federation. However, in accordance with RF Government Resolution No. 2236-r of 1 December 2012 these statutory norms should be fully implemented and the relevant services should be fully available on the territory of the Russian Federation by December 2018 (in practice this may happen earlier in certain regions of the Russian Federation, including Moscow). Therefore, currently the registration process is carried out by the registration authorities at the location of the real estate in question.

Additionally, in an attempt to simplify the document submission process the Registration Law was changed to provide that applications for state registration of rights and encumbrances (restrictions) of such
rights can be filed in hard copy (paper) and electronically not only with the state registration authorities directly but also through multifunctional governmental and municipal service centers (MFCs).

Under the Registration Law, state registration of a right to real estate and/or registration of a transaction with real estate takes ten business days, although in practice this term may be extended up to three months as a result of suspension or refusal of registration. The grounds for suspension or refusal of registration of rights/transactions are specified in the Registration Law. Refusal of state registration can be contested only in court.

The Russian real estate registration authorities widely advertise their intention to reduce the registration period and make the registration procedures more simple and transparent. In particular, the registration period of seven business days is stated in draft law “On State Registration of Real Estate” which would replace the Registration Law if adopted (presumably to be effective from 1 January 2017).

The registration authorities maintain the Unified State Register of Rights to Real Estate and Transactions Therewith (the “Register”), which indicates the history and the current legal status of a real estate object. The Register also records various “registrable” encumbrances over real estate (including long-term leases, mortgages and easements) and restrictions (such as freezing orders against, or court disputes relating to, the real state object and certain injunctions, and from 1 March 2013 — the objections of ex-owners to the state registered ownership right of a new owner provided that such ex-owner applies to court with the relevant claim within three months after the registration of the objections. However, the law is silent as to the period within which an ex-owner can apply to the registrar with its objections.

The registration authority issues a certificate in a statutorily defined form that certifies by which right an object of real property is held by a legal entity or individual, and which encumbrances and/or restrictions, if any, are established with regard to such object.
Information on state-registered transactions with immovable property is also included in the Register. Basic information on the right holder(s) and restrictions (encumbrances) of such rights is open to the public, and can be provided for a fee within five business days to any person submitting a written application to the registration authority. It is possible to apply for information from the Register electronically.

Prior to state registration of title, land plots and real estate objects (buildings, structures, premises) must also undergo cadastral registration. However, applications for cadastral recording of real estate objects and state registration of rights to such real estate objects may be submitted simultaneously. The procedures and rules for the state cadastral registration of land and buildings (including premises as parts of buildings) are outlined in Federal Law No. 221-FZ “On the State Cadastre of Immovable Property” of 24 July 2007 (the Cadastral Law), as amended effective from 1 March 2008. Under the Land Code, only land plots that have undergone state cadastral registration can be bought or sold or subject to other transactions. The State Cadastre of Immovable Property is established pursuant to the Cadastral Law and contains detailed information on all real properties, including land plots, buildings, structures, premises and other facilities. Information contained in the State Cadastre of Immovable Property is openly available to the public.

As a single source of information on real estate available in electronic format, the State Cadastre of Immovable Property became operational from 1 January 2013. The Cadastral Law provides for a unified system of state cadastral registration of all basic types of real estate, including land plots, buildings, premises, unfinished construction, complex immovable property objects, territorial and functional zones and zones with usage conditions.

With effect from 1 March 2009, the government agency that performs state registration of rights to real properties (formerly named the Federal Registration Service) has been renamed the Federal Service for State Registration, the Cadastre and Cartography (Rosreestr) and also became responsible for cadastral registration of real estate.
(including land plots). The Cadastral Law does not apply to forests, perennial plantations, bodies of water, subsoil resources, marine vessels or aircraft.

13.4 Classification of Real Estate

There is no official legislative classification of real estate (properties) in Russian law. In practice, real properties are classified on the basis of their intended use (e.g., residential or non-residential for buildings, agricultural or industrial for land plots, etc.). The designated use should be identified in the lease, the certificate of ownership, as well as in the technical documentation and cadastral documents.

Buildings, structures and other facilities require various obligatory state permits and approvals. The Town Planning Code of 29 December 2004, as amended (the Town Planning Code), stipulates the documents to be obtained and procedures to be followed for carrying out construction. Construction activities are also governed by regional and municipal legislation, such as, for instance, the Town Planning Code of the City of Moscow (as amended), adopted by Moscow City Law No. 28 of 25 June 2008, which came into effect on 10 July 2008.

13.5 Payments for Real Properties

Under Russian Federal Law No. 173-FZ On Currency Regulation and Currency Control dated 10 December 2003 (the Currency Regulation Law) as amended, payments for real estate (sale-purchase, lease, other transactions) are permitted both in Russian rubles and in foreign currency provided that payments in foreign currency meet the requirements for such payments stipulated in the Currency Regulation Law and other currency control normative acts and regulations. Payments between Russian residents can be carried out in rubles only. Where a seller or buyer, or both the seller and the buyer (or the lessor and the lessee) are foreign legal entities, settlements in foreign currency are possible. Settlements between foreign residents (including legal entities and individuals) can be carried out through foreign (non-Russian) bank accounts. However, transactions with real
properties may trigger Russian tax consequences even if carried out outside Russia.

13.6 Residential Real Estate

Up until the early 1990s most apartments in the Russian Federation were state or municipally owned. However, most apartments have since been privatized and many new residential developments have been constructed by investors and most of these apartments are in private ownership. Relations arising in connection with residential real estate are regulated by the Housing Code of 29 December 2004 (the Housing Code), which came into effect on 1 March 2005. The Housing Code (as amended) defines categories of residential property, which include a residential house (cottage), an apartment in a multi-storey (multi-apartment) building or a room in such an apartment, as well as various forms of rights to residential real estate. The Housing Code provides for use of residential property for residence by individuals. Residential premises may be also used by individuals for their professional and entrepreneurial activities (as an individual entrepreneur) provided that such activities do not violate (i) the rights and legitimate interests of other individuals; and (ii) statutory requirements established for the residential premises.

13.7 Mortgage of Real Properties

13.7.1 General

A mortgage arises either by virtue of law or a mortgage agreement. Mortgage rights must be state registered and are invalid without such registration.

Federal Law No. 102-FZ On Mortgage of Immovable Property of 16 July 1998, as amended (the Mortgage Law) stipulates the following essential terms of a mortgage agreement: (i) description of the mortgaged property (described to the extent sufficient to identify it), its location, and valuation; (ii) nature, scope and maturity date of the obligation secured by mortgage; (iii) the right on which the mortgaged property is held by the mortgagor; and (iv) the name of the registration
authority that registered the mortgagor’s right to the mortgaged property. When requested, and subject to the payment of state duty, local offices of the state registration authority (as of 1 March 2009 named the Federal Service for State Registration, the Cadastre and Cartography) can provide information on whether a specific real property is mortgaged. Such information is provided in the form of an extract from the Register.

According to the Mortgage Law, the following types of real properties can be subject to a mortgage:

- Land plots (including agricultural land plots). However, land plots that have been withdrawn from or are limited in circulation, and (with a few exceptions provided by the Mortgage Law) the land plots held by the state or municipalities cannot be mortgaged;

- Enterprises i.e., complexes of immovable and movable properties registered as a single real estate property;

- Buildings, structures and other immovable property used for business activities;

- Residential houses, apartments and parts thereof consisting of one or several separate rooms;

- Cottages, garages, and other structures for personal use;

- Aircraft, space objects, sea and river vessels; and

- Lessee’s lease rights to real properties — “to the extent mortgage of lease rights does not contradict federal law and the nature of lease relations.”

Buildings and structures can only be mortgaged together with the land plots underlying these buildings and structures or together with the lease rights to such land plots.
The existing mortgage of a land plot is automatically extended to cover a building or structure erected on such land plot by the mortgagor, unless otherwise provided by the mortgage agreement. This provision of the Mortgage Law entitles a mortgagee to extend the mortgage over a land plot to all buildings and structures that may be developed on it, without the need for a subsequent addendum to the mortgage agreement.

The terms and conditions of a mortgage may restrict the owner or user’s capability to dispose of the property, including its contribution to charter capital and/or lease to third parties. The disposal of mortgaged property generally requires the mortgagee’s consent unless the mortgage agreement provides otherwise. Notwithstanding such consent, the mortgage survives the change of ownership over the mortgaged property, or the change of holder of such property, unless and until the primary obligation secured by the mortgage is performed. Following this, the property must be released from mortgage. The release of property from mortgage is performed through the procedure of cancellation of the mortgage entry in the Register.

The Mortgage Law provides that, unless otherwise provided in the mortgage agreement or by federal law, a building, structure or any other non-residential property and an underlying land plot, as well as a residential house or an apartment that was purchased or constructed with loans from banks or other lenders is deemed to have been mortgaged from the date of state registration of the ownership right of the relevant purchaser/investor to the respective non-residential or residential property (and the underlying land plot). With regard to residential property the Mortgage Law further provides that foreclosure by the mortgagee on a mortgaged residential house or apartment and disposal of such property constitutes grounds for termination of the occupancy rights of the mortgagor and the family members residing together in such residential house or apartment, provided that this residential house or apartment was mortgaged under a mortgage agreement to secure the return of a loan granted for the
purchase or construction of such residential house or apartment, or a loan granted to refinance a previous construction / acquisition loan.

The implications of these provisions of the Mortgage Law are that a mortgagee can now demand that a mortgagor vacates the mortgaged property if the mortgagee intends to foreclose on it. However, this rule would apply only if the mortgaged property were mortgaged to secure the repayment of a loan taken out by a mortgagor to purchase or construct a property or to refinance a previous construction / acquisition loan. It is also important to note that those individuals who occupy mortgaged property pursuant to a lease or a “hiring” agreement (under Russian law, a specific type of a residential lease where the lessee is a private individual) cannot be evicted upon foreclosure on the mortgaged property. Such a lease or hiring agreement concluded prior to the mortgage agreement or after the mortgage agreement with the mortgagee’s consent will remain in force and can be terminated only under specific circumstances provided for by the Civil Code or applicable housing legislation.

13.7.2 Foreclosure on mortgaged property

There are two types of foreclosure on mortgaged property: in court and out-of-court. With regard to out-of-court foreclosure, prior to 7 March 2012, the parties could enter into a contract for the transfer of the mortgaged property to the mortgagee to discharge the secured obligation only after an event of default under the secured obligation had occurred. In the absence of such contract, a mortgagee could not automatically acquire rights to the mortgaged property if an event of default occurred, and in most cases the mortgaged property had to be sold at a public auction, with the proceeds then being used for repayment of the debt.

With effect from 7 March 2012, the transfer of the mortgaged property to the mortgagee after an event of default has occurred is possible if the parties stipulate so in the mortgage agreement. There are three methods for out-of-court foreclosure: (i) a sale at a public tender; (ii) a sale at an open auction (subject to some exceptions where a sale at a
closed auction is also possible) and (iii) appropriation of the mortgaged property by a mortgagee.

Out-of-court foreclosure on mortgaged property is prohibited with regard to certain classes of immovable property (such as immovable properties owned by the state and municipalities and residential properties owned by individuals). The Russian Civil Code amended as per Law 367 (as defined below in Section 13.7.5) establishes additional cases applicable to real estate where out-of-court foreclosure is not allowed:

(a) residential property which is the only residential property owned by an individual. However, after establishing grounds for foreclosure, the parties may conclude an agreement on out-of-court foreclosure;

(b) pledged property is of significant historical and cultural value;

(c) a pledger is an individual recognized in the established by law manner as a missing person;

(d) pledged property is pledged under a preceding and subsequent pledge agreement that provides for different procedures for foreclosure;

(e) pledged property is pledged to different pledgees to secure different obligations.

The above list is open and the law may provide for other grounds that prohibit out-of-court foreclosure.

By general rule, out-of-court foreclosure of the pledged property should be completed through auction, to be held in accordance with the statutory requirements or an agreement between a pledgee and pledger. However, under the new rules, if a pledger is engaged in business/entrepreneurial activities, the agreement between the pledger and pledgee may also provide for foreclosure by means of (a)
appropriation of the pledged property by the pledgee; and (b) the pledgee selling the pledged property to a third person. However, in both cases the pledged property is to be assessed at no less than its market value. If the outstanding amount of the secured obligation is less than the market value of the pledged property the difference is to be returned to the pledger.

13.7.3 Mortgage certificates

A mortgage certificate can be issued to the mortgagee at any time after the state registration of the mortgage and until termination of the secured obligation. Mortgage certificates can be transferred to a depositary for registration and custody, which is evidenced by a respective note on the document. Such a note should also disclose if the custody is temporary (in which case the certificate’s holder can at any time require that registration and custody of its certificate is canceled) or obligatory. The type of custody can be chosen by the issuer or by the subsequent holder of the mortgage certificate.

13.7.4 Mortgage agreement vs mortgage certificate

The Mortgage Law protects the position of mortgage certificate holders by providing, inter alia, that in case of discrepancies between the provisions of a mortgage agreement / main agreement containing the secured obligation and the provisions of the respective mortgage certificate, the provisions of the mortgage certificate have priority unless at the time of acquisition of such certificate its acquirer was aware or should have been aware of such discrepancies.

13.7.5 Pledge

Federal Law No. 367-FZ of 21 December 2013 (Law 367) introduced certain amendments to Part 1 of the Russian Civil Code regarding pledge. Save for a few provisions, the amendments have been effective since 1 July 2014. After this date the provisions of the Mortgage Law apply to the extent that they correspond to the new provisions on pledge of the Russian Civil Code.
The amendments introduce a new concept “ranking of pledges,” which will allow pledgees and pledgers to change seniority pledges by agreement. The object of pledge may be pledged to several pledgees whose pledges will be of the same seniority and who will have equal rights to the pledged property (co-pledgees).

Law 367 specifically states that provisions of the Mortgage Law and Registration Law regarding state registration of mortgage agreements do not apply to mortgage agreements made after 1 July 2014. This means that a mortgage agreement is valid from the moment of its signing by the parties, however, the mortgage as an encumbrance becomes effective only after its state registration. Currently, registration procedures of mortgages have certain specifics. For instance, a registration period may not exceed one month from the documents submission to the registration authority. However, the mortgage of land plots and buildings is to be registered within fifteen working days and the mortgage of residential property within five working days. State registration of a mortgage certified by a notary is carried out within five working days.


In furtherance of Presidential Decree No. 1108 dated 18 July 2008, the Supreme Arbitrazh Court of the Russian Federation prepared a draft bill introducing many amendments to the Russian Civil Code, which, if Russian lawmakers were to adopt the bill in the form of the current draft, would result in significant changes of many fundamental provisions of Russian real property law and, in particular, would affect the existing provisions of the Russian Civil Code on real estate leases and ownership title to buildings and land. They would also introduce new types of title allowing holders to develop and use immovable property. Amendments to the Russian Civil Code are introduced in blocks. The amendments related to real estate in 2012–2013 revised provisions of Part 1 of the Russian Civil Code.
The first amendments to the Civil Code (Part 1, Chapters 1–4) were introduced by Federal Law No. 302-FZ of 30 December 2012 (Law 302), most of them are effective from 1 March 2013. The amendments include a general provision on state registration of rights to property if such state registration is envisaged by other laws. The amendments on state registration of real estate rights repeat the requirements of the Registration Law.

Subsequent amendments to the Russian Civil Code related to real estate were introduced by the following laws:

- Federal Law No. 100-FZ of May 7, 2013 (Law 100). Under Law 100, general provisions on transactions, representation, terms and the limitation period were amended. In particular, now transactions that are made in breach of law are deemed contestable, not invalid as before. The three year period for the effectiveness of a power of attorney was abolished. Currently, a power of attorney may be issued for any term. The amendments became effective 1 September 2013;

- Federal Law No. 142-FZ of July 2, 2013 (Law 142). Law 142 deals with objects of civil rights. The amendments refined definitions of a thing (separable and non-separable things), securities and other objects. A new concept “a single real estate complex” has been introduced. The amendments under Law 142 became effective 1 October 2013;

- Law 367 (as defined in Section 7.5 above) deals with amendments regarding pledge and is described in more detail in Section 7.5 above; and

- Federal Law No. 99-FZ of 5 May 2014 (Law 99) deals with numerous amendments regarding legal entities which to certain extent affect real estate transactions.
14. Privatization

14.1 History of Privatization

The privatization process in Russia can be roughly summarized as having occurred in three progressive stages. The first stage of “voucher-assisted privatization” lasted from 1992 to 1994 and included massive privatization of state property. This first privatization scheme allocated vouchers to Russian citizens, with these vouchers later being exchanged for shares in the charter capitals of newly established (privatized) open joint stock companies.\(^7^5\)

Although at this early stage the country lacked experience in all privatization matters, and the first Privatization Law of 3 July 1991 was perhaps inevitably undeveloped, the Government’s rush to privatize companies through the allocation of vouchers resulted in a very large percentage of state-owned entities being transferred into private hands.

The second stage of privatization lasted from 1995 to 1996, and focused on obtaining large payments for significant enterprise stakes. The principal objectives of this stage were to replenish the state budget and to attract domestic and foreign investments into Russia. Unfortunately, these objectives were never achieved because:

- most of the financially viable and attractive businesses had already been privatized during the first stage;

\(^7^5\) Previously there was a legal organizational form in Russia called an open joint-stock company, which is referred to in the Current Privatization Law. From 1 September 2014 this form ceased to exist and has been replaced by public and non-public joint stock companies, however the Current Privatization Law has not yet been amended accordingly. That said, we note that references to open joint-stock companies in the Current Privatization Law are likely to be replaced with references to public joint stock companies. Although it is possible that lawmakers will decide to incorporate references to non-public joint-stock companies into some articles of the Current Privatization Law. For more information on public and non-public joint stock companies please see Section 4.2.
domestic large-scale investors did not yet exist; and

- foreign investors were still wary of large-scale capital injections into Russian entities (particularly due to the volatile political environment in the Russian Federation at the time).

As a result of the difficulty in attracting investment during the second stage of privatization, sophisticated privatization schemes (e.g. the “loans for shares” scheme) were introduced and resulted in a limited number of Russian businessmen acquiring state property at artificially low prices. Further changes in privatization law eliminated the legal grounds for such schemes and they cannot be used any more.

The next Privatization Law of July 1997 established a special right (“golden share”) of the state authorities to participate in the management of those joint stock companies where such a right was provided during privatization. This right was realized by nominating representatives of the relevant state authorities to the board of directors and audit committee of such joint stock companies, participation in the general shareholders meetings and veto rights on certain agenda issues of the general shareholders meetings.

The Privatization Law of July 1997 provided for a single fundamental sanction for failure to abide by the privatization rules, i.e. that the corresponding transaction could be declared void and the relevant property could be returned to the state. The statute of limitation for such claims was ten years from the consummation of the transaction. Later, in 2005, the statute of limitations to challenge a void transaction (including past privatization deals which were still open to challenge in July 2005 on the grounds of the deals’ alleged invalidity) was reduced from ten to three years.

14.2 Current Status

The current Privatization Law entered into force in April 2002 (the Current Privatization Law). In contrast to previous legislation, the Current Privatization Law allows the privatization of land plots associated with real estate objects. In addition to the usual methods of
privatization recognized in other jurisdictions such as the sale of state-owned property and shares in joint-stock companies at tenders and auctions, the Current Privatization Law allows reorganization of unitary enterprises into joint-stock companies and contribution of state-owned property to the share capital of joint-stock companies.

The Current Privatization Law also established a number of new methods for sale of privatized property, including, for example, the sale of shares in joint-stock companies on stock exchanges, and the sale of such shares outside the Russian Federation. At the same time, some of the previously well-known and widely used methods of privatization (such as the sale of shares in joint-stock companies to their employees, or the buyout of leased state property by the lessees) have disappeared in the Current Privatization Law. In doing this the Russian Government is trying to eliminate the use of “cheap” methods of privatization, which appears to be a reasonable and long-anticipated change based on the inadequacies of previous privatization attempts.

In 2010, a number of amendments were made to the Current Privatization Law, which were mainly connected with the following:

- approval of a one–three year plan (program) for privatization (previously this term was for one year only);
- making the privatization process more transparent (certain documents such as the plan, decisions, conditions and results of privatization, to be publicly available);
- determination of the starting price of the properties;
- privatization procedures in electronic form.

In 2011 the Current Privatization Law was further amended. The main goal of the 2011 amendments was to facilitate privatization of state unitary enterprises (SUE), which can now be reorganized into limited liability companies or joint-stock companies depending on the amount of charter capital, average number of employees and the amount of
Doing Business in Russia

profit. Therefore, all provisions of the law that previously dealt only with joint-stock companies have been amended accordingly to affect limited liability companies as well.

One of the most important amendments introduced in 2011 was that a privatized SUE cannot buy its own shares or participatory interests, nor is it entitled to have provisions concerning the preemptive rights of a privatized SUE in its charter. This provision was designed to attract outside investors.

Also, new requirements for the prospective buyers of SUE’s were added to the Current Privatization Law in 2011. These requirements are to ensure the credibility of a prospective buyer. For instance, one of the new requirements is that a person or entity cannot participate in a public sale unless such person pays a deposit of 10 percent of the starting price.

In 2013 the Current Privatization Law was amended to eliminate formerly existing restrictions on privatization of certain types of SUE’s — utilities, power supply network facilities, thermal energy sources, heat supply networks, hot water systems and parts thereof (although the restriction on privatization of cold water systems remains in force).

Specific requirements applicable to privatization of such assets were set out and obligations of new private owners of such facilities to modernize and overhaul them were established. The relevant obligations follow the assets upon their disposal to subsequent owners.

The plan (program) for privatization of federal property and the main guidelines for privatization of federal property for 2014–2016 were adopted in 2013.

According to the plan (program) for privatization, the Russian Federation intends to cease its participation in non-mineral enterprises by 2016. This does not concern, however, natural monopolies, defense
industry companies, strategic companies and certain other entities and enterprises which are subject to special privatization rules.

The current legislation on privatization clearly demonstrates the harmonization of privatization processes and elimination of “cheap” methods of privatization.

14.3 Recent developments

In 2014 the following matters were excluded from the scope of the Current Privatization Law:

- alienation of state-owned movable assets (save for shares and participation interests) title to which was obtained by the state as a result of law enforcement procedures or by way of legal succession; and

- alienation of federal property to private persons in exchange for their private property used in connection with Sochi 2014 Winter Olympics.

Further, special rules for privatization of state-owned assets that are subject to concession agreements came into force on 1 February 2015. According to such new rules, private concessionaires will have a pre-emptive right to purchase the state-owned assets used under concession agreements, if such assets have been included into a plan (program) for privatization.
15. Language Policy

Under Article 68 of the Constitution of the Russian Federation, the state language throughout the territory of the Russian Federation is Russian. All official election materials, legislation, and other legal acts, must be published in the official state language.

In addition, the Constitution upholds the rights of each of the individual republics within the Russian Federation to establish its own state language. Thus, regional state bodies and local institutions of self-government within Russia’s 21 republics may conduct official state business in two languages: Russian and the republic’s national language.

There are a few other principle legislative acts dealing with language policy in Russia, in addition to Russia’s Constitution. These are: the Federal Law On the State Language of the Russian Federation, the Federal Law On the Languages of the Nations of the Russian Federation, the Federal Law On Protection of Consumer Rights, and the Civil Code of the Russian Federation (Article 1473). According to the abovementioned laws:

(i) All Russian state and municipal bodies, and all companies operating in Russia, including those owned by foreign investors, are required to use Russian in their activities, for example in book-keeping, tax reporting and office paperwork. Official paperwork in the national republics within Russia may also be conducted in those republics’ national language. Paperwork in the sphere of commerce may be also conducted in a foreign language as provided in respective agreements between commercial partners.

(ii) The names of companies operating in Russia must be either in Russian or expressed in Russian transliteration. It is normally permitted to also have a company name in a foreign language and/or the state language of a national republic within the Russian Federation in addition to the mandatory Russian
name. The company name of a legal entity in Russian and in the languages of nations of the Russian Federation may comprise borrowed foreign words in a Russian transcription or in a transcription of the languages of nations of the Russian Federation, except for the terms and abbreviations reflecting the legal entity’s legal form. A company whose name is inconsistent with the requirements of the law may be refused registration.

Use of the word “Rossiya” (Russia) or “Rossiyskaya Federatsia” (Russian Federation) in Cyrillic, or a derived name, for example “Rossiyskiy” (Russian) in Cyrillic in the name of a company requires a special permit from the Ministry of Justice of the Russian Federation, and exposes such company to certain tax consequences. Only those companies that have branch and/or representative offices in more than half the constituent entities of the Russian Federation, companies which are qualified among the largest taxpayers, companies dominant in a market with a more than a 35% market share, or companies in which more than 25% of the shares or of the charter capital is held by the Russian Federation, can apply for such a permit. However, use of words denoting ethnicity rather than the official country name, such as “Russkiy” or “Russkaya” in Cyrillic (translated into English also as “Russian”) does not require a permit, as was clarified by the Russian Supreme and Supreme Arbitrazh Courts.

(iii) All advertising in the Russian Federation must be either in Russian or in the particular state language of the individual republic in which the advertising appears.

(iv) Under the consumer protection regulations a consumer should be informed in a clear and accessible manner in the Russian language about the manufacturer (seller), the operating mode of its work and the goods (works, services) it produces or sells.
Foreign languages or state languages of individual republics within the Russian Federation may be used in addition to the Russian language, in which case the communications in Russian and in the other language must be identical in their content, sound and form of presentation. When using Russian as the state language of the country, it is prohibited to use words or expressions that are not consistent with the norms of the Russian literary language, except foreign words that do not have commonly used Russian equivalents.

There are a few exceptions to the requirement of mandatory usage of the Russian language outlined above. For example, trademarks and service marks expressed in the original (non-Russian) language of the trademark and registered in Russia may be used without being accompanied by a Russian equivalent.

In cases provided for in specific acts of Russian federal laws, a person who does not understand Russian is entitled to an interpreter. For example, it is guaranteed for those foreigners who are subject to criminal proceedings in Russia to have a Russian interpreter free-of-charge.

There is no single state authority responsible for enforcement of the Russian language policy in the territory of the Russian Federation. Some of the aspects of the language policy, in particular violation of Russian language norms in advertising, are overseen by the Russian Antimonopoly Service. The Russian Antimonopoly Service may penalize a company in violation of the applicable language rules with a fine and/or issue it an order requiring it to cease and desist from violating the law.
16. Civil Legislation

The adoption of the Civil Code of the Russian Federation in 1994 was one of the landmarks in Russia’s transition to a market economy and a fundamental work which followed the example of the civil codes of Germany, the Netherlands, Italy and Switzerland. However, unlike many other continental European jurisdictions where civil codes are equal in their legal status with any other civil laws, the Russian Civil Code prevails over other laws (including other federal laws) in the case of inconsistencies.

The Civil Code regulates virtually all elements of private law, with the notable exceptions of family law, housing law and transportation law, and consists of four parts.

Part I of the Civil Code came into effect on 1 January 1995 and Part II on 1 March 1996. Together these two parts serve as the legal basis for virtually every transaction in the Russian Federation.

Part I of the Civil Code provides the basics of Russian civil law and for such rights as the rights to own and inherit property; to engage in entrepreneurial activity; to establish independent legal entities, and provides for the protection of non-material attributes, in particular, defense of honor, dignity and business reputation. Part I also defines basic concepts of civil law such as a legal entity, securities, transaction, obligation, power of attorney and contract. Part I of the code provides that parties are free to enter into a contract, whether or not such type of contract is expressly recognized by law. Parties are free to conclude contracts containing elements of different types of contracts. Parties are free to agree on the terms of the contract they enter into unless the contractual terms are prescribed by Russian law. Part I further provides the rules for entering into contracts, such as an offer to make a contract and acceptance of the offer, conditional acceptance, late acceptance, conclusion of contracts at an auction.

Part I also provides for various instruments to secure the proper performance of a contract, such as pledge, surety, bank guaranty.
earnest money, withholding of property, penalty (fine). The parties to a contract may agree to any of the above to secure the performance of the contract, as well as other security not specifically listed in the Civil Code. Part I of the code also provides for the general grounds for alteration and termination of contracts. A contract may be altered or terminated by mutual agreement. If there is no agreement, a contract may be altered or terminated if there is either a material breach of the contract or if there is a substantial change in those circumstances that were the bases for the parties to enter into that contract.

Part II of the Civil Code further expands on the law of obligations. It contains provisions governing certain types of contracts: sale and purchase; swap contract; donation; annuity; rent; contractor’s agreement; provision of services; transportation; forwarding; loan; bank deposit; bank account; settlement; storage; insurance; agency; trust management; franchising and simple partnership contracts. In addition, Part II of the Civil Code provides for non-contractual obligations such as agency without authority, torts (including product liability), unjust enrichment, public contest, and public promise of a reward.

Many provisions of the Civil Code required the adoption of additional legislation. Such legislation includes the Federal Law “On Joint Stock Companies,” the Federal Law “On Limited Liability Companies,” the Federal Law “On State Registration of Legal Entities” and many other laws. Significant amendments to the Civil Code, and respective federal laws related to limited liability companies, pledge and mortgage, came into force in 2009. Instances remain, however, where appropriate lower level legislation has not been adopted — the absence of a direct multimodal transport law being one such example.

Part III of the Civil Code entered into force on 1 March 2002, covering the law of succession and conflict-of-law rules. Part III, Chapter V of the Civil Code (the Inheritance Law) details the rights of citizens to dispose of their property by devise, establishes priority categories of heirs-at-law (i.e. those who inherit absent a devise), and provides for other forms of inheritance. Legal entities and the state
may act as heirs. In addition to regular wills (which should be executed in writing and notarized), Chapter V provides for confidential wills and wills made in a simple written form.

Part III, Chapter VI (International Private Law) regulates transactions “complicated by a foreign element” i.e. transactions with a foreign citizen or with a foreign legal entity, or otherwise involving a “foreign element.” Generally, the parties to a transaction that is complicated by a foreign element are free to choose any law (either Russian or foreign) as the law governing their transaction; however, the law so chosen will not apply if it contravenes the public order of the Russian Federation or so called “super-mandatory rules” of Russian law.

Part III, Chapter VI of the code recognizes that foreign law may be applicable in Russia regardless of whether or not the choice of Russian law as applicable is honored in the respective foreign country. If the application of foreign law depends upon reciprocity, it shall be presumed that reciprocity exists. If the parties did not choose the law applicable to their transaction, the applicable law will be determined on the basis of the default rules of the Civil Code (Part III, Chapter VI). Generally, these conflict-of-law rules are based on the idea that a transaction should be regulated by the law of the country that has the closest connection to the transaction. The code contains conflict-of-law rules relating to both contractual and non-contractual (e.g. tort) obligations. Special provisions in the code determine the law applicable to international consumer transactions; assignment of rights; obligations arising from unilateral transactions; interest accrued on monetary liabilities; product and service liability; liability for unfair competition; unjust enrichment.

Part IV of the Civil Code, covering various intellectual property issues, came into force on 1 January 2008. These issues are discussed in more detail in a separate chapter of this brochure on IP.

In 2008 the President of the Russian Federation by his decree launched a full-scale reform of the Civil Code aimed at making the code more flexible, up-to-date and attractive to foreign investors. As
Doing Business in Russia

mentioned earlier, the Civil Code is one of the fundamental Russian laws underlying other Russian legislation and will therefore affect all companies doing business in Russia.

Certain important changes were already introduced into the code in 2013, and it is expected that a series of major amendments will continue during 2014–2015.

By way of example, on 1 March 2013 the law introducing the first set of changes to the Civil Code, which concern in particular the state registration of property, the principle of good faith in business and abuse of rights, came into force. According to these changes, from March 2013 there is no need to register transactions with real estate, instead only rights to real estate will require state registration. These changes were purported to end a burdensome system of double registration under which, for instance, the sale of an apartment required simultaneous registration of the sale and purchase contract as well as of the transfer of title to the new owner.

The principle of good faith in conducting business affairs was introduced into the Civil Code as one of the main principles of civil legislation. This is aimed at bringing Russian law closer to European rules where courts have greater flexibility in evaluating the business conduct of the parties. This will mean that bona fide participants of commerce should be better protected. For instance if a company’s rights are violated by the bad faith actions of a counterparty, the company will be able to seek protection even if that counterparty did not formally breach the terms of the relevant contract.

Acting in circumvention of the law is now to be classed as an abuse of rights. From now on such abuse of rights may result in the need to pay damages to those whose own rights are violated by such abuse as well as possibly more serious consequences such as invalidation of transactions concluded with an abuse of rights.

Other significant changes of 2013 include abolishment of the mandatory requirement for an international transaction to be in
writing, change in rules on challenging transactions making it less easy to challenge a transaction purely on formal grounds, introduction of new rules which envisage that a power of attorney can be irrevocable.

Among other changes expected in 2014 are new provisions on forms of legal entities and corporate governance, property rights (rights in rem), contract law and on intellectual property rights.
17. Intellectual Property

17.1 Regulatory Environment

Russian IP legislation consists for the most part of the Civil Code of the Russian Federation, specifically Part IV put into force by Federal Law No. 230-FZ, dated 18 December 2006. Part IV of the Civil Code along with Federal Law No. 231-FZ “On Enacting Part IV of the Civil Code of the Russian Federation,” dated 18 December 2006, have replaced or amended all preceding individual IP laws as of 1 January 2008. Part IV of the Civil Code is a codification of pre-existing IP laws, which have been compiled as chapters in Part IV of the Civil Code with some significant amendments. Parts I–III of the Russian Civil Code also set out certain general provisions pertaining to legal protection of IP rights. Federal Law No. 35-FZ, dated 12 March 2014, introduced a vast set of amendments to Part IV of the Civil Code, part of which entered into force on 1 October 2014 and the second part — on 1 January 2015.

Any foreign legal entity or individual may seek protection for its/his/her intellectual property rights in Russia, provided that the requirements of the law are satisfied. Russia is a signatory to major international treaties on intellectual property rights, including the Universal Copyright Convention, the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty, the Madrid Agreement on the International Registration of Trademarks, the Protocol to the Madrid Agreement, the Singapore Treaty on the Law of Trademarks, the Trademark Law Treaty, the Patent Law Treaty, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, the Brussels Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, the Nairobi Treaty on the Protection of the Olympic Symbol, the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure, the Strasbourg Agreement Concerning International Patent Classification, the Locarno
Agreement Establishing an International Classification for Industrial Designs, the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, the WIPO Performances and Phonograms Treaty, and the WIPO Copyright Treaty.

17.2 Patents

An invention is a technical solution in any field related to a product (inter alia, to a device, substance, microbial strain, or cell culture of plants and animals) or a method/process. Patent protection is given to an invention if it is novel, inventive (non-obvious from prior art) and industrially applicable. The maximum duration of patent protection for an invention is 20 years from the application filing date, subject to payment of annuities. The term of a patent for an invention related to a medicine, pesticide or agrochemical, the use of which is subject to obtaining special permission (Marketing Authorization), may be extended at the request of the patent owner for a period not exceeding five years. The right to obtain a patent belongs to the inventor, his/her employer (in case of an employee’s invention) and their assignees. A patent application is filed with the Federal Service for Intellectual Property, Patents and Trademarks (“Rospatent”).

A utility model is a technical solution pertaining to a device. Utility model protection is similar to that of inventions, with certain limitations and restrictions. A utility model is granted patent protection if it is novel and industrially applicable. The term of a utility model’s patent protection is ten years from the application filing date, subject to payment of annuities, and may be extended for an additional period not exceeding three years. One application can cover only one device, variants have not been possible since 1 October 2014.

An industrial design is an artistic and construction solution that determines the outer appearance of a product of industrial or handicraft origin by its images. An industrial design is granted patent protection if its essential features as present on the images are novel
and original. An industrial design is deemed novel if the combination of its essential features from the images is not known from information publicly available in the world before the priority date of the industrial design. An industrial design is considered original if its essential features from the images evince the creative character of a product’s distinctive features. Legal protection of industrial design patents granted prior to 1 January 2015 lasts for 15 years, subject to payment of annuities, and with the possibility of extension for an additional period specified in the application, but not exceeding ten years. Starting from 1 January 2015 the initial term of industrial design patent validity lasts for five years, extendable four times for an additional five years (25 years in total).

Russia has two valid patent systems for inventions: national and regional. The regional patent system is based on the Eurasian Patent Convention of 1995 (the “Convention”), which enables one Eurasian patent to cover eight countries that are members of the Commonwealth of Independent States. Russia is a member state of the Convention. Both Russian and Eurasian patents for inventions can be obtained to protect an invention in Russia. Utility models and industrial designs are not covered by the Convention and can be protected only under national patent law.

A granted Russian patent may be invalidated on a limited number of grounds, such as the patented invention, utility model or industrial design not complying with the conditions of patentability established by Russian patent law; the patented invention, utility model or industrial design not being sufficiently disclosed to enable implementation by a skilled person; the patent being issued when there were several applications for identical inventions, utility models or industrial designs having one and the same priority date; the patent indicating as the author or patent holder a person not being such or without an indication in the patent of the author or patent holder.

A patented invention or utility model will be deemed used in a product or by a method if the product contains, or the method uses, each feature of the patented invention or utility model stated in an
independent claim of the invention or utility model, or a feature equivalent thereto. Equivalence of a feature is generally assessed according to the criteria of identical or adequate replacement and achievement of the same technical function/effect.

Patent rights are protected by the remedies contained in the Civil Code of the Russian Federation (see section 17.11 below) and are applicable at the request of right holders and/or exclusive licensees under the authorization thereof.

Preliminary or interim injunctions are available but rarely granted in patent cases at present. It is more realistic to obtain preliminary or interim injunctions in case of a repeated infringement that has already been proven in other litigation in respect of the same patented product or process.

There are also criminal and administrative proceedings available for patent disputes but these are rarely used.

**Summary of specific issues of patent litigation in Russia**

It is necessary to have all information and evidence at hand before initiating the action since:

- there is no discovery;
- courts frown upon requests aimed at obtaining information from third parties;
- once initiated the proceedings move quickly;
- judges rely heavily on forensic examination results, thus it is necessary to engage suitable experts to recommend for the forensic examination.

Patent invalidity is not a defense in patent infringement actions since these are two different types of action. The Chamber for Patent Disputes of the Russian Patent Office handles invalidity actions.
Russian courts handle patent infringement suits. At that, if a patent is invalidated partially or in whole a patent infringement court case may be dismissed or reconsidered.

It is necessary to be careful in drafting claims as ambiguous claims may be rejected by the court even if the plaintiff has sufficient evidence to prove infringement.

The IP court, which has operated in Russia since 2013, currently considers patent disputes as a third (cassation) court instance (see Section 17.12 below).

Under Russian law it is possible to assign or license an invention, utility model and industrial design protected by a patent to another person. Such assignment and license agreements must be recorded with Rospatent, failing which the transfer (grant) of the rights is deemed not to have taken place. These agreements enter into force as of the date of such recording. The patent owner has the sole right to use an invention, utility model or industrial design that is protected by such a patent. Without the patent owner’s permission no one is allowed to use a patented object in any way, including importation, manufacture, application, offer for sale, sale or other introduction into commercial turnover, or storage for this purpose. Infringement of patent rights may entail civil, administrative or criminal liability in accordance with the applicable legislation.

17.3 Trademarks, Service Marks, Trade Names and Appellations of Origin of Goods

Under Part IV of the Civil Code, trademarks (and service marks) are designations individualizing goods or services of legal persons and individual entrepreneurs. A mark may be represented by a word or words, pictures, three-dimensional signs and other designations or combinations thereof. A trademark may be registered in any color or color combination.
Legal protection of trademarks and service marks is granted by virtue of their registration with Rospatent or by virtue of international agreements to which the Russian Federation is a party. Russia is a “first-to-file” jurisdiction. Although unregistered signs used as trademarks do not enjoy legal protection, extensive pre-filing use may help to demonstrate acquired distinctiveness if the trademark is inherently non-distinctive.

It is advisable to conduct a preliminary search of senior rights among registered trademarks and pending applications designating similar goods and services prior to any use or filing of a trademark for registration. The Russian trademark legislation does not provide a formal opposition procedure. Trademarks maybe challenged by third parties only after registration, however it is possible to submit an “informal opposition” with objections against granting registration while the undesirable trademark is still pending. All applications are examined by Rospatent for compliance with formal and substantive requirements, including absence of conflict with a prior right. A coexistence agreement with the holder of a prior right (or its written consent to registration) may help to overcome a provisional refusal.

Trademark protection is granted for ten years from the filing date of the application, and may be renewed during the last year of validity for a subsequent ten-year period. Unless it is renewed a trademark registration lapses. Trademark protection may be terminated upon a request from an interested party in respect of all or part of the designated goods and services due to non-use of the trademark or service mark during any continuous three year period after the registration date and within three continuous years before the cancelation request is filed. Any changes which might affect the registration, such as changes of name and/or address of the trademark owner, assignments, mergers or other transactions, must be recorded as soon as possible.

Extensively used trademarks and unregistered signs may be recognized as well-known marks in Russia. Legal protection of a well-known trademark is perpetual, retrospective and under certain
circumstances not limited to goods and services in regard of which the registration has been granted. Therefore, the procedure of recognizing a trademark well-known may be used in order to ban use of identical or confusingly similar trademarks owned by third parties for other goods and services, without it being necessary to have the renowned trademark registered in all classes of goods, thus risking cancellation based on non-use. Trademark and service mark assignments and licenses must be registered with Rospatent. In the absence of such registration the transfer of the respective rights to the trademark is deemed not to have taken place.

**Trade names** are protected by the Civil Code. Part IV of the Civil Code contains a special section concerning legal protection of trade names. Trade names (so-called “commercial designations”) are designations which individualize trading, industrial or other types of enterprises owned by legal entities and individual entrepreneurs. Trade names differ from company names in that they do not require registration and are not subject to obligatory incorporation into the foundation documents of the trade name owners. The owner of a trade name enjoys an exclusive right to its trade name and may use it by any lawful means. The exclusive right to a trade name arises if the designation which is used as a trade name possesses sufficient distinctiveness and its use has gained notoriety within a certain territory. The scope of protection of a trade name used for the purpose of individualization of an enterprise located in the Russian Federation is limited to the territory of the Russian Federation. An exclusive right to a trade name terminates if the owner of the trade name fails to use it during a continuous one-year period. A trade name owner may grant the right to use its trade name to another person under a lease of enterprise agreement or a franchising agreement.

**An appellation of origin** of goods is a name constituting or containing a current or historical denomination of a country, settlement, locality or other geographic unit (hereinafter referred to as a “geographic unit”) or a derivative of such denomination that has become known as a result of its use with respect to goods, the specific features of which are mainly or exclusively determined by natural
conditions or human factors which are characteristic of such geographic unit. A designation which, though representing or containing the name of a geographic unit, has entered into the public domain in the Russian Federation as a designation of goods of a certain kind (has become generic) and is not related to the place of manufacture of said goods, may not be deemed to be an appellation of origin of goods. Legal protection is given to an appellation of origin of goods based on its registration with Rospatent. An appellation of origin of goods may be registered in the name of one or more persons. The person or persons that have duly registered an appellation of origin of goods obtain the right to use such appellation, provided that the goods manufactured by such person(s) satisfy the criteria mentioned above. The right to use an appellation of origin of goods may be granted to any legal entity or individual which produces goods with the same specific features within the same territory. The protection is granted for ten years from the date of filing the application, and may be renewed for subsequent ten-year period. The owner may not grant licenses for use of the appellation of origin of goods.

Infringement of rights to a trademark, service mark or appellation of origin of goods may entail civil, administrative or criminal liability.

17.4 Company Names and Trade Names (Commercial Designations)

Company names are designations that identify or distinguish different legal entities when conducting their commercial activities. Legal protection of company names is provided by the Civil Code and the Paris Convention for the Protection of Industrial Property, to which the Russian Federation is a party. In the Russian Federation a company name consists of two parts: the indication of a business’s legal structure and the distinctive name of the company. A company may use the official name of the Russian Federation or any words derived therefrom in its company name only with the consent of the Russian Government. The right to a company name arises from the moment of state registration of the legal entity. The owner of a
company name is allowed to use its company name exclusively, and to prohibit others from its unauthorized use. The owner of a company name may not alienate its company name or grant the right to use it to another person. A legal entity may not use a company name that is identical or confusingly similar to the company name of another legal entity if both entities are engaged in similar business activities and the company name of the former legal entity has been incorporated in the state register of legal entities prior to state registration of the latter. A legal entity illegally using the company name of another legal entity is obliged to cease such use at the request of the company name owner and to compensate for any losses caused. A company name owner may use its company name or its individual elements as a part of its trade name or a trademark (service mark) belonging to the company name owner. A company name incorporated in a trade name or a trademark (service mark) is protected regardless of the protection of the trade name or the trademark itself.

17.5 Domain Names

Part IV of the Civil Code of Russia does not list domain names among objects of intellectual property, nor does it contain a legal definition of a domain name. A registered domain name by itself is not considered as a prior right impeding registration of a trademark, unless at the date of trademark application the website is famous enough for Rospatent to find that registration of the trademark may lead to customer confusion.

Please note that.RU domain names are registered in Russia on a “first-come, first-served” basis by several registrars. When registering domain names, the registrars neither check nor require domain name applicants to prove that they have a legitimate right to use the names they seek to register.

Pursuant to Part IV of the Civil Code, no one may use, without the permission of the trademark owner, designations that are confusingly similar to a trademark in respect of goods and services for the individualization of which the trademark was registered, or similar
goods. The law specifies some acceptable forms of use of a trademark by its owner. The exclusive right to a trademark may be exercised, in particular, by use of the trademark on the Internet, including its use in domain names and other means of address.

In the recent years the number of disputes over domain names has significantly increased.

There is no procedure similar to the Uniform Domain-Name Dispute-Resolution Policy in Russia; therefore, all domain name disputes that are not amicably resolved need to be taken to a court of law. In practice domain name disputes are usually submitted to arbitrazh (state commercial) courts (regardless of whether the defendant is an individual or a legal entity) as claimants (owners of trademarks valid in Russia) are either legal entities or individual entrepreneurs.

According to the recent practice of the Higher Arbitrazh Court\textsuperscript{76}, courts should verify three criteria for finding a domain name holder responsible for a trademark infringement:

\begin{itemize}
\item whether the domain name at issue is confusingly similar to the trademark;
\item whether the domain name holder has any rights or legal interests with respect to the domain name;
\item if the domain name is registered and used in bad faith.
\end{itemize}

Consequently, if the registrant of a confusingly similar domain name has acquired it and uses it in good faith for activities unrelated with the goods and services of the trademark holder, it is highly unlikely that the court will rule in favor of the trademark owner, especially if

\textsuperscript{76} Although on 6 August 2014 the Higher Arbitrazh Court was merged with the Supreme Court of the Russian Federation, the decisions and guidelines on domain name issues of the former are still observed by the lower courts.
the domain name was acquired prior to the registration of the trademark.

In addition, it is worth noting that even if the trademark in question hasn’t been actually used by its owner, the disputed domain name registration may be considered illegal and infringing upon the trademark owner’s rights (in accordance with the practice of the Higher Arbitrazh Court).

17.6 Copyrights and Neighboring Rights

Part IV of the Civil Code protects works of science, literature and the arts (copyright), and grants protection to the rights of performers, phonogram producers, broadcasting and cable-casting organizations, database compilers and publishers (neighboring rights). Copyright protection arises by virtue of the creation of a work of art without any registration requirements. An author enjoys personal (moral) rights (right of authorship, right to the name, right to public disclosure, right to protect the author’s reputation) and proprietary rights (right of reproduction, distribution, import, public demonstration, public performance, translation, modification, etc.). Personal (moral) rights are inalienable from the author and cannot be assigned or transferred by agreement. The proprietary rights to a copyrighted object may be licensed or assigned by virtue of a copyright agreement. Part IV of the Civil Code allows for the transfer of copyright in the form of an exclusive or non-exclusive license agreement as well as by an assignment of copyright. The term of copyright protection for all works, including software programs or databases, is the lifetime of the author plus 70 years after his/her death. The author’s moral rights (right of authorship, right to the name and right to protect the author’s reputation) are protected perpetually. Infringement of copyright may entail civil, criminal or administrative liability.
17.7 Software Programs and Databases

Copyright protection also applies to software programs and databases. Pursuant to Part IV of the Civil Code, software programs are protected as literary works, while databases are protected as compilations. Although registration is not mandatory for protection, an author may optionally register and deposit software or a database with Rospatent. Assignments of registered software and databases must be recorded with Rospatent. A software program or a database is protected for the lifetime of the author(s) plus 70 years after his/her (their) death(s). The right to use a software program may be granted under a software license agreement.

17.8 Topologies of Integrated Microcircuits

In accordance with Part IV of the Civil Code, legal protection is granted with regard to original topologies of integrated microcircuits, developed as the result of an author’s work. The author enjoys the exclusive right to use the topology as he/she sees fit, including the prohibition of its unauthorized use by third parties. The rights to a topology may be transferred fully or partially to another person under a written assignment agreement or license agreement. Although the registration of a topology is not mandatory for its protection, an author may voluntarily register it with Rospatent. The exclusive right to use the topology is effective for ten years from the date of its initial use or from the date of the topology’s registration, whichever is earlier.

17.9 Trade Secrets and Know-How

Use of trade secrets (know-how) is regulated by the Russian Civil Code (Part IV) and Federal Law No. 98-FZ “On Trade Secrets,” dated 29 July 2004, as amended (the “Trade Secrets Law”).
According to the Civil Code, confidential information may be treated as a trade secret (know-how) and be protected intellectual property only if:

- such information has actual or potential commercial value being not known to third parties;
- there is no free legal access to such information; and
- the owner of such information takes reasonable measures to maintain such information’s confidentiality including establishment of a special trade secrets regime with regard to such information.

All these three criteria must be met in order for information to be protected as a trade secret (know-how) and recognized as intellectual property under Russian law. If any of these criteria is not met the entity might be unable to protect its trade secrets (e.g. to initiate criminal or administrative prosecution for violation of the trade secrets regime, to claim damages, to dismiss an employee for disclosure, etc.).

Pursuant to the Trade Secrets Law, the trade secrets regime includes the following steps and actions to be taken by an entity in order to protect (and have others respect) its trade secrets (know-how):

- to create a list of information constituting a trade secret;
- to limit access to the information constituting a trade secret by establishing and implementing controlling procedures;
- to list the persons who have access to the information constituting a trade secret and/or who have been given access to the information constituting a trade secret or to whom such information was transferred;
- to regulate the relations on use of the information constituting a trade secret by employees on the grounds of employment.
agreements and by contractors on the grounds of civil agreements; and

- to affix “trade secret” markings on tangible media (documents) containing the information constituting a trade secret with a reference to the owner of such information with its full name and address.

The trade secrets regime is deemed established if and when the owner of the information performs all the above-mentioned actions. Otherwise, the company might be unable to prove that certain confidential information constitutes know-how under Russian law and, consequently, to protect its know-how as valid intellectual property.

17.10 Employee’s Developments

As a general rule of Russian law, an employer obtains rights in the intellectual property (including the exclusive right) created by an employee strictly within his/her employment duties. Therefore, to ensure that all rights are owned by the employing company, it is essential to ensure that employment agreements and other relevant documents with Russian developers are drafted in such a way that all rights in and to the intellectual property created by the developers are fully and duly vested in the employer and are consequently wholly owned by the employer without any limitations or encumbrances.

In most cases employees create patentable intellectual property and copyrighted works.

The amount of remuneration for creation of intellectual property and its payment to an employee is agreed between the employee and the employer in an agreement. Without such agreement, a court decides on the amount of remuneration and its payment should a dispute arise between the parties.
To ensure that all rights to the intellectual property created by employees are vested in the employer the latter should take the following steps:

- an employment agreement as well as any other employment documents (i.e. employment instructions) should ensure that creation of intellectual property is a duty of the employee;

- ensure that the employment agreement envisages that the remuneration for creation of intellectual property is included into the employee’s salary or, alternatively, the employee and the employer enter into a stand-alone agreement on the remuneration;

- the employer should take measures provided by the Russian Civil Code (Part IV) and in the time stipulated therein to keep the ownership to the intellectual property created by its employees (i.e. keep the created intellectual property confidential, file a patent application with Rospatent, start to use the created intellectual property, etc.).

17.11 License and Franchise Agreements

Under a general rule of Russian law, a grant of the right to use intellectual property in Russia must be in the form of a license or franchise agreement made in writing and signed by both parties.

The grant of rights to registered patents or trademarks under a license agreement or a franchise agreement is subject to mandatory state registration with Rospatent. Without such registration with Rospatent the license/franchise would be considered invalid in Russia.

Under recent amendments to the Russian Civil Code that came into force on 1 October 2014, the grant of rights under a license/franchise agreement can be registered on the basis of a notification executed by both licensor and licensee (franchisor and franchisee) and filed with Rospatent. Such notification must contain the essential terms of the relevant agreement. Alternatively, to register the grant of rights to use
intellectual property under a license / franchise, the parties can file a notarized extract from the relevant agreement or the agreement in its entirety with Rospatent.

At the moment it is not precisely clear how the new registration regulations will actually work. It is anticipated that there will be some ambiguity in implementation and enforceability of those license and franchise agreements or parts of them or amendments thereto that are not be submitted to and registered with Rospatent.

License and franchise agreements between an international licensor/franchisor and a Russian licensee / franchisee may be governed by non-Russian law. However, certain mandatory Russian law provisions and requirements would be applicable to license and franchise agreements irrespective of the parties’ choice of law. For instance, a license/franchise agreement must provide a detailed description of the licensed intellectual property (e.g. registration numbers and registration dates for licensed trademarks) and specify the scope of rights granted to a licensee. From the Russian law perspective the right to use certain intellectual property that is not specifically provided in a license agreement is considered not granted.

Under Russian law, a franchisor is subsidiarily or even jointly and severally liable with a franchisee with regard to claims brought against the franchisee in respect of the quality of franchised goods and/or services. The scope of such liability differs depending on whether or not the franchisee manufactures those goods in connection with which a claim is brought under the franchise agreement. For a trademark license, a trademark licensor would be jointly and severally liable with a licensee in connection with claims brought against the licensee in connection with its manufacture of goods and rendering of services under the licensed trademark.

Such Russian law provisions and requirements, among others, should be considered in connection with license/franchise agreements that grant the right to use any intellectual property registered and/or protected in Russia.
17.12 IP Enforcement. IP Court

Infringement of intellectual property rights entails civil, administrative or criminal liability.

**Criminal and administrative actions** are initiated by the police, the customs, the Federal Antimonopoly Service, or by the mark owner filing a complaint with one of the above agencies. To qualify for criminal proceedings, the infringement must have caused substantial damage to an IP right/trademark owner or consumers. The authority in charge will investigate the case and pass their findings on to the court. The decision of the court of first instance may be further appealed in the court of appeals and in the cassation court.

In Russia legal entities cannot be held liable for a **criminal offense**. Criminal charges may be lodged against the director(s) of the entity responsible for infringement of copyright and related rights (article 146 of the Criminal Code), patent (article 147 of the Criminal Code), trademarks, service marks and appellations of origin (article 180 of the Criminal Code). Depending on the scale and gravity of the crime, the court hearing the criminal case may adjudge a punishment in the form of a fine, mandatory community service, correctional labor or imprisonment.

Administrative sanctions (fines, confiscation of infringing goods) are applicable both to individuals and legal entities. The sanctions applied to legal entities are stricter than those applied to individuals. If a legal entity repeatedly or grossly infringes IP rights, the court may decide to liquidate it.

A civil claim may be filed in a criminal trial, but to obtain damages in case of administrative liability, the trademark owner must file a civil lawsuit in parallel.
Remedies under civil proceedings include:

- Declaration: recognition of the right when a person either denies or otherwise does not recognize the exclusive rights and by doing so violates the interests of the right holder;

- Injunction: stopping the actions that infringe the right or create the threat of infringement;

- Payment of damages or — alternatively for patent, trademark, appellation of origin, copyright and related rights holders — of monetary compensation in the amount:
  - from RUB10,000 to 5 million (approx. USD178 to 89,000), or
  - of double the royalties that would be due under similar circumstances;

- Seizure of material utilized by the manufacturer, importer, holder, carrier, seller, distributor or non-bona fide acquirer; and

- Proclamation: publication of a court decision on an infringement.

The Court for Intellectual Property Rights (“IP Court”) is the first IP-dedicated civil judicial body in Russia. It became operational on 3 July 2013. It has exclusive jurisdiction to consider disputes involving intellectual property rights and acts both as the court of first instance and the court of cassation.

- As the court of first instance, the IP Court resolves disputes involving challenges of acts of federal state authorities in the IP area as well as various disputes related to granting or terminating the legal protection of IP, including decisions of the federal antimonopoly authority on recognizing actions related to the acquisition of exclusive rights to the means of
individualization of legal entities, goods, works, services and businesses as unfair competition;

- Within its capacity as the court of cassation, the IP Court considers cases it had previously resolved as a court of first instance as well as cases related to the protection of IP resolved by other arbitrazh courts across the country;
- The court is authorized to resolve all disputes mentioned in federal legislation regardless of the parties involved in the case;
- Judicial decisions passed by the IP Court as the court of first instance can not be appealed other than by way of cassation appeal and come into force immediately after adoption.

The IP Court resolves IP disputes collegially in the first instance and in cassation, while the Presidium of the IP Court reviews cassation appeals in cases considered by the IP Court in the first instance.

17.13 Russia’s New Anti-Piracy Legislation

In August 2013 Russia introduced country-wide blocking injunctions for the rights owners of movies and TV shows and codified safe harbor principles for information intermediaries.

Starting from 1 May 2015 blocking injunctions will also become available to owners of other categories of copyrighted content (with the exception of photographs).

Applications seeking preliminary injunctions are to be filed with the Moscow City Court. Alongside the regular “paper” method there will be an option of filing the application through an on-line form at the website of the Moscow City Court. In both scenarios, the applicant must prove the infringement and provide sufficient evidence of the existence of the relevant rights. As it stands, Moscow City Court is the only venue to consider disputes involving placement of infringing content on the Internet.
Once the injunction is granted, the Moscow City Court appoints a deadline for filing a claim (no more than 15 calendar days). If the claim is not filed, the preliminary injunction will be withdrawn. The ruling imposing the injunction will be published on the website, sent to the applicant and the Telecom Regulating Authority (Roskomnadzor). The adverse party is entitled to request the court to bind the applicant to provide an indemnity to cover potential damages.

Further, the law provides for a procedure of executing injunctions by Roskomnadzor. Roskomnadzor must identify the ISP; send a notice with details that will enable the identification of the particular website and work (name of the work, author, rights holder, IP address) and record the date when it was sent out.

The ISP must inform the customer and request immediate removal of the infringing information within one business day. If the customer takes no action the ISP must limit access within three business days after the receipt of the notice by the customer. Should the ISP fail to perform such actions, this information will be sent to the relevant network operator, who must block this website/web page within one day.

The law explicitly states that the ISPs can not be held liable for limitation of access to the Internet under this procedure.

**Liability of Internet service providers (ISP):**

There are three types of providers identified by the new law:

- persons performing transmission of materials in networks (i.e. access providers);
- persons providing the possibility of placing materials in networks, or information required for obtaining such materials (i.e. website and platform operators); and
• persons providing the possibility to access materials placed in networks (e.g. hosting providers).

An Internet access provider can not be held liable if it (i) does not initiate the transmission, (ii) does not alter materials (except for technical purposes), (iii) is not and could not have been aware that use of the materials by the person initiating their transmission is illegal.

A website and platform operator can not be held liable if it (i) is not and could not have been aware that use of the respective intellectual property in such materials is illegal, (ii) receives written notice of an infringement and expeditiously takes necessary and sufficient measures.

With respect to persons providing the possibility to access materials placed in networks, the law just says that the above rules apply to this category, without any further specifications.

Notwithstanding the above, the new legislation states that even if the above requirements are met by an ISP, it is still possible to file an infringement claim against the ISP, however the relief will be limited and will not include damages or statutory compensation.
18. Insolvency

18.1 Overview

Russia has had a series of insolvency regulations and laws in place since 1992, which have been subject to regular changes and amendments. Russian insolvency law is rather extensive and provides several options including reorganization and rehabilitation of an insolvent company and debt rescheduling for natural persons as an alternative to liquidation/bankruptcy.

In practice, insolvency is not yet widely viewed as a reliable and transparent process for resolving debtor-creditor issues. To date, creditors often view it as a process used by debtors to transfer assets and avoid creditors; hence the concept of “sham insolvency” is addressed in the legislation as well as the concepts of suspicious and preferential transactions of a debtor, which may be challenged during insolvency proceedings.

A recent amendment that substantially influenced attitudes to bankruptcy is the introduction of liability for controlling persons (i.e. management, shareholders, participants and other persons affiliated somehow with a debtor) responsible for the bankruptcy of a company.

Under the current legal framework, Russian insolvency law applies only to individuals who are registered as sole entrepreneurs, and legal entities. Separate rules are applied with respect to the bankruptcy of core companies, farms, financial organizations (e.g. banks, insurance companies, etc.), strategic enterprises, natural monopoly entities and developers.

18.2 Legislation

Insolvency and restructuring in Russia is governed by Part I of the Civil Code of the Russian Federation and by Federal Law No. 127-FZ dated 26 October 2002 “On Insolvency (Bankruptcy)” (as amended) (the “Insolvency Law”). In addition, there are extensive rules and
regulations adopted by the government, the Ministry of Economic Development and various state bodies, in addition to court decisions from the Supreme Arbitrazh [State Commercial] Court and other courts, designed to standardize insolvency in practice.

In 2014 the rules related to signs of bankruptcy were amended. A debtor or creditor is empowered to file a petition with a court for bankruptcy if the debtor’s overall indebtedness exceeds RUB300,000 (approx. USD5,300) for legal entities and RUB500,000 (approx. USD8,900) for individuals.

From 29 January 2015 the tax authorities and banks are entitled to initiate bankruptcy proceedings against debtors if their debts are at least three months overdue.

There are also several draft laws pending in the State Duma (Russian Parliament) and the Russian Ministry of Economic Development aimed at improving the legislation and resolving various issues related to bankruptcy proceedings.

18.3 Procedure

Insolvency procedure may be initiated against a debtor in case it fails to satisfy creditors’ claims or to effect obligatory payments (tax, duty payment, etc.) within three months from the date the above claims and/or obligations become due. The Russian insolvency procedure can be initiated either by creditors, authorized state bodies, or by the debtor itself. Creditors can file a petition to begin insolvency proceedings only after obtaining a court judgment that a debtor owes them in excess of RUB300,000 (approx. USD5,300) — in relation to legal entities, or in excess of RUB500,000 (approx. USD8,900) — in relation to individuals. The requirement for a court judgment was designed to protect debtors from frivolous filings. Its downside is that it causes delays for creditors seeking to quickly initiate the procedure.

77 After 29.01.2015
This rule has an exception for credit institutions, which may initiate bankruptcy proceedings without a court judgment based on signs of insolvency of the debtor under the condition that they file a notification with a public state registry 15 days prior to initiating such proceedings.

The law requires debtor companies and individuals to file a petition for insolvency within a month of determining that satisfying one creditor would make it impossible to satisfy their other debts in full.

Once the grounds of the petition for insolvency have been verified, the debtor company enters the first phase of the procedure, which is called supervision. Each insolvency process involves a supervision period. Other phases, which will vary depending on the circumstances of the insolvency, include financial rehabilitation, external management, liquidation and amicable settlement.

The information which is subject to publication under the Insolvency Law should be included in the Uniform Federal Register of Information on Bankruptcy and should be published in “Kommersant” newspaper.

18.3.1 Supervision

The supervision stage is mainly aimed at having a court-appointed temporary (bankruptcy) administrator secure and value the debtor’s assets and compile a list of creditors. Once these tasks are completed, the first creditors’ meeting is convened to decide on the next steps.

During the supervision stage, the debtor’s business is run to a large extent in the same way as before, since the temporary administrator has only limited powers over the debtor’s activities. The company’s management remains in place, unless the administrator receives court approval to dismiss the management. If the management is dismissed, the new management is appointed by the court from among candidates proposed by a representative of the company’s shareholders.
At the same time there are certain limitations imposed by law which need to be taken into account. First, during the supervision stage the temporary administrator’s approval is required (i) for any transactions with company’s assets with a value of 5% or more of the book value of the debtor’s assets as of the date of commencement of the supervision, (ii) for granting/receiving loans, assignment of rights, transferring debts, granting guarantees/suretyships, putting the debtor’s assets into trust. Second, the debtor (its management bodies) is prohibited from buying shares from its shareholders, issuing bonds or paying dividends, from taking decisions on reorganization, liquidation, establishment of branches or representative offices or participation in joint ventures, associations and holding companies.

At the end of the supervision stage the temporary administrator submits a report to the court. On the basis of this report and the decision of the creditors’ meeting the court takes a decision on further procedures to be applied to the debtor.

The supervision stage should last for not more than seven months, although sometimes this period is extended.

18.3.2 Financial Rehabilitation

This procedure is rarely used in practice. It could be introduced if a company’s creditors and the court believe that there are reasonable chances of the debtor avoiding bankruptcy liquidation. During this stage the debtor’s management remains in place and the business is carried out to a large extent as during the supervision stage, with certain minor exceptions.

At the financial rehabilitation stage a debtor presents a plan for repayment of the outstanding payments (debts) which can envisage, among other things, the writing-off of an important part of such debts. If the debtor succeeds in repaying its debts then the bankruptcy proceedings are terminated.

In our experience this stage can be extremely effective, especially if you find an investor prepared to invest into and develop the business.
18.3.3 External Management

External Management is aimed at restoring the debtor to financial health. The debtor’s management is dismissed and a court-appointed administrator manages the debtor according to an external management plan, which is prepared by the administrator and approved at the creditors’ meeting. External management must be completed within 18 months, but in some instances this term can be extended.

18.3.4 Bankruptcy Liquidation

Note that in contrast to other jurisdictions where insolvency proceedings are often used as a tool to defend a company from its creditors and to help it recover from a difficult financial situation, in Russia most insolvency proceedings end up with liquidation of the company. Thus, bankruptcy liquidation is very often ordered by courts after the supervision stage.

At this stage all the debtor’s assets are sold to pay creditors’ claims in the order prescribed by law. Once the liquidation is completed, the debtor is wound up and ceases to exist. The bankruptcy liquidation could take from six months to six years to complete, where the actual term largely depends on the size of the company and its business, number and complexity of creditors’ claims as well as the number of claims brought by the bankruptcy administrator.

18.3.5 Amicable Settlement

A company’s creditors and the debtor are entitled to sign a settlement agreement at any stage of insolvency proceedings. Such an agreement will be subject to the court’s approval. Once a settlement agreement is concluded and approved by the court, the bankruptcy proceedings are terminated.

18.3.6 Bankruptcy manager

The Bankruptcy Law provides that a debtor (if it initiates bankruptcy proceedings) or a creditor should propose a candidate to be nominated
as bankruptcy manager. The nominee should be a bankruptcy manager of a professional Russian self-regulating organization establishing and monitoring requirements and standards for bankruptcy managers. If the court concludes that the proposed candidate meets the legal requirements, the court approves this candidate as bankruptcy manager.

Note that the bankruptcy manager plays a key role in the bankruptcy procedures and it is very important who this person is. It is noteworthy that the bankruptcy manager is empowered to request that a debtor’s shareholder(s) be made vicariously liable or claim for the invalidation of transactions entered into by an insolvent company prior to or after the commencement of the bankruptcy proceedings.

18.4 Challenging transactions

Transactions of the debtor may be challenged under the Insolvency Law on the following insolvency specific grounds: suspicious and preferential transactions. The changes adopted in 2014 have extended the scope of persons entitled to challenge transactions beyond only arbitrage administrators. Now a bankruptcy creditor with more than 10% of the total bankruptcy claims in the register of claims has also been given the right to challenge transactions.

Two types of transactions are defined as suspicious, namely undervalue transactions and transactions that are deemed to infringe the rights of the debtor’s creditors. An undervalue transaction can be overturned by the court in insolvency proceedings if it is proven that:

- the counterparty to such transaction provided incommensurate consideration to the debtor; and
- the transaction is concluded within 1 year prior to, or after the initiation of, insolvency proceedings against the debtor.
A transaction which is deemed to infringe creditors’ rights may be challenged if the following conditions are simultaneously met:

- the conclusion of the transaction was intended to prejudice creditors’ rights and has resulted in such infringement;
- the counterparty to the transaction was aware or should have been aware of the aim of such transaction;
- the transaction was concluded within 3 years prior to, or after the initiation of, insolvency proceedings against the debtor.

A transaction gives preference to an existing creditor and may be challenged if such transaction concluded within 6 months (in some cases within 1 month) prior to or after the initiation of insolvency proceedings against debtor and if such transaction:

- provides for security for an existing creditor; or
- entails any change of priorities in which the existing creditors’ claims are satisfied; or
- may entail satisfaction of claims that have not yet matured; or
- results in preferential satisfaction of claims of one creditor over other creditors’ claims.

If a transaction is invalidated under the above grounds, the court will apply restitution and all assets transferred under such transaction will be returned to the debtor and form part of its insolvency estate. The claims of the counterparty under the invalidated transaction, which is deemed to infringe creditors’ rights and certain types of preferential transactions, may only be satisfied after satisfaction of all claims of creditors of all priorities. Claims of recipients of invalidated undervalue transactions may be satisfied in the third priority together with other unsecured claims.
18.5 Priority of Claims

Russian law envisages the following ranks of claims (creditors):

*Priority Rank:* Court expenses and bankruptcy manager expenses have priority over the claims of all other creditors;

*First Rank:* Claims connected with bodily injuries, other injuries to health;

*Second Rank:* Claims of employees regarding their salaries and severance payments, royalties to the authors of items of intellectual property;

*Third Rank:* Claims of all other creditors, including claims of secured creditors, claims of state bodies (e.g. federal, regional government, tax, pension funds, etc.). The potential claims of regional government in connection with closing mines also fall within this category.

The property available for distribution, including proceeds from the sale of assets, will subsequently be allocated among creditors of each rank on a pro rata basis.

A secured creditor having claims secured by the pledge of the debtor’s assets may enforce its security by means of foreclosure. Such secured claims are satisfied prior to other creditors’ claims of the same rank. In the event of foreclosure over pledged assets a creditor will receive 70% of the proceeds from the assets’ sale, and the remaining 30% will be used to cover claims of the creditors of the first and second ranks, as well as the court and bankruptcy manager expenses.

18.6 Treatment of Secured Creditors

Creditors whose claims are secured by pledge of the debtor’s assets may claim to levy execution over the pledged property and satisfy their claims at an early stage during financial rehabilitation or external management. If the secured creditor exercises this option, the pledged...
assets are sold at a public auction and the proceeds are used entirely to satisfy its claims. Should the proceeds from such an auction be insufficient to satisfy the creditor’s claims, the outstanding amount is to be satisfied on par with the claims of creditors of the third rank once the liquidation commences. Importantly, the court is allowed to prohibit levy of execution over the pledged assets if this will entail inability to reinstate the debtor’s solvency.

If the secured creditor chooses not to exercise, or waives the right to levy execution on the pledged assets prior to the debtor being declared bankrupt, such assets will be sold at a public auction in the course of liquidation. In this case, 70% of the proceeds (or 80%, if the underlying obligation secured by the pledge is a bank loan) will be used to discharge the pledger’s respective secured obligations (regardless of any claims filed by creditors of other ranks), 20% will be directed towards satisfying the claims of creditors of the first and second ranks, while 10% will be used to cover court fees and other costs (in the case of a bank loan, 15% and 5% respectively).

18.7 Liability of Controlling Persons

Vicarious Liability

Under the Bankruptcy Law a controlling person may be found liable for the bankruptcy of a company and be ordered to compensate creditors’ losses after all the assets of the insolvent company are distributed. This is possible if the controlling person issued instructions which led the company to bankruptcy.

A controlling person is broadly defined as a person (an individual or a legal entity) who can either control the debtor’s activity and give mandatory instructions to the debtor (including a member of a liquidation commission and an owner of more than 50% of the debtor’s shares, or who could do so within the two years prior to the initiation of the bankruptcy proceedings).
Under law the fault of the controlling persons in causing damage to the creditors is presumed, but this presumption may be rebutted by the controlling person: it would not be held liable if it acted in good faith and in the debtor’s interests, and thus did not contribute to the bankruptcy.

In addition, the amount of the controlling person’s liability may be reduced by the court if the creditors’ losses incurred as a result of faulty actions/omission to act of the controlling person are significantly lower than the overall amount of creditors’ claims that remain unsatisfied.

**Criminal Liability**

A director may also face criminal liability, and in practice this could be used by the authorities as an instrument for putting pressure on a license holder in order to avoid redundancies, achieve fulfilment of certain obligations of the company under subsoil licenses, etc. In particular, under the Russian Criminal Code a director and/or other controlling persons, including shareholders, may be held criminally liable for:

(i) fraudulent actions aimed at concealing the assets of the debtor; or

(ii) intentional bankruptcy (when the director intentionally takes business actions that ultimately result in the bankruptcy of the debtor); or

(iii) sham bankruptcy (when the director intentionally makes the public believe that a company is insolvent).

The liability for these crimes may vary from a criminal fine to imprisonment. Russian law does not envisage criminal liability for companies (e.g. if a shareholder is a legal entity), but in this case their directors could be prosecuted.
18.8 Insolvency of Banks and Financial Institutions

Insolvency procedures may be initiated against a bank or other financial institution if it fails to satisfy creditors’ monetary obligations or to effect obligatory payments within fourteen days from the date of the above claims and/or payments become due or after revocation of a license and/or if the value of its assets is insufficient to satisfy these obligations. The petition for insolvency will be considered by the court only after the Central Bank of Russia (the “Bank of Russia”) has revoked license of a bank or a financial institution. Furthermore, the court may declare a bank or a financial institution to be insolvent and apply the liquidation procedure or refuse to recognize it as insolvent. Unlike other legal entities, banks and financial institutions may only be subject to liquidation. Supervision, financial rehabilitation, external management and amicable settlement are not applicable to these entities.

The law provides several measures to prevent the insolvency of banks and financial institutions which may be used prior to the revocation of a license by the Bank of Russia. Such measures include financial assistance (change in the assets structure or increase of the charter capital), reorganization and appointment of a temporary administration by the Bank of Russia.
19. Natural Resources (Oil and Gas/Mining)

Today Russia is one of the largest mineral producers in the world. Russian mineral resources are an important component of its wealth.

19.1 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.

19.2 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 commonly occurring mineral resources and insignificant subsoil plots.

The core legal act in the mining and oil and gas domain is the 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.
The principal piece of legislation regulating operations with precious metals and gem stones in Russia is the Federal Law On Precious Metals and Gem Stones dated 26 March 1998, as amended (the “Precious Metals Law”). The Precious Metals Law provides the general legal framework for the processing, use and disposal of precious metals and stones, and has specific provisions on geological survey, exploration and mining of such metals and stones.

19.3 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 held by Russian companies only. The licenses for offshore fields may be held only by a Russian company that is at least 50% owned by the Russian state and which has at least five years’ experience of development of offshore 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, foreign companies usually hold subsoil rights to Russian deposits indirectly through their Russian subsidiaries which are allowed to hold subsoil rights to on-shore strategic deposits.

19.4 Licenses

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

A geological survey license may be granted for a maximum period of 5 years (7-year geological survey licenses can be granted in certain Russian regions) and for 10 years for off-shore fields and can be extended if needed for completion of the works. Exploration and production/mining 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
provided there are no violations of the license terms and conditions by the license holder.

Geological survey licenses are issued without a tender or auction based on an application of the interested party. Unlike geological survey licenses, production/mining licenses and combined licenses can be granted only through a tender or auction, except (i) when a production/mining or combined license is issued to a holder of geological rights that made a commercial discovery under a geological survey license and (ii) with respect to strategic deposits (subsoil plots of federal significance) included by the Russian Government into the list of strategic deposits to be licensed by decision of the Government without a tender/auction.

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, except for strategic deposits. Rights to strategic deposits (which include all offshore deposits) may only be granted based on a decision of the Government of the Russian Federation.

**19.5 Transfer of Subsoil Rights**

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 in certain instances (except for the transfer of rights to strategic deposits to companies with foreign participation), 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.
to companies with foreign participation unless otherwise is determined by the Russian Government for 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.

19.6 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, starting from 1 January 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 (the so-called offshore deposits);

4. Subsoil plots that can only be developed using land used for defense and security.

The list of subsoil plots of federal significance is published by the Federal Agency for Subsoil Use and includes approximately 1,000 strategic deposits and is updated on a regular basis. It is noteworthy that the list is not exhaustive and any deposit that meets the above criteria will be deemed strategic irrespective of whether it is included into the list or not.

19.7 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 the long term. 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 the subsoil plot was put out to auction and the auction failed. That is, only those plots that are not of interest 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 8.9), PSAs have, in practice, become largely ineffective in terms of attracting foreign investment into Russia.
19.8 Export of Gas and LNG

In late 2013 Gazprom’s monopoly on export of gas was abolished. Starting from 1 December 2013 access to the LNG export market was granted to the following categories of exporters in addition to Gazprom and its wholly-owned subsidiaries:

1. subsoil users holding subsoil licenses for strategic deposits (see Section 19.6 above) if their subsoil license as of 1 January 2013 envisages either (a) development of an LNG plant or (b) recovery of natural gas for further liquefaction at an LNG plant;

2. Russian companies meeting all of the following criteria:
   - more than 50% owned by the Russian Federation;
   - holders of subsoil licenses in respect of Russian offshore deposits; and
   - producers of LNG out of fluidity gas extracted from the deposits mentioned above or under product sharing agreements;

3. 50%+ subsidiaries of the companies meeting the criteria set out in item 2 above, if such subsidiaries produce LNG out of fluidity gas recovered under product sharing agreements.

19.9 Precious Metals and Gem Stones

Under the Precious Metals Law precious metals include gold, silver, platinum, palladium, iridium, rhodium, ruthenium and osmium; and gem stones include natural diamonds, emeralds, ruby crystals, sapphires, alexandrites, and natural pearl and unique amber formations. Both lists, of precious metals and gem stones, are exhaustive.
Precious metals, with the exception of native metals, may be refined by organizations included on a special list of companies authorized to do so, which is maintained by the Russian Government. Following the refining process, precious metals may be sold on the domestic market. Export requires a separate export license, which in practice is usually granted to banks and major producers.

It is important to note that the Russian authorities enjoy a right of first refusal to purchase precious metals and gem stones from mining companies. The prices for precious metals in such instances are based on world market prices. The pricing of precious stones is carried out by expert commissions on the basis of world market prices.
20. Banking

20.1 Introduction

As of 1 January 2015, there were 783 banks registered in Russia. The Central Bank of the Russian Federation (the “Bank of Russia”) is the key regulatory authority for banking and is also in charge of monetary policy.


20.2 Banking and Banking Operations

20.2.1 Banking and Credit Organizations in the Russian Market

Pursuant to Federal Law No. 395-1 “On Banks and Banking Activities,” dated 2 December 1990 (the “Banking Law”), there are two main types of credit organizations: banks and non-banking credit organizations. A bank is a credit organization that has the right to carry out such banking operations as opening and maintaining the bank accounts of legal entities and individuals, attracting deposits from legal entities and individuals and placement of those funds in its own name and at its own cost and expense. Conversely, a non-banking credit organization is an entity that is allowed to perform a limited number of specified banking operations as set forth in its license.

Both banks and non-banking credit organizations are entitled to carry out banking operations from the moment of receipt of a banking license issued by the Bank of Russia. Both types of credit organizations may participate in banking groups (when the controlling
company is a credit organization) and banking holdings (when the controlling company is a non-credit organization).

20.2.2 Foreign Participation in the Banking sector

Although foreign banks may not currently open branch offices in the Russian Federation, a local subsidiary or a representative office may be established.

*Foreign direct ownership*

A foreign bank may establish a subsidiary in Russia in the form of a Russian legal entity (joint-stock company or limited liability company) (see Section 4.2).

The participation of foreign banks in the Russian market is subject to certain restrictions. In particular, non-residents need the Bank of Russia’s prior approval if they acquire 10% or more of the shares in a Russian bank or non-banking credit organization. When a non-resident acquires more than 1% but less than 10%, the Bank of Russia need only be notified. This is similar to the regulation that applies to Russian residents. Also, the Bank of Russia may not establish additional requirements for the subsidiaries of foreign banks related to mandatory ratios and minimal charter capital. However, additional requirements on reporting procedures, approval of management bodies and permitted operations of the representative offices and subsidiaries of foreign banks may still be introduced.

*Representative Offices*

Representative offices of foreign banks and foreign citizens to be employed there are accredited by the Bank of Russia. A representative office of a foreign bank can be accredited for a term of three (3) years. Accreditation becomes effective if a representative office of a foreign bank starts operating within six (6) months after the Bank of Russia grants such accreditation. Accreditation can be renewed an unlimited number of times. The Bank of Russia may grant permission to open a representative office to a foreign bank that meets all the following
criteria: (i) the foreign bank has been operating in its country of incorporation for at least five (5) years; (ii) the foreign bank has a good reputation in the banking system of its country; and (iii) the foreign bank has a stable financial position. Confirmation of the foreign bank’s compliance with these criteria should be requested from the relevant supervisory body in the country where the foreign bank is incorporated.

Representative offices of foreign banks have limited legal capacity under Russian law. They are allowed to study the economic situation and standing of the Russian banking sector, to maintain and develop contacts with Russian banks, and to develop international cooperation\(^78\). While the representative office of a foreign bank may not solicit new clients for the bank, it may provide consultancy services to existing clients of the foreign bank.

Representative offices of foreign banks are subject to the supervisory control of Bank of Russia, which may close the representative office of a foreign bank at any time at its discretion\(^79\).

20.2.3 Banking Activities

Under the Banking Law only credit organizations holding the respective license are allowed to carry out certain activities, which are called “banking operations”. The list of banking operations includes the following:

- Attraction of monetary funds for on-demand and term deposits and placement of such funds in the name and at the expense of the relevant credit organizations;

\(^78\) See Clause 1.2. of the Regulations on the Procedure for Opening Representative Offices of Foreign Credit Organizations in the Russian Federation and for the Activities Thereof (endorsed by Order of the Bank of Russia No. 02-437 dated 7 October 1997), hereinafter, the “Regulations”.

\(^79\) See Clause 3.7. of the Regulations.
• Holding deposits and placement of precious metals;
• Opening and maintaining bank accounts for individuals and legal entities;
• Collecting money, promissory notes and bills of exchange, payment and settlement documents;
• Providing cash services to individuals and legal entities;
• Exchanging foreign currency;
• Issuing bank guarantees; and
• Transferring money (including e-money) with or without opening of bank accounts.

Banks and non-banking credit organizations are also entitled to perform certain non-banking operations, inter alia: providing financial suretyship; fiduciary management; performing operations with precious metals and stones; renting out safe deposit boxes; participating in financial leasing operations; and providing consultancy and other informational services. Subject to compliance with respective licensing requirements (see Chapter 5) credit organizations may act as professional participants on the securities market. Credit organizations are prohibited from engaging in any industrial, trade, or insurance activities, other than derivatives transactions (see Chapter 5).

Corporate Lending

One of the major activities of a credit organization in Russia is lending. While lending to Russian corporate entities, a number of issues should be taken into account.

The parties to a transaction with a foreign element (i.e. a foreign counterparty) may generally choose foreign law as the law governing their contractual relationship. Thus, if financing is provided to a
Russian company by a foreign bank, the loan agreement is usually governed by foreign law (usually English law and LMA-style agreements are used). The choice of governing law for security documents however is generally determined by where the proposed collateral is situated or created.

It is noteworthy that Russian law does not recognize the concept of a trust. Therefore, straightforward use of a security trustee in syndicated secured financing may not work in Russia, where alternative structures are used.

Although most of the currency control restrictions were removed in 2007, foreign banks should still take into account some currency control regulations when lending to Russian corporate borrowers, e.g. the necessity of opening a transaction passport, and repatriation of funds from export proceeds.

Payments by a Russian borrower to a foreign lender under a loan agreement may, as the payer is a Russian taxpayer, be characterized as a Russian source income. In such case, the payments by the Russian borrower may be subject to Russian profits withholding tax at the rate of 20%, subject to reduction or elimination pursuant to the terms of an applicable tax treaty.

**Consumer Lending**

Lending to individuals is specifically regulated by Federal Law No. 353-FZ “On Consumer Credits (Loans),” dated 21 December 2013 (the “Consumer Credit Law”), which became fully effective in July 2014.

According to the Consumer Credit Law the terms and conditions of consumer credit agreements fall into two categories: general and individual. General terms are drawn up by the lender for mass application and must include the following information:
the range of total charges for the credit, for each type of credit program available in the bank;

types of security for performance of obligations under a credit agreement;

information about agreements the borrower must enter into to obtain a loan.

Individual terms are agreed upon by the lender and the borrower and should be separately specified in the credit agreement. Individual terms would usually cover the following:

- the amount of the credit, the repayment period, the interest rate or method for its determination;

- liability of the borrower for undue performance;

- information about the possibility to assign the creditor’s rights under the agreement;

- the total charge for the consumer credit in question.

Individual terms may also contain other terms and conditions agreed by the parties. Even though the individual terms are supposed to be agreed by the parties, the Bank of Russia is required to adopt standardized individual terms which the banks will be required to adhere to. In case of any discrepancies between general and individual terms, individual terms prevail.

The Consumer Credit Law also introduced the regulation of total charge for credit (the “TCC”) which would generally include repayment of the loan and payment of accrued interest, other payments in favor of the creditor required by the agreement, payments to third parties (e.g., an insurance company), and some other payments. On the date the parties enter into the credit agreement, the TCC must not exceed the average market TCC, as calculated and published by the Bank of Russia, by more than one third. The average
market TCC will be calculated and published by the Bank of Russia for different types of credit on a quarterly basis. The Bank of Russia decided not to apply the regulation of TCC to consumer loans provided by Russian banks from 1 January 2015 till 30 June 2015.

The Consumer Credit Law generally allows a creditor’s rights to be assigned to third parties, including non-banking institutions, unless such assignment is prohibited by law or by the individual terms of the credit agreement. Upon assignment the initial creditor is entitled to transfer personal data of the borrowers and legal entities/persons that provided guarantees or collateral under consumer credit agreements.

20.3 Legal and Regulatory Framework


20.3.1 Regulatory Authorities

The primary regulatory body governing the banking sector of the Russian Federation is the Bank of Russia. The Bank of Russia 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 Bank of Russia, but also approve the resignation of the chairman. The Bank of Russia Law provides for the establishment of a special body within the structure of the Bank of Russia, the National Banking Council (the “NBC”), comprised of representatives of various executive and legislative bodies. The NBC exercises control over the Bank of Russia’s board of
directors, and participates in establishing the basic principles of Russian banking and financial policy.

The Bank of Russia and the Government share authority over monetary policy. The Bank of Russia is responsible for circulating monetary funds and ensuring the stability of the Russian ruble. As part of its regulatory role, the Bank of Russia establishes state registration, accounting, reporting and licensing rules for credit organizations, sets minimum reserve requirements for lending operations, mandatory ratios (capital adequacy, liquidity, etc.) and requirements on the amount of charter capital. The Bank of Russia maintains regional offices throughout the Russian Federation.

20.3.2 Licensing and Banking Supervision

A credit organization must be registered in the Russian Federation further to a specific procedure and must be licensed by the Bank of Russia. Newly established banks can receive licenses permitting a limited scope of operations. A bank that has held a license for a period of two years or more is entitled to apply for licenses permitting an extended scope of operations.

The Bank of Russia may refuse to issue a banking license in the event of the following:

- Non-compliance of the application documents with Russian legal requirements;

- Unsatisfactory financial standing of the founders of the credit organization, or their failure to perform their respective obligations before the federal budget, the budgets of constituent entities of the Russian Federation or local budgets;

- Failure of a nominee for the position of chief executive officer or chief accountant of the credit organization (or their deputies) to meet the qualification requirements, or an unsatisfactory business reputation of a nominee for the
position of a member of the board of directors (supervisory board) of the credit organization.

The Bank of Russia has controlling powers over Russian banks: it approves the appointment of the senior management of all credit organizations, holds mandatory reserves placed by credit organizations, and monitors credit organizations’ compliance with applicable requirements. If a credit organization fails to comply with these requirements the Bank of Russia is entitled to exercise various sanctions, which range from a warning and fine to suspension of certain banking operations and revocation of its banking license, which triggers the dissolution or bankruptcy of the credit organization.

Under certain circumstances banks have to cooperate with the Federal Antimonopoly Service (“FAS”). For example, in case of mergers, banks are required to obtain preliminary clearance from FAS if the purchaser will acquire more than 25% in the charter capital of a bank and at the same time the target bank’s assets exceed RUB29 billion (approx. USD515.6 million). Where the figure does not exceed the established limit, it is sufficient for the lending institutions concerned to notify FAS of the merger.

20.3.3 Deposit Insurance

Federal Law No. 177-FZ “On the Insurance of Deposits of Individuals in the Banks of the Russian Federation,” dated 23 December 2003 establishes an insurance system for the deposits of individuals. It stipulates that all banks accepting individual deposits must be members of the deposit insurance system. The Agency for Deposit Insurance is responsible for supervising this system.

Banks that hold a valid retail banking license need to apply to the Bank of Russia to become registered as a participant in the mandatory deposit insurance system. A bank is expected to pass a number of tests before it can be admitted. The Bank of Russia must be assured that: the bank’s financial accounts and reports are accurate; the bank is in
full compliance with the Bank of Russia’s mandatory ratios; the bank’s solvency position is sufficient; and that the Bank of Russia has not cancelled the bank’s banking license.

If a bank fails the above tests or chooses not to participate in the deposit insurance system, it will not be able to attract deposits from, or open accounts for, individuals. Member banks have to make contributions to a special deposit insurance fund. These contributions are calculated as a percentage of the average daily balance of individual deposits maintained with a particular bank, and are subject to an upper limit of 0.1%. All individual depositors with deposits in member banks are entitled to 100% compensation for aggregate amounts up to RUB1.4 million (approx. USD25,000) for each bank. However, the deposit insurance would not cover e-money deposits.

20.3.4 Countering Money Laundering


The Anti-Money Laundering Law imposes certain requirements on credit organizations, professional participants of securities markets, insurance and leasing companies, postal and other entities that deal with the transmission of money or other valuables. These entities must:

- Identify clients and beneficiaries pursuant to a specific procedure;
- Require certain information on payers in payment orders;
- Report to the Federal Financial Monitoring Service on certain types of transactions of RUB600,000 (approx. USD10,600) or more (or the equivalent in foreign currency), and transactions with real property of RUB3 million (approx. USD53,300) or
more (or the equivalent in foreign currency) and all complex or unusual transaction schemes that have no apparent economic or lawful purpose irrespective of their amount;

- Identify foreign public officials and the sources of their money and other property;
- Pay increased attention to transfers of monetary funds and other property between foreign public officials and their close relatives.

The Anti-Money Laundering Law disallows the creation and maintenance of anonymously held accounts.

20.3.5 Capitalization and Basel III implementation

Russian banks are required to comply with the capital adequacy requirements set by the Bank of Russia, which has recently approved implementation of Basel III developed by the Basel Committee on Banking Regulations and the Supervision Practices of the Bank for International Settlements.

Regulation of the Bank of Russia No. 395-P “On Methods for Calculation of the Capital of Credit Organizations,” dated 27 February 2013 (“Regulation 395-P”) implemented the rules of Basel III on capital adequacy in Russia. It should be noted that the new capital adequacy rules are tighter than the default rules suggested by the Basel Committee.

Under Russian law, the minimum capital adequacy ratio that banks are required to maintain is calculated (on an unconsolidated basis) as the ratio of a bank’s owned funds (its capital) to the total amount of its risk weighted assets. From the beginning of 2012 the minimum capital adequacy ratio required by the Bank of Russia is 10% for banks whose capital is RUB300 million (approx. USD5.3 million). If the capital adequacy ratio of a bank drops below 2%, then the Bank of Russia should revoke its banking license.
Existing banks are required to achieve the above amounts of capital by 2015. Should a bank fail to reach the above level of capital, the Bank of Russia will revoke its license. From the beginning of 2012 the minimal capital of newly registered banks must be RUB300 million (approx. USD5.3 million).

Implementation of Basel III heavily influenced the regulation of subordinated instruments widely used by banks to boost their capital. In order to qualify as a subordinated instrument and be eligible for inclusion into a bank’s capital, subordinated instruments should meet the following requirements:

- the borrower should not be obliged to repay a subordinated loan before the maturity date and the creditor should not be entitled to claim early repayment of the debt;
- the terms and conditions of the subordinated instrument (including the interest rate) should not differ substantially from the market conditions;
- the subordinated instrument should expressly provide that it cannot be prepaid, amended or terminated without prior consent of the Bank of Russia;
- in case of the borrower’s bankruptcy the subordinated loan may only be repaid after satisfaction of all other creditors’ claims;
- the subordinated loan may not provide for (i) any security, (ii) non-monetary form of settlement or (iii) a natural person, subsidiary or affiliated company as a party to the subordinated instrument; and
- subordinated loans must be provided for at least 5 years and, in certain cases, for at least 50 years or on a perpetual basis.
The Bank of Russia has prepared Regulation No. 421-P “On the Calculation of the Liquidity Coverage Ratio,” dated 30 May 2014 (the “LCR”) which will become effective on 1 July 2015. The LCR is aimed at showing a bank’s ability to properly perform its monetary and other obligations within 30 calendar days from the moment of calculation of the liquidity coverage ratio in times of economic instability. At first only domestic systemically important banks will be subject to the LCR rules. However, in the course of time the Bank of Russia will subject more Russian banks to the LCR rules.

The Bank of Russia adopted Instruction No. 154-I “On the Procedure for Assessment of Compensation in Credit Organizations and Rectifying Violations of the Rules on Compensation,” dated 17 June 2014, which became effective on 1 January 2015. This instruction regulates the remuneration of the management and employees of banks who affect the risk profile of the bank. This regulation provides that at least 40% of such remuneration should be variable and paid taking into account the level of risk management and overall performance of the employee. However, banks are allowed to introduce higher thresholds for the variable part of remuneration for a wider range of employees. Banks should prepare remuneration policies, which should be approved by the Bank of Russia.

20.3.6 Financial Statements and Reporting Standards

Accounting and reporting requirements in Russia are not comparable to those in other (especially Western) jurisdictions. All credit organizations in the Russian Federation must prepare Russian Accounting Standards (“RAS”) statutory accounting reports and, on an annual basis, their financial statements according to IFRS.

The Bank of Russia devises reporting forms for credit organizations and works out procedures for preparing reports and filing them. Banks are obliged to submit a very large quantity of information to the Bank of Russia with some of the reports to be filed on a regular basis. The list of information may vary depending on the type of operations carried out by a particular credit organization and the number of
licenses it holds. Thus, all credit organizations should disclose information concerning their affiliates, file accounting statements, provide information on analogous claims and loans grouped in portfolios together with information on the quality of the credit organization’s assets and information on securities acquired by the credit organization, data on loans and market risks, information on obligatory norms and any deviation therefrom, information on forward transactions etc.

If a bank is a joint-stock company and a securities market participant, it must also disclose information at various stages of each securities issue. Such information is disclosed in the form of an offering statement, quarterly securities issuer reports and disclosure of material facts affecting the bank’s financial and business activities. Information to be disclosed must be published by one of the authorized services. In addition, a particular issuer may use its own or some other Internet site for such purposes. The rules covering this disclosure are set by the Bank of Russia.
21. Insurance in Russia

21.1 Introduction

The insurance business and distribution of life insurance products in Russia is mainly regulated by Federal Law No. 4015-1 “On the Organization of the Insurance Business in the Russian Federation” dated 27 November 1992, as amended (the “Insurance Law”) and the Civil Code of the Russian Federation (the “Civil Code”). In the cases envisaged by the Insurance Law, federal executive authorities may adopt further regulatory acts governing insurance procedures. Since September 1, 2013 the insurance business has been supervised by the Central Bank of Russia (the “Bank of Russia”), which is responsible for issuing insurance licenses and supervising the compliance of insurers with applicable regulations.

There is a tendency towards consolidation of the insurance market, including as a result of the Bank of Russia policy, which is aimed at strengthening the financial stability of domestic insurers and decreasing the number of providers of “false” insurance or insurers not in compliance with the law.

In reinsurance matters Russian insurers work closely with foreign reinsurers and integrate into the international insurance market by establishing affiliated companies abroad.

21.2 Licensing Requirements

Conducting insurance activities requires a license in Russia. Pursuant to the Insurance Law, insurers must be legal entities incorporated in accordance with Russian legislation and need a Russian license in order to conduct insurance business. Reinsurance services may be provided by foreign reinsurers not licensed locally. Intermediation in the Russian insurance market can be conducted by insurance agents and/or brokers. Under Russian law the difference between insurance brokers and agents is that a broker is not allowed to act in the name and on the instructions of an insurer, and an agent is not allowed to act
in the name and on the instructions of the insured. In addition, brokers should be licensed by the Bank of Russia whereas agents do not need a license. Brokerage and agency activities may not be combined under Russian law. The activity of agents and brokers connected with the entry into and performance of insurance policies (save for reinsurance policies) with foreign insurance organizations or foreign insurance brokers is not permitted in the territory of the Russian Federation.

21.3 Restrictions on Foreign Investments

Foreign investors may access the Russian market via their Russian subsidiaries. Russian law places restrictions on insurance companies that are subsidiaries of foreign investors or where more than forty-nine percent (49%) in their charter capital belongs to foreign investors (with an exception discussed below). They cannot conclude personal insurance contracts in relation to property interests connected with citizens surviving until a certain age or date, death, or other events in citizens’ lives (i.e., life insurance). They cannot provide mandatory liability insurance, mandatory state insurance or property insurance polices related to the performance or delivery of work under a contract for state needs as well as insurance of the property interests of state and municipal organizations.

There is a quota on the foreign capital present in the aggregate capital of insurance companies operating in Russia. This quota was changed due to Russia’s accession to the WTO and is now set at fifty per cent (50%) and is far from being exceeded. Should the amount of foreign capital invested into the sector exceed this quota, the regulator must stop issuing licenses to insurance companies that are affiliates of foreign insurers or which are more than forty-nine percent (49%) foreign-owned.

An exemption from the above restrictions is provided in Clause 5 of Article 6 of the Insurance Law. This exemption applies to subsidiaries of foreign companies and to companies with foreign capital exceeding the forty-nine percent (49%) limit whose parent organizations are situated in member states of the European Community. This exception
is established in the “Agreement on Partnership and Cooperation Establishing a Partnership between the European Communities and their Member States, on the One Part, and the Russian Federation, on the Other Part” dated 24 June 1994.

Russia has undertaken obligations in insurance services under the Protocol on the Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organization in Geneva on 16 December 2011. In particular, foreign insurance companies will be allowed to directly open branches in Russia starting in 2021. Incorporation and operation of such branches would be supervised by the Bank of Russia, and they would need to be permanent establishments for tax purposes. As a WTO member, Russia also undertook other obligations in order to make its insurance market more open for foreign companies.

### 21.4 Regulation of the Insurance Market and Products

The Insurance Law contains a general description of the organization of the Russian insurance market, licensing requirements, operation and liquidation of insurance businesses, requirements relating to the financial stability of insurers, as well as regulation of other participants of the Russian insurance market, such as insurance brokers and dealers.

The Civil Code establishes the types of insurance, the concept and compulsory terms of insurance contracts, the rights and duties of parties to such contracts, rules for the change of parties and beneficiaries to insurance contracts, rules for termination of insurance contracts, as well as other fundamental insurance-related regulation. In particular, Article 934 of the Civil Code establishes the basis for personal (life and health) insurance and Article 929 the basis for property insurance (property insurance, liability insurance and business risks insurance).
21.5 Types of Insurance in Russia

Russian law provides for two basic types of insurance: personal insurance (such as life and health insurance) and property insurance (property insurance, liability insurance and business risks insurance). Life insurance activity may not be combined with other types of insurance activities, i.e. an insurer may only offer either life insurance, or health and property insurance.

The law also mentions the possibility of issuing insurance policies incorporating investment elements in the case of life insurance; however, because there is no further regulation of such instruments and for a number of other reasons, it is not clear how the investment provisions of such insurance policies would be treated by courts.
22. The Pharmaceuticals and Healthcare Industry

22.1 Legal Framework

The protection of citizens’ health is one of the principles of the constitutional system of Russia declared by the Russian Constitution, and the Russian healthcare system is built around this principle.


This is not the only significant change planned in the Russian regulatory landscape. A much anticipated draft law to amend the Law on Circulation of Medicines (the “Amendments”) has been approved and will come into force on 1 July 2015 (except for certain provisions). The Amendments will significantly change the Law on Circulation of Medicines.

The new rules introduced by the Amendments most importantly, (i) limit data exclusivity protection, (ii) reinstate the grace period for medicinal preparations that recently had their registration dossier
changed, (iii) lay the groundwork for revision of state regulation of prices, (iv) introduce new regulations on biological/biosimilar and orphan medicinal preparations, (v) establish interchangeability of medicinal preparations and a GxP inspectorate.

This chapter describes Russian regulations in the pharmaceuticals area taking into account the Amendments, unless otherwise specifically noted. Please refer to the 2014 Doing Business in Russia handbook for a description of the regulations existing before the Amendments enter into force.


22.2 Regulatory Bodies

The regulatory bodies governing the healthcare system and pharmaceutical market of the Russian Federation are the Ministry of Healthcare (the “MOH”), the Ministry of Industry and Trade (the “MIT”) and the Federal Service for Surveillance in Healthcare (the “Federal Service”).

Once the Amendments are effective the authorities described below may be somewhat redistributed. However, their specific allocation is not yet certain. Most importantly, the Amendments should lead to creation of a separate Russian inspectorate to overview compliance with Russian GxP documents. It is true that most of the functions that the inspectorate should have are already performed by various Russian
state bodies but the new inspectorate should consolidate these functions. Furthermore, it will conduct inspections of foreign manufacturing sites for GMP compliance.

The MOH is responsible for drawing up state policy and regulation in healthcare, circulation of medicines for human use, sanitary and epidemiological welfare and in numerous other areas. The MOH submits drafts of federal laws and acts of the President and of the Government on healthcare to the Government. The MOH also adopts a significant number of important executive regulations on circulation of medicines required by laws.

The MOH, among other things, also:

- Adopts rules for development of general pharmacopeial monographs, and publishes the state pharmacopoeia;
- Registers medicinal preparations for human use;
- Issues permits for the conduct of clinical trials;
- Issues permits for importation of a specific lot of unregistered medicines for their clinical trials, their expert examination for the purposes of state registration, and for rendering medical aid to a patient if he or she has extremely serious indications;
- Registers maximum manufacturers’ prices of medicinal preparations included into the list of essential and most important medicinal preparations, also known as the essential drug list (ED List, or EDL);
- Attests authorized persons of medicine manufacturers.

The Amendments will give the MOH a long-anticipated authority to render scientific consulting services on clinical trials and registration of medicinal preparations.
The MIT, among other things:

- Plays an important role in regulation of declaration of conformity and certification of medicinal preparations and medical devices;
- Grants licenses for the manufacture of medicines;
- Keeps a register of licenses granted.

The Federal Service, among other things:

- Exercises control over the circulation of medical devices;
- Exercises control over the circulation of medicines;
- Exercises control over the quality of medicines;
- Monitors the assortment and prices of EDL medicinal preparations;
- Monitors the safety of medicinal preparations;
- Grants licenses for pharmaceutical activities;
- Keeps a register of licenses granted;
- Exercises control over the quality and safety of medical activity.

22.3 Clinical Trials of Medicinal Preparations and Clinical Studies of Medical Devices

The Law on Circulation of Medicines, similarly to its predecessor, contains a broad definition of clinical trials. It defines clinical trials as a study of the diagnostic, therapeutic, prophylactic, and pharmacological properties of a medicinal preparation in the process of its administration to humans and animals, including the study of the processes of its absorption, distribution, modification, and excretion,
using scientific methods for the purposes of obtaining (i) evidence on the safety, quality, and efficacy of the medicinal preparation; (ii) data on adverse reactions of humans and animals; and (iii) data on the effects of its interaction with other medicinal preparations and/or food products/animal feed.

According to the Rules of Clinical Practice in the Russian Federation, adopted by Order of the Russian Ministry of Healthcare No. 266 dated 19 June 2003, a clinical trial is a study of the clinical, pharmacological and pharmacodynamic effects of the studied medicine on humans, including processes of absorption, distribution, modification and excretion, for the purposes of obtaining, through scientific methods of assessment, evidence of the efficacy and safety of medicines, and data on anticipated side effects and on the effects of interaction with other medicines.

Article 38 of the Law on Circulation of Medicines introduces the following possible objectives of a clinical trial:

- Ascertaining the safety of medicinal preparations on, and/or their tolerability by, healthy volunteers (not allowed on Russian territory for medicinal preparations manufactured outside Russia);

- The selection of optimal dosages of medicinal preparations, (ii) treatment courses for patients with a specific ailment, and (iii) selection of the optimal dosages and vaccination schemes for immunobiological preparations for healthy volunteers;

- Ascertaining (i) the safety and effectiveness of medicinal preparations for patients with a specific ailment, and (ii) the prophylactic efficiency of immunobiological preparations on healthy volunteers; or

- Studying the possibility of widening the indications for medical use of registered medicinal preparations, and identifying unknown side effects.
The Amendments separate the regulation of state registration of medicinal preparations and their clinical trials, which were partially merged in the currently effective version of the Law on Circulation of Medicines. In practice this will increase the availability of certain types of clinical trials for unregistered medicinal preparations as it is will not be necessary to initiate the procedure for state registration of the relevant medicinal preparation or to organize its clinical trial as an international multicenter program in order to organize a clinical trial of an unregistered medicinal preparation.

The Law on Circulation of Medicines also lists bioequivalence and therapeutic equivalence studies as types of clinical studies of medicinal preparations.

Besides the two documents already mentioned governing clinical trials in Russia, the following two documents are also relevant to this process: Industry Standard OST 42-511-99 — Good Clinical Practice, adopted by the Russian Ministry of Healthcare on 29 December 1998, and National Standard of the Russian Federation GOST R 52379-2005 — Good Clinical Practice, adopted by Order of the Federal Agency on Technical Regulation and Metrology No. 232-st, dated 27 September 2005; both documents are derived from Good Clinical Practice (GCP) of the International Conference on Harmonization (ICH), the latter document being a direct translation.

A permit from the MOH is required to perform clinical trials. This permit is obtained by filing an application with the MOH together with the necessary documents. The MOH then orders the conduct of two expert examinations of the relevant clinical trial documents; an expert examination of the documents for obtaining a permit for performance of a clinical trial of a medicinal preparation concentrating on the scientific side of the trial in question, on the results of the preceding pre-clinical trial(s) of the relevant medicine and, if any, clinical trials of this medicinal preparation, and an ethical expert examination (concentrating on the ethical side of the trial in question with the aim of protecting the health and life of patients). These two expert examinations are performed respectively by a state
institution for expert examination of medicines (employing attested experts who perform expert examinations as part of their employment duties) and by the ethics council (composed of representatives of medical and scientific organizations, educational institutions of higher professional education as well as representatives of civic and religious organizations and the mass media). No other filings are necessary to obtain the permit and no direct communication between the applicant and the expert bodies is allowed.

Currently clinical studies of medical devices in Russia are regulated specifically in connection with the procedure for state registration of medical devices by Government Decree No. 1416 “On Approval of the Rules for Registration of Medical Devices,” dated 28 December 2012 (the “Rules for Registration of Medical Devices”). Therefore, the process of obtaining a permit to conduct clinical studies of medical devices will be described in the next chapter.

22.4 Registration of Medicinal Preparations and Medical Devices

Registration of medicinal preparations is regulated by the Law on Circulation of Medicines (Chapter 22.6).

Medicinal preparations can be manufactured, sold and used on the territory of the Russian Federation only if they are registered with the MOH. More specifically, the following medicinal preparations (both Russian and foreign) are subject to state registration:

1. All medicinal preparations entering the Russian market for the first time;

2. Medicinal preparations registered earlier, but manufactured in different medicinal forms (in accordance with the list of names of medicinal forms), in new dosages provided the clinical significance and efficacy is proven; and
3. New combinations of medicinal preparations registered earlier.

The Amendments substantially alter the terminology of the Law on Circulation of Medicines. First of all, they replace the term “original” medicinal preparation with the term “reference” medicinal preparation. A reference medicinal preparation is a medicinal preparation that is registered in Russia for the first time, its quality, effectiveness and safety is proven by pre-clinical and clinical trials results, and which is used to ascertain bioequivalence or therapeutic equivalence, quality, effectiveness and safety of reproduced or biosimilar medicinal preparations.

Reference medicinal preparations are always registered using the results of their own clinical trials.

Reproduced medicinal preparations, i.e., generics, are medicinal preparations that have the same qualitative and quantitative composition of active substances in the same medicinal form as a reference medicinal preparation, the bioequivalence or therapeutic equivalence of which to the reference medicinal preparation is confirmed by the corresponding studies.

Secondly, the Amendments introduce new and long-awaited categories of medicinal preparations, namely biological (a collective reference to immunobiological, human/animal blood/blood plasma derivatives, biotech and gene therapy medicinal preparations)/biosimilar and orphan medicinal preparations.

The main idea behind the “bio” area of regulation is to differentiate biological generics (biosimilars) from plain generics. This is done so that biosimilar medicinal preparations can not be registered on the basis of a bioequivalence study and clinical trials will be necessary.

Orphan medicinal preparations are defined as medicinal preparations designed only for diagnostics of orphan diseases or their treatment aimed at the development mechanism of the disease.
Lastly, the Amendments introduce the concept of the owner (holder) of a registration certificate, which entails various regulatory duties. In the context of biotech or orphan medicinal preparations, the owner (holder) of the registration certificate is obliged to provide samples to other companies willing to conduct clinical trials (including comparative clinical trials) using them.

The complete state registration procedure for a medicinal preparation should not take longer than 160 working days (excluding the time for sending requests to the applicants if inaccurate information is discovered in the application or dossier and receiving the relevant responses to them) and is initiated through submission of an application with the necessary set of documents to the MOH.

The Amendments describe in great detail the set of documents and information to be submitted together with the application for the state registration of a medicinal preparation. This set of documents and information is termed a “common technical document.” Certain modifications to the requirements of this Russian CTD may be set for specific types of medicinal preparations.

The default rule for registration of medicinal preparations in Russia is that registration of a medicinal preparation new to the Russian market requires submission of the results of a clinical trial at least partially conducted in Russia. There are three exceptions to this general rule. All these exceptions are very different.

First of all, orphan medicinal preparations may be registered on the basis of the results of clinical trials conducted abroad.

Secondly, certain reproduced medicinal preparations may be registered without conducting any clinical trials, even in the form of bioequivalence trials. These reproduced medicinal preparations include:
• water solutions for parenteral administration (subcutaneous, intramuscular, intravenous, intraocular, intracavitary, intraarticular, intracoronaral);

• solutions for oral administration;

• powders or lyophilizates for preparation of solutions;

• gases;

• ear or eye medicinal preparations in the form of water solutions;

• water solutions for topical administration;

• water solutions used for inhalation with the use of nebulizers or as nasal sprays, administered with the use of similar devices.

These medicinal preparations, however, should have exactly the same composition as the relevant reference medicinal preparations (including composition of excipients). If the composition of excipients differs, the applicant should prove that excipients used in the reproduced medicinal preparation do not affect its safety and/or efficacy.

The last exception to the requirement for Russian clinical trials applies to medicinal preparations that have been allowed for medical use in Russia for more than 20 years.

According to the Law on Circulation of Medicines, the application for state registration of a medicinal preparation may be submitted to the MOH either by the company that developed the relevant medicinal preparation (the company owning the rights to the results of its preclinical and clinical trials and to its manufacturing technology) or its representative (another legal entity).
Within ten working days after the full application file is submitted, the MOH orders the following expert examinations to be conducted:

- an expert examination of documents to ascertain whether the relevant medicinal preparation may be treated as an orphan medicinal preparation (if the applicant applied for orphan medicinal preparation status);

- an expert examination of the suggested methods of quality control of a medicine, and of the quality of the supplied samples of this medicine made with the use of these methods (shorter name — expert examination of the quality of the medicine) and an expert examination of the ratio between the expected benefit to the possible risks connected with use of the medicinal preparation (or the same expert examinations to be conducted within the expedited expert examination procedure).

The first expert examination should be conducted by an expert body within 30 working days. If its results are positive and medicinal preparation is recognized as orphan in Russia then the other two expert examinations are ordered to be conducted.

The expert examination of the quality of the medicine and the expert examination of the ratio between the expected benefit to the possible risks connected with use of the medicinal preparation should be conducted within 110 working days. Positive conclusions in both these expert examinations lead to registration of the medicinal preparation.

It is mentioned above that these expert examinations have expedited versions, which do not have different contents, but have the timing shortened to 60 working days.

Expedited expert examinations may be applied to the following medicinal preparations:
• orphan medicinal preparations;
• the first three reproduced medicinal preparations;
• medicinal preparations to be used exclusively for the treatment of minors.

Expedited expert examinations may not be applied to the following medicinal preparations:

• biosimilars;
• reference medicinal preparations (except for orphan medicinal preparations);
• reproduced medicinal preparations (except for the first three reproduced medicinal preparations and medicinal preparations to be used exclusively for the treatment of minors);
• new combinations of medicinal preparations registered earlier;
• medicinal preparations registered earlier, but manufactured in different medicinal forms (in accordance with the list of names of medicinal forms) and in new dosages.

It is important to note that there is no correlation between qualification for expedited expert examinations and the exception to the requirement for clinical trial results for registration of a medicinal preparation. Some medicinal preparations may qualify for both, while others for only one of these preferential regimes.

The Amendments limit cases in which pre-clinical and clinical trials data will be protected (data exclusivity). Now only use for commercial purposes of pre-clinical and clinical data submitted by another applicant for the state registration of medicinal preparations will be prohibited for six years after the date of state registration of the reference (original) medicinal preparation. State registration of a reproduced medicinal preparation may now be initiated four years
(three years for biosimilars) after registration of the reference medicinal preparation. This is aimed at allowing generic medicines to appear on the Russian market immediately after the six-year data exclusivity period expires.

The Amendments re-establish a grace period for medicinal preparations that recently had their registration dossier changed. The circulation of medicinal preparations manufactured in accordance with the “old” registration dossier will be allowed for 180 days after a decision of the registration authority to amend the registration dossier.

Registration of medical devices is performed by the Federal Service and is regulated by the Rules for Registration of Medical Devices. All medical devices circulated on the territory of the Russian Federation are subject to state registration except for medical devices produced under a patient’s individual order exclusively for his/her own use.

Currently registration of any medical device involves the performance of clinical studies. Clinical studies are performed in medical organizations approved for the conduct of clinical studies by the Federal Service, a list of which is published on the official web site of the Federal Service.

In accordance with the Rules for Registration of Medical Devices, the application for state registration of a medical device may be submitted to the Federal Service either by the company that developed (the developer) or manufactured (the manufacturer) the relevant medical device or by the authorized representative of the manufacturer. The authorized representative of the manufacturer is a legal entity, registered on the territory of the Russian Federation, authorized by the manufacturer of the medical device to represent its interests with respect to circulation of the medical device on the territory of the Russian Federation, including with respect to issues of evaluation of conformity and state registration, and in the name of which the registration certificate of the medical device may be issued.
The Rules for Registration of Medical Devices do not, however, expressly require the registration certificate to be issued in the name of authorized representative of the manufacturer or otherwise only in the name of a Russian legal entity. Thus, the registration certificate can still be issued in the name of a foreign legal entity.

The complete state registration procedure for a medical device is initiated through submission of an application with the necessary set of documents to the Federal Service and should not take longer than 50 working days from the date the decision to commence state registration is adopted by the Federal Service (excluding the time for conducting clinical studies). Within six working days after submission of these documents the Federal Service orders two expert examinations: (i) an examination of the application for registration and supporting documentation in order to ascertain the possibility (impossibility) of conducting clinical studies (performed by a separate federal state institution); and (ii) an ethical expert examination of the possibility of conducting clinical studies of medical devices if such clinical studies involve human participation (performed by an ethics council in the sphere of circulation of medical devices). The first of these expert examinations should be conducted within 20 working days. The Rules for Registration of Medical Devices do not detail the length of an ethical expert examination. Upon receiving positive conclusions in these expert examinations, the Federal Service suspends the registration procedure while the clinical studies are performed.

After the clinical studies are completed the applicant needs to submit another application to the Federal Service to resume the registration procedure, together with the results of the clinical studies. After resuming the registration procedure, within four working days after receipt of the above listed documents, the Federal Service orders an examination of the completeness and results of the performed technical tests, toxicological studies and clinical studies of the medical device. This expert examination should be conducted within 10 working days. A positive conclusion results in registration of the
medical device by the Federal Service within 10 working days after receipt of these results.

22.5 Manufacturing

According to the Law on Licensing, the manufacture of medicines is a licensable type of activity. The licensing procedure is governed by the Regulation on Licensing the Manufacture of Medicines, approved by Government Resolution No. 686, dated 6 July 2012 (the “Regulation”). A license for manufacturing medicines is valid for an indefinite term.

As a general rule, only registered medicines may be manufactured in Russia. The manufacture of medicines is prohibited in the following cases:

1. The manufacture of medicines that are not included in the state register of medicines, except for medicines that are manufactured for the performance of clinical trials and for exportation;

2. The manufacture of falsified medicines;

3. If the manufacturer does not have a license for manufacturing medicines; and


A manufacturing legal entity is liable for noncompliance with the licensing requirements. The Regulation lists separate requirements to be satisfied by (i) license applicants in order to obtain licenses and (ii) licensees in order to maintain licenses, including complying with the rules for manufacturing medicines established by Order of the MIT No. 916 On Approval of the Rules for the Organization of the Manufacture and Quality Control of Medicines (GMP) dated 14 June
2013. The Law on Circulation of Medicines established that there should have been a gradual transition to the manufacture of medicines in accordance with these GMP standards in the period leading up to 31 December 2013 and compliance with this standard is now mandatory.

A manufacturing license is issued for certain types of activities listed in the Regulation. Whenever a licensee starts to perform new types of activities not indicated in its current license, it must apply for reissue of its license. The license must also be reissued if the address where manufacturing is conducted changes.

According to the Law on Licensing, manufacturing medical equipment is a licensable type of mass manufacturing activity, as opposed to production of prosthetic and orthopedic appliances at citizens’ orders, which is classed as a licensable type of non-mass manufacturing activity. The licensing of medical equipment manufacturing will be abolished with the entry into force of technical regulations. However, the current status of licensing of this type of activity is uncertain due to the latest regulatory changes, namely adoption of the Fundamentals and of the new Law on Licensing.

Currently the licensing procedure is formally governed by the Regulation on Licensing the Manufacture and Technical Maintenance (Except for Internal Needs) of Medical Equipment, approved by Resolution of the Russian Government No. 469, dated 3 June 2013.

In certain cases a license for manufacturing medical equipment alone is not sufficient and other licenses may be additionally required in order to lawfully manufacture certain types of medical equipment. For example, a license for activities involving sources of ionizing radiation would also be required if X-ray equipment is being manufactured.
22.6 Importation

In accordance with the Law on Circulation of Medicines, importation of medicines may only be performed by:

1. Manufacturers of medicines for their own manufacturing purposes;

2. Foreign developers of medicines or foreign manufacturers of medicines, or other legal entities as their representatives for the performance of clinical trials, state registration of medicinal preparations, inclusion of a pharmaceutical substance into the state register of medicines, and quality control of medicines subject to the permission of the Federal Service;

3. Organizations carrying out wholesale of medicines;

4. Scientific-research institutions, educational institutions of higher professional education or manufacturers: (i) for development of medicines, (ii) for trials of medicines, (iii) for control of medicines’ safety, quality and effectiveness subject to the permission of the Federal Service;

5. Medical organizations and other organizations mentioned in items 1–4 of this list for the purposes of rendering medical assistance to a specific patient if he or she has extremely serious indications, subject to the permission of the Federal Service.

Importation of medicines into the Russian Federation is governed by the Rules of Importation of Medicines Intended for Medical Use, adopted by Resolution of the Russian Government No. 771, dated 29 September 2010. In addition, since Russia together with Kazakhstan and Belarus formed the Customs Union, decisions of the Commission of the Customs Union (now the EuroAsian Economic Commission) are binding on all members of the Customs Union, In accordance with
Decision No. 134 of the Board of the EuroAsian Economic Commission of 16 August 2012, importation licenses for properly registered medicinal preparations are effectively abolished on the territory of the Customs Union. This marks a significant change in the way the medicines enter the territory of the Russian Federation. However, this measure is only aimed at reducing the amount of paperwork done by the relevant authorities and will not affect the mechanisms for control of imported medicinal preparations. This control will be performed directly at the stage of customs procedures in relation to these medicinal preparations.

Imported medicines are released onto the Russian market only after, inter alia, their conformity to applicable Russian requirements is confirmed. In this regard it is important to note that mandatory certification of medicines was replaced several years ago with a declaration of their conformity. This change caused a significant reaction in the Russian pharmaceutical market since a procedure aimed at minimizing state involvement in the pharmaceutical market turned out to be quite burdensome for foreign pharmaceutical manufacturers. Since then, however, certain medicines have been switched back to certification.

Similarly, imported medical devices are released into the Russian market only after, inter alia, their conformity is confirmed.

22.7 Wholesale

Pursuant to the Law on Licensing, pharmaceutical activity (including wholesale, retail sale and preparation of medicines) is a licensable type of activity. The licensing procedure is governed by the Regulation on the Licensing of Pharmaceutical Activities, approved by Resolution of the Russian Government No. 1081, dated 22 December 2011, as amended. A license for the performance of pharmaceutical activity is valid for an indefinite term.

Wholesale of medicines is currently governed by the Rules for Wholesale of Medicines, approved by Order No. 1222n of the Russian
Ministry of Healthcare, dated 28 December 2010. This document, however, is likely to be replaced with the Good Distribution Practices due to the Amendments.

Wholesalers of medicines may sell medicines or place them at the disposal of the following legal entities and persons:

1. Other organizations carrying out wholesale of medicines;
2. Manufacturers of medicines for manufacturing purposes;
3. Pharmacy organizations;
4. Scientific-research institutions for scientific research purposes;
5. Individual entrepreneurs having medical or pharmaceutical activities licenses; and
6. Medical organizations.

Only duly registered medicines can be sold on the territory of the Russian Federation. Russian law explicitly prohibits the sale of falsified, poor quality and counterfeit medicines. An accompanying document must be executed for each particular medicinal preparation, stipulating, inter alia, the medicine’s name (international nonproprietary name and trade name), expiration date, information on the manufacturer, supplier, buyer, etc.

Administrative sanctions are established in Russia for breach of the rules on wholesale of medicines and sale of falsified, counterfeit or bad quality medicines (a separate offence is established if the sale of falsified, counterfeit or bad quality medicines results in harm to health or creates the threat of such harm).

The wholesale of medical devices does not require a license in Russia, unless the medical device in question is of any special type, e.g., an X-
ray medical device. In the latter case wholesale of the medical devices will require a license for activities involving sources of ionizing radiation.

22.8 Retail Sale

Retail sale of medicines is regulated by the Procedure for the Sale of Medicines, approved by Order of the MOH No. 785, dated 14 December 2005. This document, however, is likely to be replaced with the Good Pharmacy Practices due to the Amendments.

Retail sale of medicines is exercised by pharmacy organizations, individual entrepreneurs having a pharmaceutical activities license, and medical organizations and their separate subdivisions located in rural settlements where there are no pharmacy organizations. Pharmacy organizations include pharmacies (selling ready-to-use medicinal preparations, production pharmacies, and production pharmacies having a right to produce aseptic medicinal preparations), pharmacy stations and pharmacy kiosks.

Prior to 2011 there existed a list of over-the-counter medicines and all other medicines, by default, had the status of prescription medicines. That list was abolished by Order of the MOH No. 1000an, dated 26 August 2011. Now sellers should dispense medicines exclusively in accordance with the instructions on their use.

Pharmacy institutions and individual entrepreneurs having a pharmaceutical activities license need to comply with a requirement for the minimum assortment of medicinal preparations necessary for rendering medical aid. The current minimum assortment of medicinal preparations is established by Order of the MOH No. 805n, dated 15 September 2010 as amended by Order of the MOH No. 351n, dated 26 April 2011. It will be replaced starting from 1 March 2015 with a new assortment adopted by Government Resolution No. 2782-r dated 30 December 2014.
Similar to wholesale activity, retail sale of medicines is subject to licensing and only registered medicines can be sold in the Russian Federation.

Administrative sanctions are established in Russia for breach of the rules on retail sale of medicines and as in the case of wholesale of falsified, counterfeit or bad quality medicines, a separate offence is established if sale of falsified, counterfeit or bad quality medicines results in harm to health or creates the threat of such harm.

Retail sale of medical devices does not require a license in Russia, unless, as in the case with wholesale, the medical device in question is of any special type.

**22.9 Price Regulation**

The basis for the system of state regulation of the prices of medicines and its most general rules are set forth in the Law on Circulation of Medicines. The Amendments shortened those provisions and the Law will now only provide a very general framework for the state regulation of prices. Detailed regulations in this area will be adopted by the Russian Government. Therefore, it is certain that 2015 will see new reform of state regulation of prices, however the features of the regulation after the reform are not currently known. The currently effective price regulation regime is as follows.

Under the Law on Circulation of Medicines and Government Resolution No. 865 On the State Regulation of Prices of Medicinal Preparations Included in the List of Essential and Most Important Medicinal Preparations, dated 29 October 2010 (“Resolution 865”), the price of medicinal preparations included in the EDL is controlled by the state, and is subject to state registration and mark-up regulation. Price control of EDL medicines is an important tool used in the organization of the healthcare system, ensuring that essential and most important medicines are accessible for all citizens. By law, revision of the EDL should be an annual process. However, the EDL List for 2015 was initially established by Government Ordinance No. 2199-r, dated
7 December 2011, as the ED List for 2012 (the same ED List was used in 2013 and 2014). This list will be replaced starting from 1 March 2015 with a new list adopted by Government Resolution No. 2782-r, dated 30 December 2014.

According to the Law on Circulation of Medicines, the state regulation of prices of medicines included in the ED List is effected through the following measures:

- State registration of the maximum manufacturer’s prices of medicinal preparations (done at the federal level); and
- Establishing maximum wholesale and retail trade margins applied to the prices of medicinal preparations (done at the regional level).

Under the Law on Circulation of Medicines, Resolution No. 865 and Resolution of the Russian Government No. 239 “On Measures for Improvement of the State Regulation of Prices (Tariffs),” dated March 7, 1995, as amended (“Resolution No. 239”), the maximum wholesale and retail trade margins for medicines included in the ED List are established by regional governmental authorities.

Prices for other medicines (i.e., not included in the EDL) and medical devices are currently not regulated in Russia.

22.10 Interchangeability

The Amendments introduce the definition of interchangeable medicinal preparations and parameters of interchangeability (most importantly — the same pharmaceutical substance, which should translate into the same INN). The procedure for establishing interchangeability is to be defined by the Russian Government. The Amendments call for establishment of a register of standard instructions for the use of interchangeable medicinal preparations.

The interchangeability of new medicinal preparations is to be defined during the state registration of medicinal preparations (this does not
apply to registration of reference products). Interchangeability of medicinal preparations registered before the Amendments come into force will be defined by state expert committee before 31 December 2017. Starting from 1 January 2018 information on interchangeability will be included in the state register of medicinal preparations.

The Fundamentals establish the definition of interchangeability of medical devices such that they may be considered interchangeable if they are comparable in terms of their functional purpose, quality and technical characteristics and may replace one another. The Fundamentals further require the state register of medical devices to contain information on their interchangeability. However, as far as we are aware, the practice of defining interchangeability of medical devices is yet to develop.

22.11 Technical Maintenance of Medical Equipment

Technical maintenance of medical equipment is a licensable type of activity according to the Law on Licensing. Its current status is uncertain, similarly to the status of licensing of manufacturing activities in this area discussed in Section 22.5 above. The licensing procedure is governed by the Regulation on Licensing the Manufacture and Technical Maintenance (Except for Internal Needs) of Medical Equipment, approved by Resolution of the Russian Government No. 469, dated 3 June 2013. A license for the maintenance of medical equipment is valid for an indefinite term.

It should again be noted that in certain cases (similar to the licensing of manufacturing of medical equipment) a license for technical maintenance of medical equipment alone is not sufficient and other licenses may be additionally required in order to lawfully conduct technical maintenance of certain types of medical equipment (e.g., a license for activities involving sources of ionizing radiation is necessary when X-ray equipment is being serviced).
22.12 Government-run Programs for Medicinal Supply

The most important among government-run programs related to medicinal supply is the program for additional medicinal supplies for specific categories of citizens, lately referred to as the program for supply of essential medicines (the so-called DLO program or ONLS program (Russian abbreviations)) under which certain categories of citizens (social security beneficiaries) receive certain medicines free of charge. This program was established in 2004 (the first year of operation was 2005) through the introduction of amendments to the Social Care Law. The last quarter of 2007 was marked by significant reform of the ONLS program.

The reform of the ONLS program abolished price regulation in this sphere, transferred the program to the regional level, and subjected it to the usual government procurement rules so that purchases of medicines within the ONLS program are organized as auctions on the regional level.

However, part of the ONLS program remains at the federal level (but no longer bears this name) and is set up to supply expensive medicines for treatment of certain diseases (haemophilia, mucoviscidosis, hypophyseal nanism, Gaucher’s disease, malignant neoplasms in lymphoid, haematogenic tissues and other related tissues, disseminated sclerosis, and after transplantations). Expensive medicines are purchased through auctions by the MOH. The current list of such medicines was established by Government Resolution No. 2053-r, dated 31 December 2008. This list will be replaced starting from 1 March 2015 with a new list adopted by Government Resolution No. 2782-r, dated 30 December 2014.

Purchases of medicines within both programs, as well as any other purchases of medicines for state or municipal needs, are carried out in accordance with the new Federal Law No. 44-FZ On the Contractual System in the Supply of Goods, Performance of Works, and Rendering of Services for State and Municipal Needs, dated 5 April 2013, as amended.
22.13 Promotion

The only type of promotional activity in the pharmaceuticals market that is currently specifically regulated by Russian law is “advertising.” Russian legislation contains few provisions that specifically regulate practices (other than simple advertising) aimed at the promotion or marketing of medicines. This means that, in order to determine the rules applicable to such things as seminars, hospitality, entertainment and similar activities, in most cases one has to refer to the generally applicable provisions of Russian law.

Advertising is defined in Article 3 of the Law on Advertising as “information spread by any means, in any form, and by any media, which is addressed to an indefinite circle of persons and aimed at drawing attention to the object advertised, at creating or maintaining interest in it, and at promoting it in the market.”

The Law on Advertising contains general restrictions on advertising that are as applicable to medicines and medical devices as they are to any other product. The general requirement is that the advertising should be fair and true. However, the Law on Advertising also contains specific provisions applicable to medicines and medical devices.

Under the Law on Advertising, prescription medicines, as well as medicines that contain narcotic or psychotropic substances approved for medical use, methods of prophylaxis, diagnostics, treatment and medical rehabilitation, medical devices that require special training for their use may only be advertised in specialized printed publications intended for medical and pharmaceutical professionals and at medical or pharmaceutical events.

The Law on Advertising contains a requirement that the advertisement of medicines, medical services and medical devices must be accompanied by a warning regarding contraindications against their use and application, the necessity to read the instructions on their use, or the necessity to consult a specialist. This requirement, however,
does not apply to advertisements disseminated at medical or pharmaceutical events and contained in specialized printed publications for medical and pharmaceutical professionals and to other advertisements where the recipients are solely medical and pharmaceutical professionals.

The Law on Advertising further introduces a group of restrictions that apply to the advertising of medicines. Thus, the advertising of medicines should not:

1. Be addressed to minors;

2. Contain references to specific cases of recovery from disease or improvement of health as a result of the advertised object being used (except in advertising exclusively for medical and pharmaceutical professionals);

3. Contain expressions of gratitude from individuals in connection with the use of the advertised object (except in advertising exclusively for medical and pharmaceutical professionals);

4. Create an impression of advantages of the advertised object by reference to the fact that the trials required for its state registration have been conducted;

5. Contain statements or assumptions that consumers have certain diseases or impairments of health;

6. Facilitate the impression that a healthy person needs to use the advertised object (this prohibition does not apply to medicines used for prevention of diseases);

7. Create an impression that one does not need to consult a physician;

8. Guarantee the positive effect of the advertised object, its safety, effectiveness and absence of side effects;
9. Represent the advertised object as being a dietary supplement or other product that is not a medicine;

10. Contain statements that the safety and/or effectiveness of the advertised object are guaranteed by its natural origin.

The advertising of medical services on induced abortion is prohibited. The restrictions in items 2 through 5 above are also applicable to the advertising of medical services, including methods of diagnosis, prophylaxis, treatment and medical rehabilitation; and the restrictions in items 1 through 8 above apply equally to the advertising of medical devices.

The Law on Advertising contains an important general prohibition against using images of medical and pharmaceutical professionals in any advertisements, except for advertisements for medical services, personal care products, and in advertising exclusively for medical and pharmaceutical professionals.

Further, by virtue of the Fundamentals, which came into force in the relevant part on 1 January 2012 (namely, Article 74) the interaction of pharmaceutical and medical devices companies with Russian medical and pharmaceutical professionals is substantially restricted. Although these rules are not specifically targeted at restricting marketing activities, they inevitably will significantly affect them. It is also important to note that these rules are not aimed at restricting lawful interaction of pharmaceutical and medical devices companies with Russian healthcare institutions.

Most importantly, the Fundamentals prohibit medical and pharmaceutical professionals from:

- accepting visits of representatives of companies except for cases related to performance of clinical trials of medicinal preparations or clinical studies of medical devices, or participation of medical workers in meetings or other events related to their professional development or providing...
information on the safety of medicinal preparations and medical devices (in accordance with the procedure established by the management of a medical organization),

- accepting gifts or money, including payments for entertainment, vacations, travel costs, from pharmaceutical and medical devices companies (except for remuneration under agreements on clinical trials of medicinal preparations or clinical studies of medical devices, or for teaching and (or) scientific activities),

- participating in entertainment events held at the expense of companies or representatives of companies,

- accepting samples of medicinal preparations and medical devices for further distribution to patients (except in the context of clinical trials).

The Law on Circulation of Medicines has been subsequently amended to include an article on interaction with medical and pharmaceutical professionals largely duplicating Article 74 of the Fundamentals. Additionally, the following changes have been introduced into the Law on Circulation of Medicines:

- the Law on Circulation of Medicines now lists the requirements that pharmaceutical companies (their representatives) must satisfy when organizing and /or financing scientific and other events aimed at the professional development of medical professionals or the provision of pharmacovigilance information;

- the Law on Circulation of Medicines prohibits hindering the participation of other companies that manufacture or distribute medicines with a similar pharmacological mechanism to that of medicines manufactured or distributed by the company organizing or financing the relevant event;
companies (their representatives) must also make information on the event (its date, place and time, agenda, plan and participants) available by placing it on its official webpage not later than two months prior to the event. They are also required to pass the above information to the Federal Service, which should then place it on its official website.

A separate administrative offence has been established for failure to provide the authorized state body with information if required to do so by healthcare legislation. Even though it is not certain yet, this rule is likely to apply to pharmaceutical companies for failure to inform the Federal Servicer about events they organize and/or finance.

Surprisingly, the long-awaited amendments to the Code of Administrative Offences of the Russian Federation for violation of Article 74 of the Fundamentals (governing interactions with medical and pharmaceutical professionals) have not yet been introduced.
23. Telecommunications

23.1 Applicable Laws and Competent State Bodies

The general rules in the telecommunications sphere in the Russian Federation are established by the law “On Communications” dated 7 July 2003 (the “Communications Law”). The Communications Law governs communication activities in the Russian Federation and assigns certain policy and regulatory functions to various bodies. The Communications Law also establishes a separate procedure for licensing and certification in the sphere of telecommunications.

State regulations on the provision of services and other telecommunication activities are to be introduced by the President, the Government, and the Ministry of Telecommunications and Mass Communications (the “MTMC”) — the federal governmental authority for communications.

The MTMC is the state body responsible for the preparation of draft federal laws, presidential decrees and government resolutions in the area of communications and information technology. The MTMC is also entitled to issue its own regulations, such as setting out requirements for the use of numbering capacity, regulations on the use of radio frequencies, rules for providing communication services to subscribers, etc.

The other state agencies in the sphere of telecommunications are: the Federal Service for Supervision in the Sphere of Telecommunications, Information Technology and Mass Communications (“Roskomnadzor”) and Rossvyaz — the Federal Communications Agency (the “FCA”).

Roskomnadzor is responsible for exercising day-to-day control in the area of communications and mass media, monitoring the use of the frequency spectrum, registration of frequency assignments, mass media registration, issuance of licenses in the area of communications and mass media, and the protection of personal data.
The FCA is responsible for coordination of international and federal programs in the area of information technology and communications, the numbering capacity of operators, certifying the compliance of equipment, and organizing the operation, development and modernization of the federal communications and national information and telecommunications infrastructure.

The MTMC also organizes the work of the State Commission for Radio Frequencies (the “SCRF”). The SCRF is made up of representatives of various ministries and state bodies. The main tasks of the SCRF are to coordinate use of the frequency spectrum by different state bodies and frequency spectrum allocation. The SCRF is responsible for the allocation and use of the frequency spectrum, scientific and technical research in the area of use of the frequency spectrum, frequency spectrum demilitarization / conversion, technical policy for use of the frequency spectrum, and also with regard to electromagnetic compatibility.

Any decision of the MTMC, Roskomnadzor or the FCA may be appealed in court.

23.1.1 Communications Networks

The Communications Law establishes that the unified communications network of the Russian Federation consists of the following categories of communications networks, located on the territory of the Russian Federation:

- Public switched telecommunications network (“PSTN”);
- Dedicated communications networks;
- Technological communications networks; and
- Special purpose networks and other communications networks for data transfer with the use of electromagnetic systems.
The PSTN is designated for the provision of telecommunication services for a fee to any user of communication services on the territory of the RF. The PSTN network is connected to the PSTN’s of foreign countries.

A dedicated communications network is designated for the provision of telecommunication services for a fee to a closed user circle or groups of such circles. A dedicated communications network doesn’t have a connection to the PSTN and to the communications networks of foreign countries. The technological aspects of a dedicated network’s construction can be determined by the owner of the network. A dedicated communications network can be connected to the PSTN (whereupon it will be recategorized as part of the PSTN) if the dedicated communications network complies with the requirements of the PSTN.

A technological communications network is designed to support the operational activity of enterprises and management of the technological processes used in operations. A technological communications network doesn’t have a connection to the PSTN, and can be connected to the technological communications networks of foreign enterprises only for the execution of a unified/joint technological operation. A technological communications network can be connected to the PSTN, but in this case all regulations applicable to PSTN will apply to the connected network and the technological network will be treated as a part of PSTN.

A special purpose communications network is designated for state needs, national defense, state security and law enforcement. Such a network can not be used for the provision of services for a fee.

23.2 Telecommunications Licenses

Communication services can only be provided on the basis of a license. Among the communication services subject to mandatory licensing are the following:
• Local telephone communication services (with or without services via public telephones, points of public access);
• Telephone services provided via dedicated communications networks;
• International and domestic long-distance telephone communication services;
• Telegraph communication services;
• Personal calling services;
• Radio, cellular, or satellite communication services;
• Provision of communication channels;
• Data transmission services (including or not including VoIP);
• Telematics services.

A license may be obtained upon an application. The license should be issued based on the results of an auction or tender in the following cases:

• A communication service requires use of radio frequencies, and the SCRF determines that the radio frequency spectrum, available for provision of communication services, limits the possible number of communications providers on the territory;

• Limited resources of the PSTN on the territory (i.e., limited numbering capacity resources) and the number of communications providers on the territory should be limited.

A decision on whether to issue a license is taken by Roskomnadzor within 30 days after the filing of the application. If during provision of communication services it is proposed to use radio frequencies, including for the purposes of television and radio broadcasting; or to
perform cable television broadcasting, wired sound broadcasting, transfer voice data, including through a data transfer network, provide communication channels which go either beyond the territory of the constituent territory of the Russian Federation or beyond the territory of the Russian Federation, or to provide postal services, Roskomnadzor should decide on whether to issue a license within 75 days from the date of the filing of an application.

Licenses are issued for a term of up to 25 years.

Roskomnadzor collects a fee for issuance of a telecommunications license in the amount of RUB7,500 (approx. USD133).

The territory for which the license is valid is specified in the license. There are no restrictions on the number or type of communications licenses that a single licensee may hold.

The Communications Law does not permit the transfer of a license or any rights from the licensee to another person. The license can be re-issued by Roskomnadzor only to a legal successor of the licensee.

Roskomnadzor has the right to terminate a license without applying to the courts if the operator is liquidated, or ceased its activities as the result of reorganization (except for reorganization in the form of transformation), or applies for termination of the license.

The license may be suspended if Roskomnadzor discovers a breach of law or of the conditions of the license by the operator, or non-performance of services for more than three months, or non-performance of services from the date specified in the respective license as the date for commencement of provision of services.

### 23.3 Rights to Use Radio Frequencies

The Communications Law provides transparent and open frequency allocation procedures and for a national frequency allocation table. Allocation of the frequency spectrum is organized in accordance with
the Frequency Allocation Table, which has to be reviewed at least once every four years.

If a communications provider intends to use radio frequencies for provision of communication services, it should comply with the requirements for allocation of radio frequency bands prior to obtaining the respective communications license.

The procedures for allocation of radio frequency bands and assignment of radio frequencies and radio frequency channels are established by the SCRF and Roskomnadzor. In practice the allocation of radio frequency bands and assignment of radio frequencies and radio frequency channels takes at least six months. Radio frequencies, radio frequency bands and channels are allocated/assigned for a term of up to ten years.

The use of the frequency spectrum is subject to a one-off fee for allocation of a radio frequency, plus an annual fee for use of the radio frequency.

The Communications Law does not allow the transfer of the right to use a radio frequency from one operator to another operator.

In case of violations of the terms and conditions set forth in a decision of the SCRF on allocation of a radio frequency or in a decision of Roskomnadzor on assignment of radio frequencies and radio frequency channels, these decisions may be suspended for the period required for elimination of such violation, but not for more than 90 days.

As a general rule, a telecommunications provider that intends to use a radio frequency spectrum must obtain a resolution of the SCRF on allocation of radio frequency bands and a resolution of Roskomnadzor on assignment of radio frequencies and radio frequency channels. The only exception in the applicable legislation is virtual telecommunications providers who are not required to obtain the said resolutions since they use the networks and radio frequencies of other
providers based on network cooperation schemes agreed upon between the providers.

23.4 Registration of Radio Frequency Emitters

Telecommunications facilities and equipment emitting radio frequencies are subject to registration. The authority responsible for such registration is Roskomnadzor. The relevant legislation includes a list of equipment subject to registration (most radio transmitting equipment) and some exclusions from the registration procedure (for example, cellular phones, DECT phones, Bluetooth, etc.).

A necessary condition for issuance of a registration certificate is obtaining decisions of the SCRF and Roskomnadzor on allocation and assignment of radio frequencies.

A decision on whether or not to issue a certificate should be taken within ten days. The term of the registration certificate corresponds to the term of the frequency assignment permit. If such a permit is not required a certificate may be issued for a term of up to ten years.

23.5 Broadcasting of Mandatory Public TV Channels and Radio Stations

Communications providers perform the broadcasting of mandatory public TV channels and radio stations on the basis of agreements with the broadcasters of such channels and stations. A list of providers for broadcasting mandatory public channels and stations is approved by the President of the Russian Federation. Currently Federal State Unitary Enterprise “Rossiiskaya Televisionnaya i Radioveschatelnaya Set” is the only authorized provider. The list of mandatory public TV channels and radio stations is set by the President of the Russian Federation and currently includes ten TV channels and three radio stations.

The requirements on broadcasting mandatory public TV channels and radio stations on a free of charge basis (at the expense of the provider) are included into the licensing requirements to be complied with by
communications providers rendering telecommunications broadcasting services.

23.6 SORM Issues

Russian law obliges telecommunications providers (legal entities or individual entrepreneurs that provide telecommunications services on the basis of an appropriate license) to provide the state authorities that perform criminal investigations with information regarding their clients and the services rendered to them, and to give these authorities the ability to perform investigative work.

On the basis of these provisions the authorities responsible for the security of the Russian Federation have developed a set of technical devices for communications control facilities needed in order to intercept and/or interrupt communications (known as SORM). SORM equipment is installed at a provider’s premises and operated remotely by the authorities from a special control panel. SORM provides the opportunity to control communications without the participation of the provider. According to the law, such investigations are allowed only under a court order, or if there is an imminent threat that a crime may be committed.

These regulations affect communications schemes, especially the use of satellite communications channels. In some cases downlink equipment must be placed on Russian territory and equipped with SORM.

23.7 Technical Regulation Requirements

According to the Communications Law all communications devices are subject to the compulsory confirmation procedure. This is done by either compulsory certification or compulsory declaration of conformity. The list of devices subject to mandatory certification is approved by Regulation of the Government No. 532 dated 25 June 2009. All other devices are subject to a mandatory declaration of their conformity.
A declaration of conformity is a document in which the applicant confirms that the product it has manufactured corresponds to the conformity requirements. To be valid, a declaration of conformity for the relevant telecommunications device is subject to registration with the FCA. A declaration of conformity should be filed for registration by an applicant accompanied with the relevant evidence of the device’s conformity obtained with the help of accredited test laboratories.

The competent authority for certification is the Certification Agency. A manufacturer or supplier of a device files an application with the Certification Agency, which carries out the certification test. A certificate on conformity should be issued for one or three years, depending on the certification scheme stipulated in the certification rules. The cost of the whole procedure varies significantly depending on the equipment subject to the certification.

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.

Applications for certificates of compliance may be submitted only by the manufacturers, sellers or “legal entities or private entrepreneurs registered in the Russian Federation and arranging 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 communication 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.
23.8 Internet Communications Programs

Providers of Internet communications programs (companies providing for operation of information systems and/or programs for computers which are designated and/or used for the receipt, transfer, delivery and/or processing of electronic messages of Internet users) must:

- notify Roskomnadzor of the commencement of their activities as providers of Internet communications programs;
- store in Russia information on the facts of the receipt, transfer, delivery of and/or processing of voice data, written text, images, sounds and other electronic messages of Internet users as well as information on such users for six months after termination of these actions;
- provide criminal investigation authorities and national defense authorities with this information; and
- use equipment and programs that comply with the requirements of criminal investigation authorities and national defense authorities.

These requirement do not apply to communications providers to the extent of their licensed activities in Russia.

If providers of Internet communications programs fail to comply with the above-mentioned requirements access to their Internet communications programs may be blocked based on a court order or a resolution of the competent state authorities.

23.9 Bloggers

An owner of an Internet site (Internet page) with publicly available information (even when such information is published by users) accessed by more than three thousand users per day (a “blogger”) must fulfill the following obligations:
• not allow use of the Internet site/page for committing criminal offences, disclosure of state or other secrets protected by law, distribution of material containing public calls to commit acts of terrorism or material which publicly justifies acts of terrorism, other extremist material, material promulgating pornography, violence and cruelty, material containing strong language;

• check the accuracy of published publicly available information prior to its publication and immediately remove inaccurate information;

• not allow distribution of information on individuals’ private lives in breach of applicable legislation;

• comply with Russian law requirements applicable to mass distribution of information;

• observe the rights and legal interests of nationals and organizations, including honor, dignity and business standing.

A blogger must publish on his/her Internet site/page his/her full surname, initials and electronic address.

The owners of Internet sites registered as mass media are not considered bloggers.

Roskomnadzor maintains a register of Internet sites/pages with publicly available information accessed by more than three thousand users per day.

23.10 Mass Media Regulation

23.10.1 Applicable Laws and Competent State Bodies

Broadcasting activity in the Russian Federation is governed by the Law “On Mass Media” of 27 December 1991 (as amended) (the “Mass Media Law”) and the Communications Law.
The Mass Media Law regulates activities in the sphere of broadcasting and sets requirements for the mass media.

The state authority exercising control over broadcasting is Roskomnadzor. Roskomnadzor registers mass media and issues licenses for broadcasting activities.

Another state authority in the sphere of mass communications is Rospechat — the Federal Agency for Press and Mass Communications. Rospechat provides state services and manages state property in the sphere of the press and mass media.

23.10.2 Mass Media Registration

Under the Mass Media Law mass media covers printed periodicals, web periodicals, TV and radio channels and TV, radio and video programs, newsreel programs, and other forms of regular distribution of information under a permanent name.

Mass media established on the territory of the Russian Federation are subject to registration by Roskomnadzor.

Foreign companies have limited rights to establish mass media:

- A foreign company or a Russian company with a foreign share participation of 50% or more may not found TV and radio channels and TV, radio and video programs;

- A foreign company or a Russian company with a foreign share participation of 50% or more may not be a founder of a company broadcasting to an area which is half or more of the territory of the Russian Federation and/or which is home to half or more of the population of the Russian Federation.

Starting from 1 January 2016 amendments to the Mass Media Law will be in force imposing additional restrictions on participation in the Russian mass media. In particular:
unless otherwise provided by an international treaty to which Russia is a party, a foreign state, international organization, organizations under their control, a foreign legal entity, a Russian legal entity with foreign shareholding, a foreign citizen, an apatride, a Russian citizen having citizenship of another state (jointly or severally) may not be founders/participants of mass media, act as editorial boards or a broadcasting company;

unless otherwise provided by an international treaty to which Russia is a party, a foreign state, international organization, organizations under their control, a foreign legal entity, a Russian legal entity with foreign shareholding of more than 20%, a foreign citizen, an apatride, a Russian citizen having citizenship of another state (jointly or severally) may not own, govern or control, directly or indirectly (including via entities under their control or by way of holding in aggregate more than a 20% shareholding in such entities) more than a 20% shareholding in the charter capital of an entity that is a shareholder/participant of a founder of mass media, a mass media editorial board or a broadcasting company.

Establishment by the above-listed entities of any other forms of a control over the founder of a mass media outlet, its editorial board or a broadcasting company as well as over entities that are shareholders/participants of the mass media founder, as a result of which the said persons may directly or indirectly own or govern such founder, editorial board or broadcasting company, perform control over them as well as actually determine decisions passed by them is prohibited.
For registration purposes an applicant must submit the following documents to Roskomnadzor or its territorial agency:

- An application for state registration of the mass media;
- A copy of the documents certifying payment of the registration fee (for most mass media types — for the whole of Russia — RUB10,000 and RUB5,000 for one territorial unit (approx. USD178 and USD89));
- Identification documents and documents confirming the registration address of an applicant (if the applicant is a Russian citizen);
- Identification documents and documents confirming the right of permanent residence of an applicant in Russia (if the applicant is a foreign citizen or an apatride);
- Foundation documents of an applicant (if the applicant is a legal entity);
- Extract from the shareholders register or participants register (if the applicant is a legal entity) in case of establishment of TV and radio channels and TV, radio and video programs;
- Documents confirming the right to use the domain name of the Internet site in case of establishment of a periodical on the Internet;
- The charter of the mass media editorial board or the agreement between the mass media founder and the editorial board (chief editor);

80 An application should be filed with Roskomnadzor if the mass media products are to be distributed throughout and outside Russia or several of its constituent territories. If the distribution of such products is to be limited to the territory of one region, city or district, the application should be filed with the territorial division.
• Documents confirming the transfer of the rights and obligations of the mass media founder to a third party.

The review period is normally 1 month. The registration certificate should be issued for an unlimited period of time.

The founder of the mass media should start the manufacture of the mass media products within one year from the date of issue of the certificate. If it misses the prescribed term the mass media registration certificate shall be deemed invalid.

The grounds for refusal to register mass media are limited to the following:

• If the application was filed on behalf of a person or legal entity that does not have the right to establish the mass media in accordance with the Mass Media Law;

• If the application contains false information;

• If the name, tentative theme and (or) specialization of the mass media may be deemed abuse of the freedom of the mass media as determined by the Mass Media Law;

• If the responsible authority had already registered mass media with the same name and form of transmission.

A refusal to register mass media should be provided in written form and specify the grounds for refusal as foreseen by the Mass Media Law.

The application may be returned to the applicant without review in the following cases:

• If the application was filed in breach of the requirements of the Mass Media Law;

• If the application was filed by an unauthorized person;
If the state registration fee was not paid.

23.10.3 Issues Arising out of Mass Media Establishment

A Russian legal entity conducting such business activity would require not only mass media registration but also to establish an editorial commission and the necessary staff. An editorial commission is the organization or persons manufacturing and editing the mass media. The founder of the mass media should approve a charter for the editorial commission of the mass media and/or enter into an agreement with its editorial department. In addition, if there is more than one founder, a founders’ agreement is required.

23.10.4 Licensing of Broadcasting Activity

Russian legislation distinguishes between broadcasting itself and provision of telecommunication services for the purposes of cable or wireless broadcasting and each activity requires a separate license — a mass media license and telecommunications license. The requirements for obtaining a telecommunications license are listed in Article 23.2 above.

23.10.5 Mass Media License

A mass media license provides the broadcaster with the right to distribute mass media products, registered in accordance with the Mass Media Law, using technical broadcasting equipment with the observance of the license conditions. A broadcaster is understood as a Russian legal entity creating and distributing a TV or radio channel under a broadcasting license.

The licensing procedure is set by the Mass Media Law. Licenses are issued for a term of up to 10 years.

In order to obtain a license a license applicant should file an application with Roskomnadzor. The application should, inter alia, contain the following information:
Name of the TV or radio channel for broadcasting;

Subject matter of the TV or radio channel;

Broadcasting territory of the TV or radio channel;

Broadcasting capacity of the TV or radio channel (in hours);

Estimated broadcasting period and the date of broadcasting commencement of the TV or radio channel;

Information on the broadcasting method of the TV or radio channel (satellite, air, cable broadcasting, other).

In addition the following documents should be filed with Roskomnadzor:

- Documents confirming payment of the state fee;

- Extract from the shareholder register (for applicants being joint stock companies), or another document providing information on the participation interests of the founders (participants) of a legal entity in its charter capital (for applicants established in forms other than joint stock companies but except for limited liability companies);

- Charter of the editorial board of the TV or radio channel or the agreement with the editorial board of the TV or radio channel;

The review period is 45 days after the date of filing the above documents. The cost of a license is RUB7,500 (approx. USD133).

The following broadcasting licenses are issued based on a tender:

- licenses for performance of terrestrial analog radio broadcasting if the population in the broadcasting area is 100,000 or more, or if broadcasting is performed in the capitals of constituent territories of the Russian Federation;
- licenses for performance of terrestrial analog TV broadcasting;
- licenses for performance of terrestrial digital broadcasting;
- licenses for performance of satellite broadcasting with the use of orbital and frequency resources.

23.10.6 Classification of Informational Products

Russian legislation has been amended to oblige the manufacturers and/or distributors of information to classify and mark the information distributed in Russia in terms of age groups who may have access to such information. These obligations are contained in the Federal Law “On Protection of Children Against Information Causing Harm to Their Health and Development” dated 29 December 2010 (the “Child Protection Law”).

The Child Protection Law sets out requirements for the distribution of information causing harm to the health and/or development of children. Such information is divided into information that is prohibited for distribution among children and information restricted for distribution among children depending on their age. Distribution of both categories of information in Russia is prohibited without a special information sign indicating the age category that may have access to such information (age marking).

These age markings may be of five types as follows:

1. “0+” (for children under 6 years old);
2. “6+” or in the form of the following warning “for children older than 6 years old” (for children who are 6 or more years old);
3. “12+” or in the form of the following warning “for children older than 12 years old” (for children who are 12 or more years old);
4. “16+” or in the form of the following warning “for children older than 16 years old” (for children who are 16 or more years old); and

5. “18+” or in the form of the following warning “prohibited for children” (with respect to information prohibited for distribution among children).

The classification of products is the responsibility of the manufacturers and must be done before the products are sold in Russia. The law also sets requirements for the experts who can participate in the classification of products.

There are, however, certain exclusions from the obligation to mark information with the above-mentioned signs. Thus, this obligation does not apply to information distributed through the Internet (except for Internet websites registered as mass media).

The Child Protection Law also states that a website that is not registered as mass media may show an age marking and/or a warning on the restriction of distribution of information through the website among children depending on their age. Such classification may be done by the owners of the web-site.

23.10.7 Register of Internet Sites Distributing Prohibited Information

To restrict access to Internet sites containing information prohibited for distribution in Russia Russian law provides for the formation of the Unified Register of Domain Names, Indicators of Web Pages in the Internet and Network Addresses Allowing the Identification of Websites in the Internet Containing Information the Distribution of Which is Prohibited in Russia (the “Register”).

The Register will contain:

- the domain names and/or indicators of web pages in the Internet containing prohibited information;
network addresses allowing the identification of websites in the Internet containing prohibited information.

The grounds for including information into the Register are as follows:

- decisions of the competent state authorities on the following information distributed through the Internet:
  - materials with pornographic images of minors and/or announcements on the involvement of minors as participants in pornographic entertainment events;
  - information on the development, production and use of drugs, psychotropic substances and their precursors, locations where it is possible to acquire these substances and their precursors, methods and locations of cultivation of drug-containing crops;
  - information on methods of committing suicide as well as calls to commit suicide.
- an effective court decision ruling that certain information distributed through the Internet is prohibited for distribution in Russia.

Within one day after the receipt from the operator of the Register of a notification of inclusion of information on the website into the Register a hosting provider must inform the owner of the website that information on the website has been included into the Register and that the owner must immediately delete the web page containing the prohibited information.

Within one day of receiving such a warning from the hosting provider the website owner must delete the web page containing the prohibited information. If the owner refuses or fails to delete the web page the hosting provider must restrict access to the website within one day.
If the website owner and/or the hosting provider fail to comply with their obligations mentioned above the website will be included into the Register.

Within one day of a website being included into the Register telecommunications providers rendering Internet access services must restrict access to the website distributing the prohibited information.
24. Climate Change

Russia ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change (the “Kyoto Protocol”) with Federal Law No. 128-FZ dated 4 November 2004. At the 18th Conference of the Parties to the Kyoto Protocol (COP-18) that took place in Doha in November–December 2012, it was agreed to extend the effect of the Kyoto Protocol by establishing a second commitment period starting 1 January 2013 and ending 31 December 2020. However, the Russian Federation declined to undertake obligations within the second commitment period. Accordingly, at the date of publication, it does not seem possible to use Kyoto Protocol mechanisms for Russian projects any more.

Nevertheless, legislation related to Joint Implementation (“JI”), the only Kyoto-related mechanism that was established in the Russian Federation, is still in force. However, no new projects have been approved in practice since 2012–2013.

As an alternative to projects implemented under the Kyoto Protocol, projects involving trading Voluntary (or Verified) Emission Reductions (“VERs”) may be implemented in Russia.

VER trading projects have been broadly discussed for Russia as there is no local regulation directly prohibiting or restricting parties from using this mechanism. The implementation of VER trading might be used as part of a company’s carbon management strategy to effectively reduce its unavoidable emissions. The Russian carbon market has already seen some practical examples of transactions with Russian VERs (e.g., one such transaction was successfully completed by the Arkhangelsk Pulp and Paper Mill). In view of the decision by Russia and other countries with high emission levels not to participate in the second commitment period of the Kyoto Protocol, this market may grow in the coming years.

Finally, there are ongoing discussions to establish a Russian trading system.
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