

**Baker
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2018

**DOING
BUSINESS
IN RUSSIA**



Doing Business in Russia

2018

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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 as of the beginning of 2018. The exchange rate of United States dollar to the Russian ruble (hereinafter - “RUB”) is 56.60 RUB to 1 USD as of the date of this guide.

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 2018



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 approx. 143 million. Although approx. 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 approx. 11.9 million, followed by St. Petersburg, with a population of approx. 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 through 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. Russian and Western forces cooperate and exchange military information over airstrikes against terrorists in Syria. 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 fuelled 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%.

After the outbreak of the crisis the government 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 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 were acquired by government-controlled organizations. A package of tax initiatives encouraging economic activity has been adopted.

The ongoing financial crisis in Russia is the result of the collapse of the ruble which started in the second half of 2014 and had at least two major causes. The first is the fall in the oil price. The second is the result of international economic sanctions imposed on Russia. Though the oil price is still low some Western countries are declining to extend sanctions against Russia, which is a positive sign for the Russian economy in the medium term.



2. The Russian Judicial System

2.1 What are basic distinctions between jurisdiction of courts in the Russian judicial system?

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 federal and some regional laws’ and regulations’ compliance with the Constitution if they are related to issues within the competence of federal authorities.

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

Arbitrazh (state commercial) courts have jurisdiction to resolve disputes in connection with business activities as well as disputes involving legal entities and self-employed entrepreneurs. These courts are also entitled to resolve certain types of disputes irrespective of the nature of the parties, such as bankruptcy cases, corporate disputes, disputes out of depositories’ activities in connection with recording title to the shares and other securities, certain disputes out of activities of public law companies, state companies and corporations. Other disputes fall under the purview of federal courts of general jurisdiction and the courts of general jurisdiction of constituent entities (magistrates).

2.2 What is the procedure for resolving disputes in courts of general jurisdiction?

The dispute resolution procedure in the courts of general jurisdiction is governed by the Code of Civil Procedure of the Russian Federation. 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);
- 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 from trial courts can be appealed within one month of being issued. A court of appeal reviews a judgment on the grounds stated in the appeal. New evidence is only accepted 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 from a court of appeal (and a trial court's decisions) may be further appealed at a court of cassation appeal within six months of becoming effective. As a rule, review by a court of cassation appeal is only possible after review by a court of appeal. The decisions of a trial



court that were not subject to appellate proceedings may only be appealed in a court of cassation appeal when the appeal was dismissed without prejudice for failing 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 on the merits.

A losing party may appeal the decisions of the court of cassation appeal with a civil law panel of the Supreme Court within six months.

Cassation review at the Supreme Court is also a two-tier process. First, a judge of the Supreme Court resolves whether there are grounds to review of the cassation appeal at a court session of the Supreme Court's panel. The refusal to transfer the case for such review may be challenged via the Supreme Court's chairperson or deputy chairperson. If the challenge is successful, the cassation appeal is transferred for review in a court session.

A court of cassation appeal may only set aside or modify court resolutions 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 being issued 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 from the lower courts when it finds that it violates any of the following:

- The rights and freedoms guaranteed by the Constitution of the Russian Federation, international law principles and international agreements of the Russian Federation;
- 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.

All documents may be submitted to the court on paper and electronically, including in the form of an electronic document signed by electronic signature as regulated by Russian laws.

2.3 What is the procedure for resolving disputes in arbitrazh (state commercial) 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, arbitrazh courts have 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 examining witnesses, hearing experts or using audio or video recordings.

There is also a specialized court dealing with intellectual property disputes, which is part of Russia's system of 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 in such cases are effective immediately and can be appealed at 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 (two-tier);
- Court of supervisory appeal.

Since 6 August 2014, the Supreme Court is the court of supervisory appeal within the system of arbitrazh courts¹. The Supreme Court has powers to unify and direct the practice of lower arbitrazh courts².

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 to ensure a uniform application of Russian legislation. The explanatory parts of arbitrazh court rulings may contain references to resolutions of the Supreme Court as well as those resolutions of the

Before submitting a claim in with an arbitrazh court a party may have to comply with a pre-trial claim procedure. This concerns, for example, civil law disputes for the recovery of funds where claims have arisen out of contracts, other transactions as well as due to unjust enrichment. The statutory term for the pre-claim procedure is 30 calendar days as from sending a pre-trial claim to the other party. Another term and procedure can be stipulated in the law or a contract. Compliance with pre-trial procedure for other types of civil law disputes is necessary where such procedure is stipulated by a federal law or a contract.

2.3.1 What are the peculiarities of procedure at the trial court?

The maximum state fee for filing a claim is limited to RUB 200,000 (approx. USD 3,450 as of 1 December 2017). 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 receiving a statement of claim. The judge may request an extension of up to six months for complex cases or cases involving a considerable number of parties. In practice, this period may be longer but regular cases are reviewed within these deadlines. A judgment is announced immediately after the final hearing.

A judgment from 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 applying the law. In fact, an appeal is a limited retrial.

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 What are the peculiarities of procedure at the 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 What are the peculiarities of procedure at the court of cassation appeal?

A judgment of first instance, after undergoing review from 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 only deals 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 issued the decision for a retrial.

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, although 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 Supreme Court within two months.

Cassation review at the Supreme Court is a two-tier process. A judge from the Supreme Court first resolves within two or three months whether there are grounds to 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. A refusal to transfer the case for such review may be challenged via the Supreme Court's chairperson or deputy

chairperson. 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 Supreme Court's panel may be appealed with the court of supervisory review within three months of becoming effective.

2.3.4 What are the peculiarities of supervisory review at the supreme court?

Supervisory review is also a two-tier process. Before the appeal is actually heard on its merits, a judge from the Supreme Court resolves within two to three months whether there are grounds to review 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. A refusal to transfer the case for such review may be challenged via the Supreme Court's chairperson or deputy chairperson. 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 reviewing the supervisory appeal cannot be further appealed.

2.3.5 What are the main procedural issues in litigation proceedings at an arbitrazh (state commercial) court?

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 it can retain a foreign or local law firm.

Certain formalities must be followed for a person to appear as a legal representative in court. The Code of Arbitrazh Procedure (the "CAP") 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 another person duly authorized under the law and the



constituent documents, and should bear the corporate seal (if there is one).

Moreover, a representative acting under a power of attorney may perform certain procedural actions 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 or receive awarded funds or other property.

An arbitrazh court only needs to send the first ruling on initiation of proceedings in respect of a party by post (setting the date of the first hearing in a case). The relevant information is also placed in the database of arbitrazh court cases³. Thereafter, the parties should obtain further information regarding the pending proceedings themselves.

Submissions are filed either on paper with personal signatures of authorized representatives, or electronically via MyArbitr.ru.⁴ Starting from 1 January 2017, two ways of electronic filing are available: using an authentication of the Unified Portal of State and Municipal Services and Functions (<https://www.gosuslugi.ru/>) or reinforced electronic signature of the signatory. Applications for injunctive relief may only be filed via signing with reinforced electronic signature.

2.3.6 What are the peculiarities of summary proceedings?

Summary proceedings are an expedited procedure for resolving disputes on the basis of written evidence, which aims to reduce litigation costs and the caseload for judges. A list of disputes subject to summary proceedings is provided for in the law. Among those are various types of disputes with either a relatively small or an

³ <http://rad.arbitr.ru/>, <http://kad.arbitr.ru/>.

⁴ <http://my.arbitr.ru/>.

undisputed amount of claim. Corporate disputes, class actions and bankruptcy disputes cannot be resolved in summary proceedings.

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 is established by the court, and the court does not consider any 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.

A judgment in summary proceedings is subject to immediate enforcement and lodging an appeal against the judgment does not stay the execution. An appeal can be lodged within 15 days of the judgment's issuance and where a party requests a reasoned judgment to be issued, the term for filing an appeal is to be stipulated in such reasoned judgment.

Cassation review of summary judgments is only possible after appellate review or if the request for extension of the term for filing an appeal has been refused.

2.3.7 What Are the Peculiarities of Writ Proceedings?

Writ proceedings are a procedure where a judge, sitting alone, resolves cases based on the applications for the recovery of funds or movable property from the debtor, filed by the applicant and without



summoning either the applicant or the debtor. The proceedings end with the issuance of a judicial writ, which is at the same time an executory document enforceable as per the procedure for execution of court judgments. The writ is issued within 10 days of filing an application with the court.

A list of disputes subject to writ proceedings is provided for in the law and includes small-size contractual claims (below RUB 400,000 (approx. USD 6,800)) that are substantiated by documents and admitted by the debtor; claims of the same amount that are based on notary's protest of bills for non-payment, non-acceptance and for failure to date acceptance and claims for the recovery of mandatory payments and penalties below RUB 100,000 (approx. USD 1,700).

2.3.8 When does a Russian arbitrazh (state commercial) court have 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, performance of which 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;
- In other cases where the disputed legal relationship is closely linked with the Russian Federation;

A Russian court may consider a case involving a foreign investor if (a) the key evidence in the case is located in Russia, (b) Russian law is the governing law of the contract, (c) the domain name in the foreign domain zone is predominantly aimed at the Russian audience, (d) the focus of commercial activity is on persons located in the Russian jurisdiction (the criteria of “close connection” with Russia). The court does not apply the “close connection” test automatically. Rather, courts will take into consideration all factors and circumstances of the case.

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;
- Disputes arising from 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 What are the Procedural Rules for Administrative Judicial Proceedings?

2.4.1 What types of disputes are resolved under the code of administrative proceedings

The provisions of the CAS apply to resolution by the Supreme Court, federal courts of general jurisdiction and magistrates of administrative cases for defending the violated or challenged rights, freedoms and legal interests of citizens and legal entities, as well as to other administrative cases arising out of administrative and other public law relations and connected with judicial control over the legality and validity of the exercising state or other public authority, such as:

- On challenging regulatory legal acts in part or in full;
- On challenging acts of clarifying legislation of a legal nature;
- On challenging the decisions and actions (inaction) of governmental authorities, other state authorities, military

authorities, municipal authorities, public officials, and state and municipal officers;

- On challenging the decisions and actions (inaction) of non-commercial organizations vested with certain state or public authority, including self-regulated organizations;
- On challenging the decisions and actions (inaction) of qualification boards of judges;
- On challenging the decisions and actions (inaction) of the Highest Qualifying Examination Commission and examination commissions of the Russian Federation constituent territories holding qualification exams for judges;
- On defending electoral the rights and rights of the Russian Federation citizens to take part in a referendum;
- On awarding compensation for violation of the right to judicial process within a reasonable term (within the competence of general jurisdiction courts) and the right to the execution of a general jurisdiction court act within a reasonable term;
- On termination of activities of the mass media;
- On restriction of access to an audio-visual service.

2.4.2 What are the peculiarities of procedure under the Code of Administrative Proceedings?

In addition to the joinder of parties in administrative proceedings, the CAS introduces the possibility of filing collective administrative claims to defend the violated or challenged rights and legal interests of a group of persons in administrative proceedings⁵. Such actions are

⁵ Class actions were only possible under the CAP not under the Code of Civil Procedure.



considered by a court if at least 20 persons have joined the claim at the time it is filed.

The CAS allows a court to order provisional relief in administrative cases, the list of which is not exhaustive, and includes: suspension of the challenged decision in full or in part; and prohibition against carrying out certain actions. When challenging a regulatory legal act, only one provisional relief is possible: the court may order that such act must not be applied to the administrative claimant.

The procedural coercion measures introduced by the CAS include: (i) putting limits on pleading by a party or depriving a party of the chance to plead; and (ii) an undertaking to appear. Among the procedural changes is a requirement for higher legal education for representatives in administrative cases⁶.

The CAS obligates governmental bodies and officials to prove the legitimacy of their decisions and actions (inaction). However, an administrative plaintiff that challenges such decisions or actions (inaction) is not obligated to prove their illegality (but should indicate which regulations they run contrary to, and show that their rights or the rights of others have been violated).

The CAS allows administrative cases to be heard in a simplified procedure. This procedure is subject to the conditions set out in the code (for example, at the wish of the parties) and no oral hearing is conducted, with the court examining only written evidence.

The general term for a challenge in appeal proceedings is one month. However, shortened terms of 5-10 days are stipulated for certain types of cases.⁷

In accordance with recent changes effective as of 1 January 2017, an administrative statement of claim, an application, complaint and other

⁶ At present no such requirement is stipulated in the CAP or the Code of Civil Procedure.

⁷ Article 298 of the CAS.

documents may be submitted to the court on paper and electronically, including in the form of an electronic document signed by electronic signature as regulated by Russian laws.

2.4.3 What disputes are under the Code of Administrative Offenses to be resolved by courts?

The Code of Administrative Offenses regulates the procedure for competent courts and authorities (officials, executive authorities, law enforcement authorities) to resolve cases concerning administrative liability.

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 federal general jurisdiction courts, magistrates or arbitrazh (state commercial) courts) (part 1 of Article 23.1) as well as those disputes that may be referred to court pursuant to a decision from a competent body and/or official (part 2 of Article 23.1).

Part 3 of Article 23.1 contains provisions on distinguishing the jurisdiction over administrative disputes among the courts of the Russian judicial system.

Disputes falling under the jurisdiction of arbitrazh (state commercial) courts include competition disputes as well as certain disputes when the administrative offense is committed by a legal entity and/or individual entrepreneur.

The majority of the remaining disputes falling under the jurisdiction of the courts are resolved by magistrates.

For example, the code specifies cases when a dispute regarding an administrative offense should be referred for resolution to a district court. Firstly, these are certain administrative offenses that are expressly listed as falling under the jurisdiction of district courts, such as: violation of the rules for public meetings; violation of the rules regarding cultural heritage objects; failure to perform an order from a



supervisory authority responsible for cultural heritage objects; some public safety 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 Russian Federation administrative stay of activity and disqualification of state officials.

Please note that anti-corruption cases initiated based on Article 19.28 of the Code of Administrative Offenses (Illegal Remuneration on Behalf of a Legal Entity) are heard by magistrates if the administrative offense has been committed in the Russian Federation. Anti-corruption cases with an administrative offense committed outside the Russian Federation, where such offense entails administrative liability under the Code of Administrative Offenses, are heard by district courts.

2.5 What is 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.

2.5.1 What disputes may be referred to international arbitration?

Non-arbitrable disputes are listed in Art. 33(2) of the CAP and include the following types of disputes:

- Bankruptcy disputes;
- Disputes regarding legal entities and individual entrepreneurs refusing to register or evading state registration;
- Disputes regarding the protection of IP rights involving organizations that are exercising management of copyright and related rights, as well as disputes within the jurisdiction of the IP Rights Court at first instance (involving the challenge of regulatory and non-regulatory legal acts, invalidation of

patents, early termination of the legal protection of a trademark, identifying a patent holder, etc.);

- Disputes arising out of administrative cases and other public law relations;
- Disputes regarding establishing legally significant facts;
- Disputes regarding compensation for breach of rights to a timely adjudication;
- Class actions;
- Certain types of corporate disputes;
- Disputes regarding privatization of state/municipal property;
- Disputes arising out of public procurement⁸;
- Disputes arising out of relations connected with compensation for environmental harm;
- Other disputes when expressly stipulated in the federal law.

2.5.2 What legal rules apply to international arbitration in Russia?

International arbitration in Russia is governed by the Law On International Commercial Arbitration (the “ICA Law”), enacted on 7 July 1993 and based on the provisions of the UNCITRAL Model Law. Certain provisions of the new law on domestic arbitration in Russia⁹, which came into effect in September 2016, also apply to international arbitration proceedings seated in Russia¹⁰.

⁸ Such disputes are non-arbitrable until a federal law takes effect, which sets out the procedure for determining a permanent arbitral institution that is entitled to administer disputes out of such relations.

⁹ Federal Law No 382-FZ: “On arbitration (arbitration proceedings) in the Russian Federation,” dated December 29, 2015 (the “Domestic Arbitration Law”).

¹⁰ See Article 1(2) of the Domestic Arbitration Law.



In addition, the international commercial arbitration provisions of various international treaties to which the Russian Federation is a party — particularly 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.

2.5.3 What major changes were introduced in 2016?

Major changes to the ICA Law became effective as of 1 September 2016. The most important changes are:

- The scope of the ICA Law’s application to disputes regarding foreign investments in Russia and Russian investments abroad has been extended;
- The formal requirements for arbitration agreements have been softened;
- New functions of competent state courts in arbitration proceedings have been introduced;
- Parties to institutional arbitration can now remove the possibility of challenging awards (including awards on jurisdiction) (for institutional arbitration only).

In addition to the changes to the ICA Law itself, arbitration reform in Russia involves several other changes that have an impact on international arbitration in Russia, including:

- Stricter requirements for establishing permanent arbitral institutions have been introduced, including the need to obtain the right to administer arbitrations in Russia from the Russian Government;

- Arbitrability of corporate disputes has been introduced¹¹ (with exceptions), stipulating the conditions for arbitration in corporate disputes;
- Requirements have been introduced for storing arbitration case files for five years, entitling state courts to request such files when considering arbitration-related cases;
- Requirements have been introduced for arbitrators.

2.6 What is the regulation of enforcement of judgments and arbitral awards in Russia?

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

A foreign court judgment may only be enforced in Russia 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

¹¹ Arbitration agreements for corporate disputes may be entered into after 1 February 2017. Those entered into earlier are considered incapable of being performed.



arbitral award on its merits. The grounds for refusing to recognize and enforce foreign arbitral awards are generally the same as those set forth in the New York Convention.

Judgments of foreign courts and foreign arbitral awards that do not require enforcement are recognized in the Russian Federation if the recognition is stipulated by the international treaty of the Russian Federation and the federal law.

2.7 What are the main rules for alternative dispute resolution and mediation in Russia?

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 a mediator’s assistance on the basis of the parties’ voluntary consent.

The mediation procedure can 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 if the dispute affects public interest or the rights and legitimate interests of third parties that are not participating in the mediation procedure. The limitation period is suspended from the start of mediation.

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 a 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 a decision on agreed terms.

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 What is the legal framework for foreign investment?

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

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

By virtue of this law, foreign investors shall be treated no less favorably than domestic investors, with certain exceptions. These exceptions may be introduced to protect the Russian constitutional system, public morals, health and rights of persons, or for state security and defense purposes. Foreign investments may only be nationalized following the adoption of a federal law and for compensation.

The Foreign Investments Law 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. Importantly, the Foreign Investments Law does not apply to the investment of foreign capital in banks and other credit organizations, insurance companies, mass media outlets, broadcasting organizations, and air carriers, as well as non-commercial organizations. Foreign investments in these entities are subject to specific Russian legislation.

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 “**Strategic Companies Law**”). The Strategic Companies Law is designed to regulate the acquisition of control over Russian strategic companies by foreign investors or “groups of persons” that include a foreign investor.

In addition, Russia is a member of the World Trade Organization and, thus, has committed to implement its treaties and regulations.

3.2 What is the legal definition of a foreign investor?

The Foreign Investments Law defines foreign investors as:

- foreign entities and individuals; and
- foreign states and international organizations, as well as entities under their control.

The Strategic Companies Law expands this definition by extending it to:

- entities (including those registered in Russia) under the control of foreign investors;
- Russian citizens with foreign citizenship.

3.3 Does Russian law provide for a tax stabilization clause?

The tax stabilization clause, also known as the “**Grandfather Clause**”, is set forth by the Foreign Investments Law and is considered one of its most important features. 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).

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.

According to the Foreign Investments Law, a priority investment project is a project where the amount of foreign investment exceeds RUB 1 billion (approx. USD 17.15 million) or where a foreign investor has purchased an equity interest worth more than RUB 100 million (approx. USD 1.71 million). In both cases, the investment project must also be included in a list of projects approved by the Russian Government.

Key exceptions to the Grandfather Clause are established for excise tax, VAT on domestic goods, and Pension Fund payments. There is also a potentially broad exception for laws protecting public or state interests. Despite all these exceptions and qualifications, it remains unclear if the tax stabilization clause brings any real benefit to foreign investors.

3.4 What are the main incentives to attract foreign investment in Russia?

In recent years, the Russian government has been actively promoting investments in certain fields of the Russian economy and specific territories, irrespective of whether the investments are of domestic or foreign origin.

There are a number of special zones (territories) established within the territory of Russia that offer special conditions for residents doing business, providing them with a variety of benefits and incentives (e.g., tax and customs benefits, simplified procedures to attract foreign personnel, reduced administrative barriers, etc.). The most noteworthy government efforts in this regard include:

- The Skolkovo Innovation Center, a flagship project of the government, sometimes also referred to as the Russian “Silicon Valley”, aimed at promoting research and development activities in the fields of energy efficiency,



strategic computer technologies, biomedicine, nuclear and space technologies;

- Special Economic Zones (“**SEZs**”) designed to attract investments into priority sectors of the Russian economy (such as innovative technologies, ports and recreational complexes);
- Territory Development Zones (“**TEZs**”) aimed at boosting the development of certain territories; and
- Advanced Development Territories (“**ADTs**”) aimed at incentivizing investment into more depressed regions, such as the Russian Far East and Eastern Siberia.

In response to Ukraine-related sanctions, the Russian government has taken a variety of measures to stimulate import substitution and support the development of local industrial production. That is, foreign investors may gain preferential treatment by localizing their production in Russia.

Among other things, foreign investors may enjoy certain benefits provided by the recently introduced concept of special investment contracts (“**SPICs**”). Under SPICs, a private investor undertakes to create, modernize or operate a production facility in Russia, while the Russian federal (or regional) government assumes the obligation to provide a private investor with certain benefits (e.g., a stable and preferential tax regime) to facilitate product manufacturing. SPICs are concluded for a maximum term of 10 years and have been visible in the pharmaceuticals, chemicals, health care, machinery, light industry and electronics.

Another prominent example of investment incentives are regional investment projects (“**RIPs**”). Participants in RIPs undertake to invest in the production of goods within a certain territory, and in turn are granted a number of tax benefits. Initially, RIPs were designed to promote investments in the economies of the Russian Far East and

Eastern Siberia, but investors can now implement RIPs in any region of Russia.

In order to attract private investments in public infrastructure, Russian authorities are taking significant efforts to develop public-private partnership (“PPP”) mechanisms. Until recently, the only PPP mechanism available at the federal level was the concession agreement. The concession model implies that ownership title to a facility remains with the public partner. This drawback limited the possibility for implementing internationally recognized PPP models and hindered the broad expansion of concession agreements in Russia, forcing Russian regions to develop their own more sophisticated PPP legislation.

To resolve this situation, on 1 January 2016, new PPP legislation entered into force, establishing the general legal framework for PPP projects at the federal level and, among other things, allowing the transfer of a facility’s ownership title to a private partner. This opens opportunities for private investors to employ a variety of models in structuring PPP projects, which were previously not available.

3.5 What are the restrictions and limitations on foreign investment in Russia?

There are certain restrictions on foreign investors acquiring control over companies that are of strategic value to Russia (“**strategic companies**”). In addition, foreign investments in certain industries, including banking, insurance and mass media, are also subject to certain limitations. Please refer to the Sections “Banking”, “Insurance in Russia”, and “Telecommunications” for further details.

There are also certain restrictions on foreign investors acquiring land plots in areas adjoining the borders of Russia, land plots located within the boundaries of seaports, as well as agricultural lands. Please see the Section “Property Rights” for further details.



In addition, as a result of the political situation in Ukraine, several countries (including the United States, the European Union, Canada, Australia, Switzerland and Japan) have imposed sanctions targeting Russian entities and individuals, as well as certain sectors of the Russian economy, in spheres such as finance, energy and defense. These sanctions have particularly affected the Crimea region, which is now almost completely isolated from business relations with the countries that implemented the sanctions. The sanctions regime should be taken into account by foreign investors originating from those countries that have implemented Ukraine-related sanctions against Russia.

In response to the Ukraine-related sanctions introduced against Russia, Russia imposed a ban on imports of certain agricultural and food products originating from the United States, the European Union, Canada, Australia and several other countries.

Please see the Section “Sanctions” for further details with respect to sanctions.

3.6 What restrictions are connected with foreign investments in strategic companies?

Whenever a foreign investor intends to acquire “control” over a Russian company engaged in a strategic activity, the acquisition, depending on the level of such control, requires preliminary approval from the Russian government and/or post-transaction notification to the Federal Antimonopoly Service of the Russian Federation (the “FAS”). Importantly, the notion of “control” for these purposes implies not only a certain minimum shareholding, but also rights to appoint governing bodies and otherwise determine the target company’s activity.

3.7 What are the government bodies competent to review applications for transaction approval and receive post-transaction notifications?

The competent authorities are the Government Commission on Control over Foreign Investments in the Russian Federation (regarding preliminary transaction approval) (the “**Government Commission**”) and the FAS (regarding both preliminary transaction approval and post-transaction notification).

3.8 How is a strategic company distinguished?

The Strategic Companies Law 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.

From the standpoint of foreign investment, it is crucial to verify all activities the target company is engaged in, to assess whether it qualifies as strategic and would therefore be subject to the restrictions outlined above. Strategic activities include, *inter alia*, the following:

- Operations affecting geophysical processes, as well as hydro-meteorological processes and events;
- Activities involving the use of infectious agents;
- Activities related to the nuclear industry;
- Activities related to encryption (cryptography);
- Activities related to detection of electronic bugging devices (unless performed for a legal entity’s internal purposes) and to the manufacture and sale of such devices by commercial entities;
- Activities involving military weapons and equipment, including components and ammunition;



- Manufacture and sale of explosive materials for industrial purposes;
- Activities related to aviation equipment and security;
- Space activities;
- Activities involving television or radio broadcasting on a territory where more than half of a Russian constituent entity's population resides;
- Services provided by natural monopolies (excluding generally accessible telecommunications and postal services, services for heat energy and power transmission via distribution systems, and harbor services);
- Subsoil exploration and extraction activities involving Strategic Deposits (see Natural Resources Section);
- Extraction of aquatic biological resources;
- Commercial printing, provided that the monthly output exceeds 200 million printed sheets;
- Activities performed by editorial boards and publishers, provided that the annual circulation of publications exceeds certain thresholds specified by law depending on publication frequency; and
- Other activities set out in the Strategic Companies Law.

In July 2017, Russia enacted new rules strengthening government control over transactions involving foreign investors with respect to Russian companies. Starting from 30 July 2017, any acquisitions by foreign investors of shares in any Russian company (not only companies engaged in the above “strategic activities”) may require prior approval of the Government Commission if the chair of the Government Commission (i.e., the Prime Minister of Russia) decides

that such transaction may threaten national defense and state security. In this case, FAS shall, within three days from the date of receiving such decision of the Prime Minister, notify the foreign investor that it must submit an application for preliminary approval of the transaction by the Government Commission.

3.9 Which transactions (actions) are subject to preliminary approval?

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

- With respect to the strategic companies engaged in strategic activities other than the use of strategic subsoil plots – transactions where a foreign investor or group of persons acquires:
 - direct or indirect control over more than 50% of the total number of votes attached to voting shares;
 - the right to appoint (a) the CEO, and/or (b) more than 50% of the members of a collegial executive body (i.e., management board) of a strategic company; or
 - the unconditional ability to elect more than 50% of the members of the board of directors (supervisory council) or other collegial governing body of a strategic company;
- With respect to the strategic companies using strategic subsoil plots – transactions where a foreign investor or group of persons acquires:
 - direct or indirect control of 25% or more of the total number of votes attached to voting shares;



- the right to appoint (a) the CEO, and/or (b) 25% or more of the members of a collegial executive body of a strategic company; or
- the unconditional ability to elect 25% or more of the members of the board of directors (supervisory council) or other collegial governing body of a strategic company;
- With respect to the strategic companies using strategic subsoil plots – transactions aimed at a foreign investor’s acquisition of direct or indirect control over shares (participation interests) if the foreign investor already has direct or indirect control over more than 25% but less than 75% of the total number of votes attached to voting shares (except for a foreign investor’s acquisition of shares (participation interests) which does not lead to an increase in the foreign investor’s equity interest);
- Transactions pursuant to which a foreign investor assumes the role of an external manager or external managing company of a strategic company or obtain the possibility to otherwise determine its corporate decisions, including those regarding the business of such strategic company;
- Transactions aimed at the acquisition by a foreign state, international organization, offshore company or entity under their control, of the right to directly or indirectly control more than:
 - 25% of the total number of votes attached to voting shares or other means of blocking decisions of the governing bodies in companies engaged in strategic activities other than the use of strategic subsoil plots; or

- 5% of the total number of votes attached to voting shares in companies using strategic subsoil plots; and
- Transactions aimed at a foreign investor's acquisition of a strategic company's main production facilities if their value is equal to or exceeds 25% of the company's book asset value.

3.10 Who is responsible for securing preliminary transaction approval?

The foreign investor is responsible for securing transaction approval.

3.11 How does one obtain a preliminary transaction approval?

A foreign investor must submit an application for preliminary approval to the FAS, which checks the application's compliance with the formal requirements. The application represents a standard form supported by a number of documents relating to both the foreign investor and the strategic company, including a description of their groups, corporate documents, and a draft business plan for the strategic company.

During the preliminary review, the FAS requests the Federal Security Service and the Ministry of Defense to provide their conclusions as to whether the proposed transaction threatens national defense or any other security interest. The FAS may also request additional information from the applicants, state bodies, organizations and individuals.

After the formal check is completed, the FAS submits an application for preliminary approval to the Government Commission. The Government Commission, in turn, decides whether to approve the application and whether any additional conditions established by the Strategic Companies Law shall apply to such approval.



3.12 How long does an application review take?

After a foreign investor submits the application, the FAS and the Government Commission have a maximum of three months to issue a final written decision. The Government Commission may extend the review period by another three months (six months in total). In practice, however, the approval process might take longer and there are no official “fast-track” options.

3.13 How much discretion do the authorities have when deciding on an application review?

While the FAS’s review of a foreign investor’s application focuses on compliance with the formal requirements, the Government Commission has full discretion to approve or reject the proposed transaction and is not obliged to explain or substantiate its decision.

3.14 If preliminary transaction approval is not granted, can such decision be challenged?

By virtue of Russian law, the decision of the Government Commission may be challenged in the Supreme Court of the Russian Federation. In practice, such a challenge is very difficult (if not impossible), as the Government Commission takes decisions at its own discretion and is not obliged to explain or substantiate them.

3.15 When is post-transaction notification required?

The Strategic Companies Law sets forth a duty to provide post-transaction notification to the FAS in case of:

- acquisition of at least 5% of the shares (whether voting or not) in any strategic company; and
- completion of the transactions and other actions for which a preliminary approval has been obtained.

3.16 What are the exemptions from the Strategic Companies Law?

The Strategic Companies Law does not apply, *inter alia*, to:

- acquisitions of strategic companies by entities under the control of the Russian Federation, its constituent territories or citizens of the Russian Federation that qualify as Russian tax residents¹² (except for individuals with double citizenship) (“**Russian UBOs exemption**”);
- investments in a strategic company (other than those using strategic subsoil plots) by a foreign investor, provided that: (i) such foreign investor already directly or indirectly controls more than 50% of votes attached to the voting shares in that strategic company; and/or (ii) such foreign investor and such strategic company are controlled by the same person (so-called “intra-group exemption”); and
- investments in a strategic company using strategic subsoil plots by a foreign investor, if the Russian Federation had a right to control over more than 50% of voting shares in such strategic company before the transaction and such a right still remains with the Russian Federation after the transaction is closed.

3.17 What are the consequences of violating the Strategic Companies Law?

Transactions executed in breach of the Strategic Companies Law are deemed void. The court may hold that the parties to a void transaction shall return everything received under such transaction. If it is impossible to reverse a deal, or if a foreign investor fails to provide post-transaction notification to the FAS in case of acquisition, directly

¹² Generally, a Russian tax resident is an individual that can prove his or her physical presence in the territory of Russia for more than 183 days during a year.



or indirectly, of 5% or more of shares of a strategic company, a court may rule to deprive the foreign investor of voting rights at the shareholders' meetings of a strategic company.

Violation of the Strategic Companies Law is also considered an administrative offense, and is subject to the following penalties:

- Failure to obtain a preliminary transaction approval, submission of misleading information to the FAS, or breach of the terms and procedures of application filing may lead to a fine of up to RUB 1 million (approx. USD 17,150) for a legal entity, up to RUB 50,000 (approx. USD 855) for an executive officer of the infringing legal entity, and up to RUB 5,000 (approx. USD 85) for an individual.
- Failure to submit a post-transaction notification (information) to the FAS, submission of knowingly misleading post-transaction notification (information) or breach of the terms, and procedures of submitting a post-transaction notification (information) may lead to a fine of up to RUB 500,000 (approx. USD 8,550) for a legal entity, up to RUB 30,000 (approx. USD 515) for an executive officer of the infringing legal entity, and up to RUB 3,000 (approx. USD 51) for an individual.
- Failure to provide the FAS with information required by law, including additionally requested information, may lead to a fine of up to RUB 1 million for a legal entity, up to RUB 50,000 for an executive officer of the infringing legal entity, and up to RUB 5,000 for an individual.

3.18 Are there special rules for investments made by foreign states, international organizations and offshore companies?

Investments of foreign states, international organizations and offshore companies (i.e., those incorporated in a state or territory providing for

beneficial tax treatment and (or) failing to disclose or share information when conducting financial operations, a list of which is adopted by Russian Ministry of Finance¹³), as well as of entities under their control (a “**Restricted Investor**”), in any Russian company, whether strategic or not, are subject to additional clearance requirements under the Foreign Investments Law. Any transaction that gives a Restricted Investor the right to directly or indirectly control over more than 25% of the total number of votes attached to voting shares in any Russian company, or otherwise block decisions of a Russian company’s governing bodies, requires preliminary clearance with the Russian Government and the FAS.

Furthermore, a Restricted Investor must obtain preliminary transaction approval pursuant to the Strategic Companies Law when acquiring more than:

- 25% of the total number of votes attached to voting shares or other means of blocking decisions of the governing bodies for companies engaged in strategic activities other than the use of strategic subsoil plots; or
- 5% of the total number of votes attached to voting shares of companies using strategic subsoil plots.

In addition to that, Restricted Investors are explicitly prohibited from establishing control over strategic companies, as this term is defined in the Strategic Companies Law. Under the Strategic Companies Law, “control over a strategic company” means:

- With respect to strategic companies engaged in strategic activities other than the use of strategic subsoil plots:

¹³ Ruling of the Ministry of Finance of the Russian Federation No. 108n dated 13.11.2007 “On Approving the List of the States and Territories Providing for Beneficial Tax Treatment and (or) Failing to Disclose or Share Information when Conducting Financial Operations (Offshore Zones).”



- acquisition by a Restricted Investor(s) of direct or indirect control over more than 50% of the total number of votes attached to voting shares;
 - acquisition by a Restricted Investor of the right to appoint: (a) the CEO; and/or (b) more than 50% of the members of a collegial executive body of a strategic company;
 - acquisition by a Restricted Investor of the unconditional ability to elect more than 50% of the members of the board of directors (supervisory council) or other collegial governing bodies of a strategic company; or
 - appointment of a Restricted Investor as an external managing company of a strategic company;
 - acquisition by a Restricted Investor of the right to direct the management of a strategic company on the basis of a contract or otherwise.
- With respect to the strategic companies using strategic subsoil plots:
 - acquisition by a Restricted Investor of direct or indirect control over 25% or more of the total number of votes attached to voting shares;
 - acquisition by a Restricted Investor of the right to appoint: (a) the CEO; and/or (b) 25% or more of the members of a collegial executive body of a strategic company;
 - acquisition by a Restricted Investor of the unconditional ability to elect 25% or more of the members of the board of directors (supervisory

council) or other collegial governing bodies of a strategic company;

- appointment of a Restricted Investor as an external managing company of a strategic company; or
- acquisition by a Restricted Investor of the right to direct the management of a strategic company on the basis of a contract or otherwise.



4. Establishing a Legal Presence

4.1 What are the most common forms of legal presence in Russia?

Foreign investors most often conduct business in Russia either (i) through a local representative office or branch of a foreign company; or (ii) through a Russian subsidiary.

4.2 Representative Office or Branch of a Foreign Legal Entity

4.2.1 Is a branch or representative office considered a Russian legal entity?

No. Both a branch and a representative office of a foreign company are not considered to be a Russian legal entity, but rather a subdivision of a foreign parent company.

4.2.2 What are the differences between a branch and a representative office?

A representative office is set up to carry out liaison and ancillary functions in order to promote the business of its foreign parent company in Russia. Formally, representative offices must not engage in commercial activities. Thus, 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.

As opposed to a representative office, 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 for forming a branch in Russia. In contrast, a representative office that engages in commercial

activities would technically be violating the terms of its accreditation. From a purely legal perspective, violation of Russian law is a ground for the termination of accreditation of the representative offices upon the decision of the accreditation authority (i.e., Inter-district Tax Inspectorate No. 47 of the Federal Tax Service located in Moscow). In practice, however, violations by representative offices of permitted activities may only trigger difficulties with the renewal of accreditation in Russia.

4.2.3 What is the procedure for establishing a branch or representative office in Russia?

Branches and representative offices of foreign entities in Russia are subject to mandatory accreditation with Inter-district Tax Inspectorate No. 47 of the Federal Tax Service located in Moscow. However, certain industries have special accreditation bodies. For example, the Central Bank of Russia is responsible for the accreditation of representative offices of foreign banks. Accreditation provides an official status for the branch and representative office, and allows the branch to engage in commercial activities in Russia.

Following accreditation, the representative office or branch office must carry out a number of post-accreditation procedures before it becomes fully operational, including registering with the Russian statistics authorities, the Russian Pension Fund and the Russian Social Insurance Fund.

4.3 Forming a Russian Legal Entity

4.3.1 What types of legal entities can be established in Russia for the purposes of business activity?

The Civil Code of the Russian Federation recognizes the following types of business (commercial) entities:

- General and limited partnerships;
- Business partnerships;



- Production cooperatives;
- Limited liability companies (“**LLCs**”); and
- Joint stock companies (“**JSCs**”).

JSCs and LLCs are the most common types of legal entities in Russia.

4.3.2 What is the regulatory framework for Russian companies?

The main rules governing the establishment and operation of Russian companies are contained in:

- The Russian Civil Code;
- Federal Law No. 14-FZ On Limited Liability Companies dated 8 February 1998 (as amended) (the “**LLC Law**”);
- Federal Law No. 208-FZ On Joint Stock Companies dated 26 December 1995 (as amended) (the “**JSC Law**”); and
- Federal Law No. 129-FZ On State Registration of Legal Entities and Individual Entrepreneurs dated 8 August 2001 (as amended) (the “**Registration Law**”).

4.3.3 How are Russian companies classified?

Russian companies are divided into two categories: (i) public companies; and (ii) non-public (private) companies.

Public companies are JSCs whose shares, or other securities convertible into shares, either:

- have been publicly placed; or
- are publicly traded at a stock exchange; or
- which declare their public company status in the charter.

All other JSCs and LLCs are deemed to be non-public.

4.3.4 What are the main differences between public and non-public companies?

Public companies may raise capital through the sale of their shares and other securities to the public. Public companies are subject to public reporting and disclosure requirements and are less flexible in terms of corporate governance.

Non-public companies are privately-held corporations that cannot raise capital from the public. They offer greater flexibility in terms of corporate governance and structuring the relationships between shareholders (participants), particularly:

- The charter of a non-public company may include provisions that differ from statutory corporate governance rules;
- The charter of a non-public company may impose limitations on: (i) the maximum number of shares held by one shareholder; (ii) the aggregate nominal value of shares held by one shareholder; and/or (iii) maximum number of votes given to one shareholder;
- Voting rights and profits may be distributed disproportionately among the shareholders;
- In certain circumstances, a shareholder may be expelled from the company upon the demand of another shareholder; and
- Share transfers may be subject to certain restrictions (e.g., preemptive rights and shareholder consent).

4.3.5 What is the most common corporate form for a business in Russia?

The LLC is the most common corporate form of a private business in Russia, particularly for wholly-owned subsidiaries and certain joint ventures. Non-public JSCs are used less frequently. This is mainly



because LLCs are easier to establish, cheaper to maintain and are not subject to formalized securities legislation.

It is rare for foreign investors to use other types of Russian legal entities.

4.3.6 What are the main differences between LLCs and non-public JSCs?

The main differences between LLCs and non-public JSCs are described in the table below:

LLCs	Non-public JSCs
<p>The LLC is deemed incorporated once it is registered with tax authorities. The charter capital is divided into participation interests and shareholders are referred to as participants.</p>	<p>Shares are deemed securities for the purposes of Russian securities regulations. In addition to registration with the tax authorities, JSCs are subject to various additional procedural requirements and must register their shares with the Russian securities market regulator – the Central Bank of Russia. These will apply upon the initial registration of a JSC and on an ongoing basis, particularly in the event of a share capital increase.</p>
<p>The charter may allow a participant to withdraw from the company at any time (receiving the actual value of its participation interest from the company).</p>	<p>A shareholder has no statutory right to withdraw from the company (except by selling its shares).</p>

LLCs	Non-public JSCs
Information on the participants is reflected in the Russian Unified Register of Legal Entities (“URSLE”), which is maintained by the Russian tax authorities.	A shareholders’ register must be maintained by a licensed registrar for a fee.
Information on the participants is contained in the URSLE, which is publicly available.	Information on the shareholders is contained in the shareholders’ register, which is not available to the public (save for information on the initial founder(s), which is also reflected in the URSLE).
Title to a participation interest passes when the transfer is state registered with the URSLE and is notarially certified.	Transfer of title to shares is effected by making the respective entry on the account in the shareholders’ register (or depo account, if shares are transferred to a depository).
A mandatory annual audit is not required (except under certain limited circumstances).	A mandatory annual audit is required
Decisions made in general participants’ meetings need not be certified by a notary, they may be certified as provided in the charter, for example, by signing by participants.	Decisions made in general shareholders’ meetings must be certified by the registrar or a notary.



LLCs	Non-public JSCs
<p>Transfer of a participation interest is limited by law and may be additionally limited by the charter and corporate agreement.</p> <p>By virtue of law, the participants of an LLC have a pre-emptive right to purchase participation interests of the LLC offered for sale by other participants to third parties. The above is a mandatory provision of Russian legislation. The charter may also provide for such right for the LLC itself.</p> <p>In addition, the charter of an LLC may totally prohibit the transfer of participation interests to third parties or provide for the transfer of participation interests to other participants and third parties, subject to prior consent of other participants or the LLC itself (for an unlimited term).</p> <p>However, if the LLC’s charter prohibits the transfer of participation interests to third parties and other participants of the LLC refuse to purchase the relevant participation interests or the LLC’s charter requires the consent of other participants or the LLC itself for the transfer of</p>	<p>Transfer of shares is not limited by law, but may be limited by the charter and shareholders’ agreement.</p> <p>The charter of a non-public JSC may provide for the pre-emptive right of shareholders and non-public JSC to purchase shares offered for sale by other shareholders to third parties.</p> <p>In addition, the charter of non-public JSC may provide for the prior consent of shareholders with respect to the transfer of shares to third parties. The term of such limitation shall be stipulated in the charter and may not exceed five years from the date of incorporation of the non-public JSC or state registration of relevant changes to the charter providing for such limitation.</p>

LLCs	Non-public JSCs
<p>participations interests to third parties, and the other participants and the LLC itself refuse to provide such consent, a participant of an LLC may demand that the LLC buy out its participation interest.</p>	

4.3.7 What is the procedure for establishing a Russian company?

A JSC or an LLC is deemed incorporated from the moment of its state registration with the Russian tax authorities. The state registration procedure for JSCs and LLCs is similar. It takes about two weeks to formally incorporate a JSC or an LLC and a further two weeks to open its bank accounts and make it fully operational.

In the case of a JSC, the registration of its shares with the Central Bank of Russia takes an additional 1.5-2 months. The shares cannot be transferred to third parties until they are registered.

4.3.8 Is it possible to establish a Russian company with a sole participant (shareholder)?

Yes. Both LLCs and JSCs may be established by one founder, whether an individual or a legal entity, subject to the “1-1-1” restriction (see the next question).

4.3.9 What is a so-called “1-1-1” restriction or “Matryoshka Rule”?

Russian law prescribes that a company may not have another entity that has a single owner as its sole shareholder (the “1-1-1” rule or “**Matryoshka Rule**”). A company may have a sole shareholder, but this sole shareholder must have at least two shareholders.



4.3.10 What is the maximum number of participants (shareholders) in a Russian company?

The maximum number of LLC participants is 50. If the number of participants exceeds 50, the LLC must be converted into a JSC within one year or be liquidated.

There is no limit on the number of shareholders in JSCs.

4.3.11 What constitutional documents do Russian companies need to have?

The only constitutional document of JSCs and LLCs is a charter.

The charter of an LLC must include the following information:

- The name and location of the LLC;
- The structure and competence of the governing bodies of the LLC, and their decision-making procedures;
- The size of the LLC charter capital;
- The participants' rights and obligations;
- The procedure for a participant's withdrawal from the LLC (if the charter provides for such withdrawal);
- The procedure for transferring a participation interest; and
- Other provisions required by law.

The charter of a JSC must include the following information:

- The name and location 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 JSC’s governing bodies, and their decision-making procedures;
- The procedure for preparing for and holding general shareholders’ meetings, including a list of issues requiring either unanimous consent or a resolution adopted by a qualified majority of votes;
- 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 of an LLC and a JSC may include other provisions, provided they do not contradict applicable Russian legislation.

4.3.12 What types of shares may be issued by a JSC?

A JSC issues ordinary shares and may issue several classes of preferred shares. Different classes of preferred shares may have different nominal value, while all ordinary shares must have equal nominal value. The total value of a JSC’s preferred shares may not exceed 25% of its charter capital.

Each ordinary share carries one vote at the general shareholders’ meeting (except for cases of cumulative voting, as provided for in the JSC Law) and do not have any predetermined dividend amounts.

In contrast to ordinary 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, etc.) or where the preferred shares have a fixed dividend and such dividend is not paid when due. 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) or liquidation proceeds over holders of ordinary shares or preferred shares of a subordinate class. A preferred share with a fixed dividend gains a voting right if such fixed dividend is not paid when due.

JSC Law also allows a non-public JSC to issue preferred shares of different classes granting: (i) the pre-emptive right to acquire newly-issued shares of certain type (class); (ii) voting rights on all or certain issues of the agenda of a general shareholders' meeting; and/or (iii) other additional rights. Furthermore, it is possible to make such rights conditional upon the occurrence of certain circumstances.

4.3.13 What is the statutory minimum amount of the charter capital of a Russian company?

The charter capital of LLCs and non-public JSCs may not be less than RUB 10,000 (approx. USD 170). The charter capital of a public JSC may not be less than RUB 100,000 (approx. USD 1,700).

A greater amount of charter capital may be required if the company is engaging in certain specific types of business activities (for instance, banking or insurance activity, distribution of alcohol, etc.).

4.3.14 What is the deadline for paying the initial charter capital?

In LLCs, the charter capital must be paid up in full within four months from the date of the LLC's registration.

In JSCs, the founders must pay at least 50% of the JSC charter capital within three months following its state registration with the Russian tax authorities, with the remainder payable in full within the first year.

4.3.15 Is it possible to pay charter capital in kind?

The statutory minimum amount of initial charter capital (i.e., RUB 10,000 for LLCs and non-public JSCs and RUB 100,000 for public JSCs) must be paid in cash. Other contributions may be made either in cash or in kind.

In kind contributions may be made by movable and immovable property, shares (participation interests) 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 a company may provide for additional restrictions on the type of assets accepted as in kind contributions.

4.3.16 What are the governing bodies for Russian companies?

There are two models of corporate governance for Russian companies:

- a two-tier model: (i) the general meeting and (ii) the executive body/ies; and
- a three-tier model: (i) the general meeting, (ii) the board of directors and (iii) the executive body/ies.

Non-public JSCs and LLCs need not have a board of directors. For public JSCs, a board of directors is mandatory.

4.3.17 What is the role of the general meeting?

The general meeting is the supreme governing body of a Russian company. It is responsible for the most important issues pertaining to the management of the company.

The competence of the general meeting typically includes, inter alia, the following issues:

- amendment of the company's charter;
- reorganizations and liquidation of the company;
- formation of the company's board of directors, appointment of its members and their dismissal;
- approval of an increase in the company's charter capital;
- approval of the annual report and annual financial statements;



- making a decision on distribution of dividends;
- making a decision on admission of third parties into a company;
- approval of major transactions if the value of the transaction exceeds 50% of the total book value of the company's assets;
- approval of interested-party transactions if the value of the transaction exceeds 10% of the total book value of the company's assets;
- approval of the key internal documents of the company which address corporate governance issues; and
- other issues prescribed by the law or the charter of the company.

In non-public companies, the competence of the general meeting is not limited by statutory provisions and, therefore, may be broadened by the charter of the company.

If the charter of a non-public company prescribes the establishment of a board of directors, the majority of issues pertaining to the competence of the general meeting may be transferred to the competence of the board of directors, except for certain key issues (e.g., reorganizations or liquidation of the company, introducing amendments into the charter, etc.). In non-public companies, shareholders (participants) have considerable flexibility in tailoring and fine-tuning the competences of the general meeting and the board of directors to meet specific needs.

Conversely, in public JSCs, the competence of the general meeting may not be extended by the charter and is significantly limited by the authorities of the board of directors, which, in practice, plays a key role in corporate governance, leaving only the most critical issues in the competence of the general meeting.

4.3.18 What is the role of the board of directors?

The board of directors is a company's supervisory governing body responsible for overall oversight and direction of the company's activities. The legal status of a board of directors of a Russian company differs from the legal status of a board of directors in companies formed in many western jurisdictions because, under Russian law, a board of directors is a supervisory body rather than an executive one. Furthermore, the members of executive bodies of the company cannot comprise more than a quarter of the board of directors.

The competence of the board of directors usually includes, inter alia, the following issues:

- determination of the company's main spheres of business activity;
- appointment of the executive body/ies of the company;
- determination of the amount of compensation to be paid to the company's executive bodies;
- approval of participation in the charter capitals of other legal entities;
- opening and closing of the company's branches and representative offices;
- approval of major transactions if the value of the transaction is within the range of 25%-50% of the total book value of the company's assets;
- approval of interested-party transactions if the value of the transaction does not exceed 10% of the total book value of the company's assets; and
- other issues prescribed by the company's charter.



In both public and non-public companies, the competence of the board of directors is not limited by statutory provisions and therefore may be broadened by the company's charter.

4.3.19 What are the executive bodies of a Russian company?

The day-to-day management of a Russian company is the responsibility of the executive body/ies. The executive bodies of a Russian company are represented by:

- the sole executive body; and
- the sole executive body and the collegial executive body (the “**Management Board**”).

Every Russian company must have a sole executive body. Establishing a Management Board is optional in both public and non-public companies, save for banks which are required to have both executive bodies by operation of law.

4.3.20 What is the competence of the sole executive body?

The sole executive body acts on behalf of the company without a power of attorney, represents the company in relations with third parties, has the authorities to bind the company, and handles HR issues, among other things.

4.3.21 Is it possible to appoint two or more sole executive bodies? Does Russian law allow implementing a joint signature rule?

Yes. With effect from 1 September 2014, it is possible either (i) to create several sole executive bodies who may act independently of each other, or (ii) to provide the authorities of the sole executive body to several persons acting jointly – the so-called “two-signature rule”.

4.3.22 What is the role of the Management Board?

The Management Board is a collegial executive body of the company responsible for its day-to-day management. If the Management Board

is established in a company, the sole executive body acts as the chairman of the Management Board.

The Management Board's competence may not coincide with the competence of the company's other governing bodies. In non-public companies, most issues pertaining to the competence of the general meeting and board of directors may be transferred to the Management Board, except for certain key issues (such as the reorganizations or liquidation of the company, and amendments in the charter).

From a practical perspective, Management Boards are uncommon for wholly-owned subsidiaries of foreign entities which tend to have simpler governing structure. In addition, unlike members of the board of directors, Management Board members are considered to be employees of the company and non-Russian members of the Management Board must apply for a work permit and a work visa.

4.3.23 Does Russian law allow the outsourcing of the day-to-day management to an external manager?

Yes. The functions of a sole executive body may be delegated to an external commercial organization or to an individual manager on a contractual basis.

4.3.24 What body of a Russian company is responsible for supervising the company's financial activities and business operations?

An internal auditor (internal audit commission) (the “**Internal Audit Commission**”) is responsible for supervising the company's financial activities and business operations. Formation of an Internal Audit Commission is optional for non-public companies, but mandatory for public ones.

The Internal Audit Commission performs audits of the company's financial activities and business operations on an annual basis or when it deems necessary. The Internal Audit Commission is entitled to request any officer of the company (including the general director) to



provide information, comments and clarifications. The Internal Audit Commission shall have access to all of the company's documents.

From a practical perspective, an Internal Audit Commission is not common for wholly-owned subsidiaries of foreign entities, as many foreign companies rely on internal control procedures and external audits to supervise the financial and other aspects of its Russian subsidiary's operations.

In practice, an Internal Audit Commission is mainly established in public JSCs, joint ventures and large companies with developed corporate governance structures where formalized internal control procedures are required to provide additional protection and comfort to shareholders.

4.3.25 Does Russian law provide for mandatory audits of Russian companies?

All Russian JSCs (both public and non-public) are subject to a mandatory audit, i.e., their annual accounts must be audited by an independent external auditor.

As regards LLCs, they are generally not subject to a mandatory audit. The Russian law sets out several cases where the external audit is mandatory for LLCs, for example, if an LLC conducts certain types of activities (e.g., banking or insurance activities), or if the amount of an LLC's proceeds from product sales (performance of works, provision of services) for the previous accounting year exceeds RUB 400 million (approx. USD 6.85 million), or the book value of its assets exceeds RUB 60 million (approx. USD 1 million) as of the end of the previous accounting year.

5. Issuance and Regulation of Securities

5.1 What are the primary sources of legislation covering issuance and regulation of securities in Russia?

The securities market and securities transactions within the Russian Federation are primarily regulated by Federal Law No. 39-FZ “On the Securities Market” dated 22 April 1996 (the “**Securities Law**”). The offering of corporate securities is regulated by Federal Law No. 208-FZ “**On Joint-Stock Companies**” dated 26 December 1995 (the “**JSC Law**”) 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 What types of securities exist in Russia?

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”). Shares, bonds, stock options and Russian depository receipts are “mass-issued” securities, while promissory notes, bills of exchange, bills of lading, mortgage



certificates, mortgage-participation certificates, investment units, deposit certificates and warehouse documents are “non mass-issued” securities.

5.3 What are the information disclosure requirements in case of issuance of securities in Russia?

In certain cases, the Securities Law 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 should 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 drawn up 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 be published in a printed publication that is compliant with requirements set by the Bank of Russia.

5.4 What are the requirements for placement and circulation of foreign securities in Russia?

In general, foreign securities may be admitted for placement and/or public circulation in Russia:

- by decision of either a Russian stock exchange (if foreign securities have been listed abroad with any of 66 stock exchanges approved by the Bank of Russia); or
- 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).

The Securities Law also allows unsolicited listings (listings that have not been authorized by the issuer). In all the above instances, the foreign law governing the securities to be placed/offered must not restrict placement/public circulation of such securities in Russia.

If 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 depository 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.

5.5 What types of securities can be used for raising equity capital?

Russian joint-stock companies (“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.

5.6 What legislation governs the issuance of 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 suretyship, bank guarantee, state or municipal guarantee, 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 which allowed for 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 the terms and conditions applying to all issues within such bond program and a “specific” decision on issuance with the terms and conditions of a separate issue within such bond program.

5.7 How are promissory notes and bills of exchange regulated in Russia?

Besides bonds, some Russian companies use promissory notes and bills of exchange for debt financing. Under Russian law, promissory notes and bills of exchange are treated as securities. The legal regime for promissory notes and bills of exchange is prescribed in Federal Law No. 48-FZ “On Promissory Notes and Bills of Exchange” dated 11 March 1997. In addition, the Russian Federation is party to the Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes (Geneva, 7 June 1930).

5.8 How are exchange bonds and commercial bonds different from usual domestic Russian 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 placement must be made through a public offering;
- exchange bonds may not be secured by pledge;
- the bonds must be issued in documentary form and paid to the bearer; and
- 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.



5.9 What powers does the general meeting of bondholders have?

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 eligible to vote and present at the meeting.

For example, electing a bondholder representative or filing a lawsuit against the issuer or security provider requires a simple majority of votes. However, certain matters require three-quarters of the votes of bondholders present at the meeting:

- approval of amendments to the terms and conditions of bonds or empowering the bondholder representative to do the same in its sole discretion;
- waiver of rights to redeem the bonds early, enforcement of security, etc.; and
- termination of bonds by way of settlement or novation.

Bondholders also have the right to waive their rights to apply to a court by a 9/10 supermajority of votes.

5.10 What are the functions of the bondholder representative?

A bondholder representative must be appointed if the secured bonds (except for bonds secured by state or municipal guarantees) are:

- publicly placed; or
- privately placed with more than 500 investors who are not qualified investors; or
- suitable for non-qualified investors and admitted to trading on a securities exchange.

The issuer appoints a bondholder representative. However, bondholders have a right to replace the bondholder representative at the general meeting at any time.

The duties of a bondholder representative may be performed by any professional participant of the securities market, including banks, or a company established under Russian laws and existing for more than three years. Any entity willing to perform the 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 the 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. The bondholder representative may unilaterally terminate the services agreement by notifying the issuer within three months before such termination, unless the services agreement provides for a different notice period.

5.11 How can mortgage loans be securitized in Russia?

Federal Law No. 152-FZ “On Mortgage-Backed Securities” dated 11 November 2003 (the “**MBS Law**”) allows Russian credit organizations and special purpose entities (mortgage agents) to issue mortgage-backed securities — mortgage-backed bonds and mortgage-participation certificates.

The MBS Law provides for two types of mortgage-backed bonds:

- issued directly from the balance sheet of a Russian bank (covered bonds); and
- issued via a Russian special purpose vehicle (a so-called mortgage agent) acquiring mortgages from an originator (“**RMBS**”).

On 10 January 2016, amendments to the MBS Law became effective which allowed for the establishment of RMBS bond programs.

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 a bank to free up

capital and reserves. Usually such bonds are rated with the 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 (the independent management company and the specialized accounting organization may not perform functions of each other). It should also be noted that the mortgage agent is not subject to corporate profits tax. Such RMBS structures allow a rating uplift of five to six notches above 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 confirms the 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 and gradual implementation of stricter requirements for investment into such instruments by the Bank of Russia.

5.12 What are the requirements for cover pool of mortgage-backed securities?

The cover pool of mortgage-backed bonds and mortgage-participation certificates may be made up 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 the concept of a specialized depository that 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 certificates (*zakladnaya*) and other ancillary documents) and on a daily basis monitors the compliance of the cover pool with eligibility criteria and ratios set out in the MBS Law.

5.13 How is cover pool of mortgage-backed bonds distributed in case of the issuer's bankruptcy?

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 will be able to claim the shortfall from the issuer as unsecured creditors, unless the terms and conditions of the bonds stipulate that such claims shall be considered discharged.

5.14 Is securitization of assets other than mortgage loans possible in Russia?

On 13 December 2013, the State Duma passed federal law No. 379 aimed at creating a legal basis for securitizations of a wide range of

assets on the Russian market (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 became effective on 1 July 2014 and is expected to boost the amount and types of securitization transactions in Russia.

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 and 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, an 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 on 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 has developed 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 the account holder (client). The use of nominal bank accounts is intended to minimize the commingling risk in certain securitization transactions.

Another type of special accounts is a collateral (pledge) account, in which the pledge may be created over all the existing and future funds in the collateral account or for a fixed amount. The collateral account allows the pledger to use the funds in the collateral account, although the parties may agree to certain limitations. 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.

5.15 Who can issue Russian Depositary Receipts (RDRs) and what obligations does the foreign issuer assume to their holders?

An RDR is a documented registered security without a nominal value stored centrally by the issuer (i.e., Russian depository), 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. If 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 in cases where the securities underlying the RDRs are 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.

5.16 What types of collective investment schemes are recognized in Russia?

There are several types of collective investment schemes in Russia:

- joint-stock investment funds;

- mutual investment funds; and
- non-governmental pension funds.

Pursuant to Federal Law No. 156-FZ “On Investment Funds” dated 29 November 2001 (as amended) (the “**Investment Funds Law**”), a joint-stock investment fund is defined as a joint-stock company founded with the sole purpose of investing into securities and other assets prescribed in the Investment Funds Law. Joint-stock investment funds need to be licensed by the Bank of Russia. The property intended for investing must be managed by a licensed management company, which acts on behalf of the joint-stock investment fund as a trust manager or as executive body of the fund.

Mutual investment funds, on the other hand, 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 its management.

Under Federal Law No. 75-FZ “On Non-Governmental Pension Funds” dated 7 May 1998 (as amended) (the “**Non-Governmental Pension Funds Law**”), a non-governmental pension fund invests funds it receives from employers as mandatory pension insurance payments (“pension savings”) and from its clients under voluntary pension coverage contracts (“pension reserves”). Non-governmental pension funds are licensed by the Bank of Russia. Pension savings must be managed by a licensed management company pursuant to a fiduciary management agreement, while the pension reserves can be invested by the non-governmental pension fund itself.

The Investment Funds Law, the Non-Governmental Pension Funds Law and relevant acts of the Bank of Russia provide detailed regulation of various issues regarding funds, including the foundation,



decision-making and asset structure thereof. Management companies of investment funds are subject to certain information disclosure requirements (e.g., regarding information on the value of an investment share). Non-governmental pension funds should also disclose information regarding their total assets and investment results.

5.17 What professional participants are there on the Russian 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.

5.18 What are the licensed intermediaries on the Russian securities market?

Under the Securities Law, brokers are professional participants of the securities market who execute clients' orders to perform transactions with securities and/or to enter into derivative transactions under a fee-based contract with their clients (including issuers in the course of placement of securities).

Dealers are defined as professional participants of the securities market who perform transactions with securities on their own behalf and at their own expense 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 became effective. Forex dealers are required to have at least RUB 100 million in capital

and maintain membership of specialized self-regulating organizations. Forex dealers 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 and/or for entering into derivative transactions.

5.19 Who records transfer of rights to securities in Russia?

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 the requirement to appoint a professional licensed registrar to maintain the 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 a 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.



5.20 What are the functions of the Central Depository in Russia?

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

If the Central Depository has a depository account in the registrar of a company or holds securities in mandatory deposit, the issuers of such securities must provide the Central Depository with information relating to the exercise of rights under such securities (e.g., shareholder/bondholder meetings, payment of dividends/coupons, conversion of shares, Voluntary Offers, Obligatory Offers, etc.) Other issuers may voluntarily provide such information to the Central Depository. The detailed list of the information to be provided in each case is established by the Bank of Russia. The information disclosed by the Central Depository on its website will take priority over the information disclosed by the issuer.

Apart from the right to open accounts for Russian legal entities, the Central Depository has exclusive rights to open accounts for foreign central depositories 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 depositories incorporated in a member state of the OECD, FATF, MONEYVAL or United Economic Area or in a jurisdiction whose securities market regulator has concluded a cooperation agreement with the Bank of Russia.

In addition, foreign organizations incorporated in a member state of the OECD, FATF, MONEYVAL or United Economic Area or in a jurisdiction whose securities market regulator has concluded a

cooperation agreement with the Bank of Russia, are allowed to open the following foreign nominee accounts with Russian depositories:

- foreign nominal holder accounts if the foreign organization is authorized to register and transfer rights to securities under its 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 its domestic legislation. This also applies to brokers.

In addition, issuers of foreign securities that represent Russian securities (such as depositary receipts) (the “**Depositary Banks**”) are allowed to open special depositary program accounts with Russian depositories, which, in turn, have to have nominee accounts opened with the Central Depository. Furthermore, the Depositary Banks must 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.

5.21 What legislation governs the activities of Organizers of trade, stock exchanges and clearing organizations in Russia?

In accordance with Federal Law No. 325-FZ “On Organized Trading” dated 21 November 2011 (the “**Law on Organized Trading**”), trade organizers are legal entities that directly facilitate the conclusion of transactions on the financial and commodities markets on the basis of a license of a stock exchange or a trade system issued by the Bank of Russia. The Bank of Russia prescribes minimum requirements for trade organizers for listing and delisting of securities. 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.



The Moscow Stock Exchange (“**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.

5.22 What are the main powers and functions of the Bank of Russia as the securities market regulator?

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 for their issuance; approval of issuance of securities outside the Russian Federation; and control over the use of inside information.

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 law remains with the courts.

Issuance of securities by state and municipal authorities falls outside the scope of regulation of the Bank of Russia and is regulated by the Ministry of Finance.

5.23 What is the purpose of Self-Regulating Organizations (“SROs”) in Russia?

Federal law No. 223-FZ “On Self-regulatory Organizations on the Financial Markets” and on Amendments to Articles 2 and 6 of the Federal Law “On Introduction of Amendments into Certain Legislative Acts” dated 13 July 2015 (the “**SRO Law**”) substantially deepened the regulatory framework governing the activities of SROs in Russia.

Under the SRO Law, an SRO is a voluntary association of financial organizations functioning on the principles of a non-profit organization established for the development of standards of professional activity, the monitoring of compliance of its members with such standards, the development of the Russian financial market, and the creation of framework for effective functioning of the Russian financial system and ensuring its stability.

The SRO Law established an obligation of professional participants on the securities market to participate in an SRO specializing in the area of such participants’ business activities. Only a non-profit organization can obtain the status of an SRO, which occurs when the Bank of Russia includes it in the uniform register of SROs. Such organizations must comply with the following requirements:

- at least 26% of professional participants on the financial market (e.g., brokers, dealers, registrars) conducting a certain type of regulated activity in Russia should be members of an SRO;
- it must develop standards of conduct which comply with the SRO Law;
- it is obliged to establish management and certain other bodies in accordance with the SRO Law; and



- its chief executive officer should comply with the specific requirements of the SRO Law.

An SRO may include professional participants of the securities market engaged in different types of regulated activities, provided that the requirement mentioned in item 1 of the list above is observed for each type of regulated activity. Generally, a professional participant on the financial market can be a member of only one SRO that specializes in the area of such participant's business activities. However, if a professional participant carries out several business activities on the financial market it is entitled to participate in several SROs of different specializations.

The SRO Law allows for associate membership in an SRO, which means that, an associate member:

- is entitled to participate in such SRO in a consultative capacity, take part in working groups and committees; and
- is not subject to supervision of such SRO unless such member consents otherwise.

The charter of an SRO should specifically allow associate membership and can specify the standards that should be observed by associate members.

5.24 Are there any requirements due to purchasing a significant amount of voting shares in a Russian public joint-stock company?

According to the JSC Law a person who intends to buy more than 30% of the voting shares in a public joint-stock company (including shares owned by its affiliates) should make an offer to the shareholders of such public joint-stock 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 public joint-stock 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 shares to be purchased.

Under the JSC Law, a shareholder who has acquired more than 95% of a public joint-stock 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 into such shares. Moreover, a minority shareholder is entitled to demand that its shares be purchased.

5.25 What are the requirements for placement and circulation of Russian shares overseas?

Starting April 2015, the total number of shares of a Russian company that may be placed outside Russia should not exceed 25% of the outstanding shares of the same category for a company.

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.

Russian companies must submit applications to the Bank of Russia to obtain its consent for placement of shares outside the Russian Federation. The Bank of Russia is entitled to either approve the contemplated placement or deny such approval if the relevant Russian issuer does not comply with the above requirements on the amount of shares to be placed.

After the placement, the relevant issuer is obliged to submit a notification on the results of placement to the Bank of Russia. Such notification must be submitted within 30 days from the date of either:

- completion of placement;
- expiry of one year from the date of issuance of consent by the Bank of Russia; or



- expiry of the term of offering.

Among other information, such notification on the results of placement must contain the following information:

- the amount of securities offered for purchase in and outside Russia;
- duration of the offering of securities in Russia and abroad;
- information about organizations that facilitated the placement in and outside Russia; and
- the amount of securities purchased in Russia and abroad.

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

5.26 Are derivative transactions awarded civil law recognition in Russia?

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 where 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 cases where 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.

5.27 What are the regulations on derivatives on the securities market in Russia?

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.

5.28 Is there an equivalent of the ISDA Master Agreement on the Russian market?

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 (frequently referred to as the Russian ISDA or RISDA).



5.29 What are the requirements for netting claims?

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 one to net contractual claims, including in the course of bankruptcy of one of the parties, provided that the transactions are concluded between eligible counterparties and 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.

5.30 What are the functions of a repository?

Under the Securities Law, repositories collect, record, process and store information regarding OTC repo and derivative transactions, and maintain registers of such transactions on the basis of a license granted by the Bank of Russia. Stock exchanges, clearing organizations, settlement depositaries and the Central Depository may act as repositories.

The following legal entities must submit information regarding their OTC repo and derivative transactions:

- credit organizations;
- brokers;
- dealers;
- trust managers;
- depositaries;
- registrars;

- non-governmental pension funds;
- management companies of investment funds, mutual investment funds and non-governmental pension funds;
- joint-stock investment funds;
- trade organizers;
- clearing organizations; and
- insurance companies.

Legal entities that are not on the above list must submit information regarding their OTC repo and derivative transactions with counterparties that are not on the above list only provided that:

- the amount of obligations arising out of such transaction exceeds RUB 1 billion or equivalent in foreign currency on the date of conclusion of such transaction; or
- the aggregate amount of obligations arising out of such transactions exceeds RUB 10 billion or equivalent in foreign currency (the “threshold amount”) on the last day of each of the three consecutive months (the “calculation period”); or
- such transactions are concluded in the month following the calculation period in which the threshold amount was reached.

5.31 What constitutes inside information in Russia?

Pursuant to Federal Law No. 224-FZ “On Countering Illegitimate Use of Inside Information and Market Manipulation” dated 27 June 2010 (the “**Inside Information Law**”) 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.



5.32 Who can be an insider in Russia?

The list of insiders includes the following:

- issuers and management companies;
- monopolies;
- consultants and counterparties;
- major shareholders;
- trade organizers, 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; and
- persons having access to inside information due to their professional activities (including auditors, banks, insurance companies) rendered to issuers, management companies, monopolies, professional participants of the securities market, trade organizers, clearing and other organizations making settlements on exchanges.

5.33 What are the obligations of insiders in Russia?

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 trade organizer 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 that relate to inside information.

5.34 What are the penalties for violation of the Inside Information Law?

Compliance with the Inside Information Law requirements is supervised by the Bank of Russia. Violation of the Inside Information Law 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. Other sanctions include the revocation of licenses (primarily applicable to banks and professional participants of the securities market), and imprisonment.



Violation of the Inside Information Law requirements includes unlawful use of inside information. The legislation provides for an administrative fine up to RUB 5,000 for individuals and up to RUB 50,000 or disqualification for up to two years for executives. The fine for legal entities amounts to the greater of RUB 700,000 and the losses they avoided by using the inside information or the difference between actual income and income which would have been made without using the inside information. If the avoided losses or income gained through the use of inside information exceeds RUB 3,750,000, the individual may be subject to criminal liability.

In addition, failure to disclose inside information and failure to enact measures to counter the use of inside information entail a fine of up to RUB 700,000 for legal entities and up to RUB 30,000 or disqualification for up to one year for executives.

Failure to maintain a list of insiders and to notify them may result in a fine of up to RUB 500,000 for legal entities and up to RUB 30,000 for executives.

The fine for failure to notify the Bank of Russia of transactions with financial instruments, securities, currency and goods that relate to inside information may reach up to RUB 5,000 for individuals, up to RUB 30,000 for executives and up to RUB 500,000 for legal entities.

6. Competition Protection Law

6.1 General Section

6.1.1 What is the legal framework for protection of competition in Russia?

Antitrust matters in Russia are mainly regulated by Federal Law dated 26.07.2006 “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 does not apply to agreements and actions committed on the so-called cross-border markets within the Eurasian Economic Union (“EAEU”), i.e., those markets involving at least two countries of the EAEU to which Russia is a member. Such agreements and actions fall within the jurisdiction of the Eurasian Economic Commission, which is a supranational authority in EAEU.

6.1.2 What is the Competition Law about?

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

- abuse of market dominance;
- anti-competitive agreements and concerted practices between companies;
- anti-competitive 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;



- state aid;
- establishment of companies;
- mergers and acquisitions; and
- unfair competition/advertising.

6.2 Abuse of Market Dominance

6.2.1 Under what circumstances can a company be considered dominant?

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.

Entities with a market share exceeding 50% are presumed to have market dominance. Entities with a market share between 35% and 50% are deemed dominant, provided their market dominance has been established by FAS. Entities with a market share not exceeding 35% are presumed to have no market dominance. However, there is an exception for collective dominance.

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, as well as the Russian Central Bank. A financial organization whose share does not exceed 10% in any single market in the Russian Federation, 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.

6.2.2 Can several companies be dominant at the same time?

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 at least 8% and at the same time exceeds the respective shares of other market players;
- during a significant 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; and
- 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.

6.2.3 What restrictions apply to dominant entities?

For those in a dominant position, the Competition Law prohibits any actions and inactions which may lead to restriction of competition or infringe on the individual interests of other economic interests or an indefinite group of consumers, being both legal entities and individuals buying goods and services, in particular, any of the following activities:

- setting and/or maintaining monopolistically high or low prices;
- withdrawal of goods from circulation if it leads to higher prices for such goods;



- creation of discriminatory conditions, i.e., those that place one or more business entities in an unequal position as other entities in terms of 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; and
- price manipulation in the wholesale and (or) retail electricity markets.

However, certain of the abovementioned 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.

6.2.4 Are there any exemptions from dominance-related restrictions?

The prohibitions against the abuse of market dominance do not apply to the exercise of intellectual property rights. This exemption, however, tends to be construed narrowly.

In order to prevent abuse of dominance, the Russian government may introduce mandatory rules of business conduct for those dominant entities whose share in the relevant market exceeds 70% and those that are not operating as a natural monopoly. Such rules can only follow a liability decision of FAS on prior abuse of dominance and can provide for a wide variety of conditions, including publication of information on (i) the supply of goods in the market; (ii) the full list of consumers to be supplied in priority to others if the supply is limited; and (iii) the material terms of supply agreement.

6.3 Anti-competitive Agreements, Concerted Actions and Actions of State Bodies Limiting Competition

6.3.1 What agreements between competitors are prohibited?

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;
- increasing or reducing prices or manipulating prices at tenders;
- dividing the market by territory, volume of sales/purchases, assortment, or the range of sellers/buyers;
- refusing to deal with particular sellers or customers; or
- ceasing or decreasing production of goods.

The term “competitors” covers not only entities supplying goods on the same market, but also entities purchasing goods on the same market.



6.3.2 What agreements between non-competitors are prohibited?

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 sell 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 prohibits all other agreements that lead or may lead to restriction of competition as may be determined by market analysis. These include agreements that 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.

6.3.3 What if there is no agreement and companies follow instructions of a third party?

Lastly, the Competition Law prohibits “coordination of economic activities” by economic entities if such coordination actually leads to certain consequences enumerated by law. Coordination is understood as direction 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. The prohibited consequences are: (i) setting or maintaining prices, discounts, bonus payments or surcharges; (ii) increasing or reducing prices or manipulating prices at tenders; (iii) dividing the market by territory, volume of

sales/purchases, assortment, or the range of sellers/buyers; (iv) refusing to deal with particular sellers or customers; (v) ceasing or decreasing production of goods; (vi) resale price fixing, save for setting a maximum resale price; and (vii) obligation not to sell 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.

6.3.4 Are there any exemptions from the above prohibitions?

The Competition Law provides certain exemptions from the restrictions state above, in particular:

- The Competition Law permits vertical agreements that are: (i) concluded between economic entities each having a market share of 20% or less in the market of a product in relation to which the agreement is concluded; and/or (ii) 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. In fact, the agreement on joint activities cannot be recognized as a cartel if it has been earlier pre-approved by FAS.



- 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 performance of the functions of an executive body of the entity.
- Agreements on transfer of 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 that automatically render a vertical agreement permissible, as well as conditions that ensure permissibility of an agreement.

6.3.5 What if there is no agreement and companies copy each other's behavior?

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;
- increasing or reducing prices or manipulating prices at tenders;
- dividing the market by territory or according to the volume of sales/purchases, the range of marketable goods, or the range of sellers or buyers;

- refusing to deal with particular sellers or customers unless such refusal is provided for by federal legislation; or
- 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 creating unfavorable conditions for a counterparty, setting different prices for the same goods without economic or technological justification, or creating barriers for third parties trying to enter into or exit from a certain market.

6.3.6 Are there any exemptions from the above prohibition?

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 are below 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.

6.3.7 Can an agreement with a state authority violate Competition Law?

The Competition Law also contains certain restrictions applicable to actions by state authorities and agreements with state authorities and third parties performing state functions or providing state services, if such actions or agreements actually lead or may potentially lead to restriction of competition.

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, and (v) discriminatory conditions.

6.4 Requirements for Tenders and Price Quotations

6.4.1 What actions are prohibited in procurement tenders?

The Competition Law lists actions that are prohibited in tenders (including government tenders), price quotations and requests for proposals if they actually or potentially 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 in tender lots products that differ technologically and functionally from the products, services and works that are the subject matter of a tender.

Finally, the Competition Law specifically prohibits agreements between procuring entities or tender organizers on the one hand, and

tender participants on the other, if such agreements have restriction of competition as their aim or effect.

6.4.2 Are there any special regulations applicable to procurement tenders aside from the Competition Law?

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.

6.5 State Aid

6.5.1 What is 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.

6.5.2 What is the procedure for granting state aid?

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. Supporting documents required for the FAS application include 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.

6.6 Merger Control

6.6.1 What transactions are subject to merger control?

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 RUB 1 billion during the year preceding the transaction;
- joint ventures in Russia between competitors; or
- the assets of Russian financial organizations.

In addition to the merger control rules described below, there are certain requirements, including a prior approval of a contemplated transaction, that apply to foreign investments. These requirements are set forth in the Federal Law No. 57-FZ “On the Procedures for Foreign Investments in Companies of Strategic Significance for National Defense and Security”, which governs acquisition of control over Russian strategic companies by foreign investors or “groups of persons” that include a foreign investor. In more detail, these requirements are described in the section entitled “Promoting Foreign Investments in Russia”.

6.6.2 When is establishment of companies subject to merger control?

The founders must obtain consent from FAS prior to establishing 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% or 75% of the shares in a Russian joint stock company or more than one-third, 50% or two-thirds 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.

6.6.3 When is a merger of companies subject to merger control?

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 RUB 7 billion or the aggregate revenue earned by the entities and their “group of persons” from the sale of goods during the past calendar year exceeds RUB 10 billion. 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% of the total number of votes carried by voting shares/participation interest in the charter capital of this company (partnership);

- a legal entity and an individual or legal entity, if such individual or legal entity exercises the functions of the sole executive body of this legal entity;
- 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);
- legal entities 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 and an individual or legal entity, if the sole executive body of such company 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; and
- 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).

6.6.4 When is acquisition of shares or participatory interests in a Russian company subject to merger control?

When an individual, legal entity or “group of persons” acquires more than 25%, 50% or 75% of voting shares in a Russian joint stock company or more than one-third, 50% or two-thirds of participatory shares in a Russian 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 RUB 7 billion and the book value of the total assets of the target and its group exceeds RUB 250 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 RUB 10 billion and the balance sheet value of the total assets of the target and its group of persons exceeds RUB 250 million.

6.6.5 When is acquisition of assets located in Russia subject to merger control?

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 RUB 7 billion and the book value of the total assets of the target and its group exceeds RUB 250 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 RUB 10 billion and the book value of the total assets of the target and its group exceeds RUB 250 million.

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.

6.6.6 When is acquisition of rights in a Russian company subject to merger control?

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 RUB 7 billion and the book value of the total assets of the target and its group exceeds RUB 250 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 RUB 10 billion and the book value of the total assets of the target and its group exceeds RUB 250 million.



6.6.7 Mergers or acquisitions made outside of Russia are not subject to merger control, right?

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 RUB 1 billion 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 RUB 7 billion and the book value of the total assets of the target and its group exceeds RUB 250 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 RUB 10 billion and the book value of the total assets of the target and its group exceeds RUB 250 million.

6.6.8 When are joint ventures subject to merger control?

When competitors enter into an agreement on joint activities in Russia (including joint ventures, co-marketing, co-promotion, etc.), they must first receive prior approval from FAS if:

- the aggregate book value of the assets of the parties and their “groups of persons” exceeds RUB 7 billion; or
- the aggregate revenue earned by the parties and their “groups of persons” from the sale of goods over the past calendar year exceeds RUB 10 billion.

6.6.9 How are the financial thresholds for merger control purposes calculated?

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

6.6.10 What is a "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.

6.6.11 Do any special merger control rules apply to any specific sectors?

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.

6.6.12 What is the merger control procedure like?

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 website 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 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, product or service, such as trademarks, logotypes and other objects of intellectual property;
- creates confusion with a competitor's business or products provisions on disparaging statements;

- receives, uses and discloses commercial, official or other secrets without the consent of the commercial entity to which this information belongs; or
- otherwise competes unfairly (e.g., uses other person's business reputation).

6.8 Russia is a Member State of the Eurasian Economic Union. Are there any special competition rules in this union?

Russia is party to the Agreement on EAEU 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 matters. 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, anti-competitive agreements and coordination of economic activities. Anti-competitive agreements with state bodies, tenders and price quotations, as well as the 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 What are the key provisions of Anti-Bribery Laws in Russia?

7.1.1 What are the general comments on the current state of anti-bribery laws and enforcement in Russia?

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, the new Article 13.3 requires all organizations to develop and implement measures to prevent bribery. It specifically recommends:

- 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; and
- preventing the creation and use of false and altered documents.

The Russian Ministry of Employment, in cooperation with several public associations, has prepared an official guide as to how legal entities should take these measures. It 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 Article 13.3.

A number of other developments in Russia's regulatory framework have prompted increased efforts by state authorities to combat 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 in bank accounts outside of Russia. The government also issued a sequence of rulings in 2013 which envisage more stringent reporting procedures for the profits and ownership of public officials. On 9 January 2014, detailed procedures were introduced by a ruling from the Russian government on reporting the gifts received by public officials, evaluating such gifts and the possible repurchase of the gifts by public officials.

The enforcement practice currently includes an increasing number of prosecutors' actions and court cases in connection with inspections of Russian entities for non-compliance with the requirements of current anticorruption laws.

The biggest anti-corruption trend of previous years includes a number of landmark anti-corruption prosecutions against senior federal and regional state officials that appear to have influenced business decisions and processes. This may have a significant impact on the business environment in general and may require improved standards of transparency in the interactions of business with state officials and enterprises.



7.1.2 What changes to anti-corruption laws are anticipated in the near future?

The draft bills that were pending at the end of 2016 did not become law¹⁴.

The anticipated amendment this year includes extending the scope of active public and commercial bribery on behalf or in the interests of a legal entity (Art. 19.28 of the Administrative Offenses Code) to cover instances of bribing in the interests of a related legal entity¹⁵.

7.2 What liability does a legal entity incur for corrupt conduct?

In Russia, there is no criminal liability for legal entities. When a legal entity is held responsible for unlawful conduct, it is ordinarily subjected to administrative liability, such as administrative fines.

7.2.1 What is the definition of the offense of active public and commercial bribery on behalf of a legal entity?

Article 19.28 of the Code of Administrative Offenses provides for administrative liability for a legal entity for unlawful provision, offer or promise by anyone in the name or in the interests of a legal entity of anything of pecuniary value to a Russian or foreign public official,

¹⁴ The first bill envisaged extending the subject-matter of the bribe/commercial bribe to include services of a non-pecuniary nature, non-property rights and other undue advantages, as well as criminalization of the offer, promise or request for a bribe and commercial bribe (Article 291.3 and Article 204.3 of the Criminal Code respectively); extending the scope of Article 202 of the Criminal Code (Abuse of authority by private notary and auditor) and of Article 204 (Commercial bribery) to encompass Russian as well as foreign arbitrators. Please refer to Archived Draft Bill No 3633-7, available at: [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=3633-7](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=3633-7). The second bill envisaged a release from responsibility for active public and commercial bribery on behalf of a legal entity for the entity's active assistance in prosecution/reporting the offense to the authorities. Please refer to Archived Draft Bill No 798912-6, available at: [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=798912-6](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=798912-6).

¹⁵ Please refer to Draft Bill No 233781-7, available at: [http://asozd.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=233781-7](http://asozd.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=233781-7).

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 those found for the corresponding criminal offenses (see sections on Active Public Bribery and Active and Passive Commercial Bribery below).

7.2.2 What defenses may a legal entity raise to avoid liability?

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 the measures it has taken to prevent bribery on its behalf as a defense.

Recent enforcement practice confirmed that a legal entity could 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 What are the sanctions for the offense?

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 RUB 1 million (approx. USD 17,700) is a fine of up to three times the amount of the bribe, but not less than RUB 1 million. The maximum sanction for a bribe over RUB 20 million (approx. USD 353,000) is a fine of up to 100 times the amount of the bribe, but not less than RUB 100 million (approx. USD 1.8 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 the liability of a particular individual involved in giving a bribe.

7.2.4 Can Article 19.28 be applied to extraterritorial conduct?

Russian authorities will also have jurisdiction over any legal entity if a bribe is directed at a foreign official or an official of a public international organization if the offense was aimed against the interests of the Russian Federation, as well as in instances stipulated by the international treaty of the Russian Federation, unless this legal entity has already been held criminally or administratively liable for the same actions in a foreign state¹⁶.

7.2.5 Does the law provide for 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 their legal predecessors regardless of whether the succeeding entities knew of such administrative offenses.

7.3 What are the major types of criminal offenses for corrupt conduct?

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

7.3.1 What actions are prohibited as active bribery of public officials?

Article 291 of the Criminal Code prohibits the 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 and cases where, upon the instructions of a public official, a bribe is provided to another individual or legal

¹⁶ See Article 1.8(3) of the Administrative Offenses Code.

entity. A bribe can take the form of anything of pecuniary value (money, securities, other property, illegal provision of property-related services, granting property rights) that is provided for an act or omission by the relevant official in connection with his/her official duties for the benefit of a bribe-giver or the persons whom he or she represents.

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, administrative 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 What are the sanctions for active bribery of public officials?

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 minor public bribery (up to RUB 10,000 (approx. USD 180)) – includes a fine of up to RUB 200,000 (approx. USD 3,500) or a salary or other income of the convicted for up to three months, or correctional labor for up to one year, or a limitation of freedom for a period of up to two years, or imprisonment for up to one year.



The maximum sanction for a bribe exceeding RUB 1 million (approx. USD 17,700) is a fine from RUB 2 million (approx. USD 35,300) to RUB 4 million (approx. USD 71,000), or in the amount of a salary or other income of the convicted for between two and four years, or of 70 to 90 times the amount of the bribe with or without a prohibition from holding certain positions or engaging in certain professional activities for up to 10 years, imprisonment for between eight and 15 years with or without a fine of up to 70 times the amount of the bribe and with or without the prohibition from holding certain positions or engaging in certain professional activities for up to 10 years.

A person who has given a bribe may be released from criminal liability if they actively aided in detecting and prosecuting the crime, and if either the bribe was extorted from them or they voluntarily reported the bribe to the criminal law enforcement authorities.

7.3.3 When is confiscation possible?

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 only be confiscated 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. Where such funds are absent or their amount is insufficient, the court may decide to confiscate other property that is

equivalent or comparable in value to the criminally obtained property (except for property that is exempt from any levy of execution).

7.3.4 What actions are prohibited as active and passive 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, or upon the instructions of such person to another individual or a legal entity, for an act or omission in connection with such person's job position in the interests of the provider or other persons, if such acts or omissions fall within the range of such person's authority or if such person can, by reason of his or her job position, foster such acts or omissions.

Article 204 contains provisions on passive commercial bribery, i.e., receipt by a person who performs managerial functions in a commercial or other organization (including instances where, upon the instructions of such person, the commercial bribe is handed over to another individual or legal entity) of anything which has pecuniary value (including property rights, services, etc.) for an act or omission in connection with such person's job position in the interests of the provider or other persons, if such acts or omissions fall within the range of such person's authority or if such person can, by reason of his or her job position, foster such acts or omissions.

Moreover, the same conduct may be prosecuted under Article 201 of the Criminal Code, which prohibits abuse of authority, such as the use by a person who performs managerial functions in a commercial or other organization of his/her authority contrary to the lawful interests of this organization for the purpose of obtaining an advantage not only for himself/herself, 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 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, such as engage in the management of at least some personnel or at least some property of the organization. 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 What are the sanctions for active and passive commercial bribery?

The sanctions for active commercial bribery under Article 204 of the Criminal Code vary depending on whether the person giving a commercial bribe has acted alone or in conspiracy with others as well as whether the commercial bribe is given for the commission of a lawful or unlawful act (omission). The minimum sanctions – for minor commercial bribery (up to RUB 10,000 (approx. USD 180) – includes a fine of up to RUB 150,000 (approx. USD 2,700) or a salary or other income of the convicted for up to three months, or mandatory labor for a period of up to 200 hours, or correctional labor for up to one year, or a limitation of freedom for up to one year. The maximum sanctions for active commercial bribery (for a commercial bribe exceeding RUB 1 million (approx. USD 17,700) are a fine from RUB 1 million (approx. USD 17,700) to 2.5 million (approx. USD 44,000), or in the amount of a salary or other income of the convicted for between one year and two and a half years, or 40 to 70 times the amount of the commercial bribe with or without a prohibition from holding certain positions or engaging in certain professional activities for up to five years, or imprisonment for a period from four to eight years with or without a fine of up to 40 times the amount of the commercial bribe and with or without a prohibition from holding certain positions or engaging in certain professional activities for up to five years.

The sanctions for passive commercial bribery under Article 204 of the Criminal Code vary depending on whether the person receiving a bribe has acted alone or in conspiracy with others as well as whether

the commercial bribe has been received for the commission of a lawful or unlawful act (omission) and whether the commercial bribe was extorted. The minimum sanctions are the same those as for minor active commercial bribery. The maximum sanctions for receiving a commercial bribe exceeding RUB 1 million (approx. USD 17,700) are a fine from RUB 2 million (approx. USD 35,300) to RUB 5 million (approx. USD 88,000), or in the amount of a salary or other income of the convicted for between two and five years, or 50 to 90 times the amount of the commercial bribe with a prohibition from holding certain positions or engaging in certain professional activities for up to six years, or imprisonment for between seven and 12 years with or without a fine of up to 50 times the amount of the commercial bribe and with or without a prohibition from holding certain positions or engaging in certain professional activities for up to six years.

A person who has committed active commercial bribery covered by Article 204 of the Criminal Code may be released from criminal liability if they actively aided in detecting or prosecuting this offense and the commercial bribe was either extorted from them or they voluntarily reported the commercial bribe to criminal law enforcement authorities.

7.3.6 Is aiding and abetting public bribery a criminal offense?

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 only applies to bribes with a value exceeding RUB 25,000 (approx. USD 420). This article also applies to offers or promises of assistance in aiding and abetting public bribery regardless of the value of the bribe. The sanctions for aiding and abetting public bribery are similar to those for active public bribery.



7.3.7 Is aiding and abetting commercial bribery a criminal offense?

Article 204.1 of the Criminal Code introduced in July 2016 criminalizes aiding and abetting commercial bribery where the value of the commercial bribe exceeds RUB 25,000 (approx. USD 420). This article also applies to offers or promises of assistance in aiding and abetting commercial bribery regardless of the value of the bribe. The sanctions for aiding and abetting commercial bribery are lightly lower than those for aiding and abetting public bribery.

7.3.8 What is the lowest amount of a bribe?

No lowest threshold has been established.

8. Taxation

8.1 What are the main Russian legislative acts that contain tax law provisions?

Over the past 18 years, Russia has been engaged in a significant reform of its tax system, which has been implemented in phases. Currently this reform is concentrated on revision and improvement of provisions of the main legal act – the Tax Code of the Russian Federation (the “**Tax Code**”).

Part I of the Tax Code came into effect in 1999, dealing largely with administrative and procedural rules. Recent amendments to Part I clarified tax audit procedures, procedural guarantees for taxpayers, payment of taxes and operations with taxpayer bank accounts and bank liability.

The provisions of Part II of the Tax Code regarding specific taxes have been introduced gradually since 2001. As of today, Part II consists of federal, regional and local taxes, social security contributions and special tax regimes. 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.

8.2 What are the main recent changes in the Russian tax system?

Recent major changes include the adoption and further enhancement of the so-called “**Deoffshorization Law**” introducing new rules on taxation of profits of controlled foreign companies (“**CFC rules**”), tax residency of foreign companies and beneficial ownership rules in Russia along with the reintroduction of the tax amnesty and implementation of provisions of the CRS Multilateral Competent Authority Agreement and the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (the “**CbCR**”). These rules substantially change the way businesses



operate in Russia, require a review of holding, financing and licensing structures from abroad into Russia, affect most 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 OECD-Council of Europe Convention on Mutual Administrative Assistance in Tax Matters, a long-term freeze of the tax consolidation regime, substitution of the Central Bank refinancing rate by a higher “key rate”, and signing of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. Tax reform continues to be an ongoing process in Russia.

8.3 What types of tax comprise the Russian tax system?

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, social security contributions and several other taxes. Regional taxes include corporate property tax, transportation tax, and gambling tax. Local taxes include land tax, individual property tax, and the trade levy.

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.

8.4 What types of tax audits do Russian tax authorities conduct?

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, or 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, tax for a given period may only be audited once. The taxpayer may also be subject to a tax audit for the same tax period upon 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 in cases where the undetected violation resulted from a conspiracy between the taxpayer and the tax authorities.

As a general rule, the term of an on-site tax audit may not exceed two months, but this term may be extended by up to six months in exceptional cases. Also, 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, 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.

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 his or her tax liabilities (if they amount to a criminal offense) 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 of the Federal Tax Service separately from the regular tax audit process. The audits will only be performed in-house and may not be performed as part of on-site regular tax audits. A transfer pricing audit may be initiated within two years after the tax authorities receive notification of controlled transaction and cover the three calendar years preceding the year the audit was initiated.

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 the results of a tax audit that have already entered into force may be appealed within one year of issue or from the moment the taxpayer found out that his or her rights had been violated by the decision.

8.5 How may taxes be paid in Russia?

Taxes should be paid in Russian rubles, preferably from a Russian bank account. Payment of taxes is by default the personal obligation of the taxpayer. Starting from 1 January 2017, taxes may be paid by a third party.

8.6 Does Russia have a tax monitoring regime?

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

Under the new tax monitoring regime, a taxpayer, if he or she so chooses, will provide tax accounting documents and information to the tax authority in electronic format, or grant the tax authorities

access to their accounting systems. In return, the taxpayer will have the opportunity to agree his or her 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 the taxpayer applied for the tax monitoring regime.

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

- the total annual amount of VAT, excise taxes, corporate profit tax and mineral extraction tax payable to the federal budget for the previous calendar year is not less than RUB 300 million;
- the total annual income for the previous calendar year according to the accounting records is not less than RUB 3 billion; and
- the 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 RUB 3 billion.

The application to change to the new regime must be submitted before 1 July of the year preceding the year of the tax monitoring, ie, the regime could be first officially applied in 2016. Members of a consolidated taxpayers group may apply for this regime starting only from 2016.

Starting from 1 June 2016, taxpayers applying the special tax monitoring regime have the opportunity to discuss with Russian tax authorities the tax implications of proposed transactions (in addition to past transactions) and to obtain a tax ruling that is binding on both the taxpayer and the Russian tax authorities. The taxpayer retains the right to challenge the tax ruling by filing an objection with the Russian tax authorities.



8.7 Which transfer pricing rules apply in Russia?

Prior to 2012, the Tax Code contained several rules related to transfer pricing. Specifically, it sets 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. These 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 the 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 RUB 60 million in total in a given calendar year:

- cross-border transactions with oil and gas products, ferrous and non-ferrous 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 the 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, Malta and Hong Kong have been removed from this list); and

- transactions of qualifying participants in regional investment projects in the Russian Far-East regions with third parties.

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

- transactions between related parties not exceeding RUB 1 billion 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; and
- starting from 1 January 2017, interest-free loans between Russian related parties.

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

The 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 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: profit 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 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. Starting from 1 January 2015, if a party of a controlled transaction (providing that income and expenses for the transaction are determined according to Chapter 25 of the Russian Tax Code) filed a tax return with an adjustment and received documents confirming fulfilment of tax obligations, another party to this transaction may make a corresponding adjustment in its tax return.

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 with 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 exceeding a certain threshold does not apply.

Starting from 1 January 2018 Russia has enhanced the transfer pricing rules to allow the use of global transfer pricing documentation and the implementation of provisions of the CbCR.

8.8 Do Russian transfer pricing rules provide for advance pricing agreements?

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 with 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 to the Russian rules covering APAs, the terms of the concluded APAs are grandfathered.

8.9 What is the standard Russian corporate profits tax rate?

The maximum corporate profit tax rate is 20%, which is currently payable at a rate of 3% to the federal budget and 17% to regional budgets. The regional authorities may, at their discretion, reduce their regional profits tax rate to as low as 12.5%. Thus, the overall tax rate can vary from 15.5% to 20%. For taxpayers participating in investment projects, the corporate profit tax rate may be reduced for a certain stability period (down to 0% in certain cases). Chapter 25 also introduces special tax rates on income earned from Russian state securities and on the profits of the Central Bank of Russia (the “**Bank of Russia**”).

8.10 Are there any specific tax rates for dividend income?

The tax rate on dividends received from Russian and foreign companies by Russian shareholders is 13%. Certain dividends payable by foreign and Russian entities to Russian companies are subject to a zero tax rate if on the day the corporate decision to pay the dividends is taken the following three criteria 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 on the 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 – Hong Kong is excluded from the list as of 1 January 2018).

Dividends payable by Russian companies to foreign legal entities are subject to a 15% withholding tax unless a reduced tax treaty rate applies.

8.11 Are there any other participation exemptions?

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

- the Russian company has continuously held those shares for more than five 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 shares have not been publicly traded on a securities market during the holding period, or (b) the shares are publicly traded shares in a Russian company and the company derives less than 50% of its value (directly or indirectly) from real property located in Russia.
- Until 1 January 2023 an additional full tax exemption on income from the sale or redemption of shares in Russian companies (acquired starting from 1 January 2011) applies, provided that:
 - a Russian company has continuously held those shares for more than one year (the “short holding period”); and
 - the income has been derived from the sale or redemption of participation interests or shares in Russian companies, provided that the interests or shares are of publicly traded Russian companies operating in the high-tech (innovative) sector of the economy throughout the short holding period.

8.12 How is taxable profits calculated?

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 restriction (e.g., certain advertising and representational costs, including business entertainment and travel costs). Expenses on research and development (including those that failed to yield a positive result) that fall onto 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.

8.13 Does the Russian Tax Code provide for a tax consolidation regime?

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 profit 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 profit 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 similar companies). To form a Group, the consolidating companies must jointly meet the following 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 RUB 10 billion;
- the combined turnover for the previous year is not less than RUB 100 billion; and
- the combined net book value of assets on the first day of the year of consolidation is not less than RUB 300 billion.

The consolidating companies form the Group by signing a Tax Consolidation Agreement outlining the group members, responsible participants and the consolidation period (minimum two years; for Agreements registered in 2018 – a minimum of five 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, Tax Consolidation Agreements cannot be registered with the tax inspectorate until 2018. The Tax Consolidation Agreements, registered in 2014–2015, are treated as not effective. 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.

8.14 Are there any other special corporate profits tax regimes?

The Russian Tax Code provides for a special corporate profit tax regime 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 profit tax is payable to the Russian federal budget with no regional component.

8.14.1 Are there any special interest deductibility rules?

With regard to interest deductibility limitations, the Russian Tax Code applies transfer pricing rules and, upon the taxpayer’s election, new safe harbor interest rates that are mostly based on the Bank of Russia “key rate” (currently 7.25%). Starting from 1 January 2016, the refinancing rate (the “**CBR**”) is presumed to be equal to the Bank of Russia’s “key rate.” The Bank of Russia does not fix an independent value of the refinancing rate.

The safe harbor interest rates are summarized in the table below (including temporary, more beneficial ranges).

Currency	Safe-Harbor Range for Interest Rates on Debt Obligations between Related Parties	
	Minimum	Maximum
RUB (for loans granted from 1 to 31 December 2014)	0%	3.5% of CBR (28.875%)
RUB (for 2015)	0% ¹⁷ of the key rate	180% of the key rate
	75% ¹⁸ of CBR	
RUB (as of 2016)	75% of the key rate	125% of the key rate

¹⁷ 0% of the key rate – applicable to ruble loans concluded between the related Russian entities.

¹⁸ 75% of the CBR – applicable to ruble loans concluded with related foreign entities or offshore companies.



Currency	Safe-Harbor Range for Interest Rates on Debt Obligations between Related Parties	
	Minimum	Maximum
EUR	EURIBOR + 4%	EURIBOR + 7%
Yuan	SHIBOR + 4%	SHIBOR + 7%
GBP	GPB LIBOR + 4%	GPB LIBOR + 7%
CHF	CHF LIBOR + 2%	CHF LIBOR + 5%
JPY	JPY LIBOR + 2%	JPY LIBOR + 5%
USD and other currencies	USD LIBOR + 4%	USD LIBOR + 7%

Starting from 1 January 2017, interest-free loans between Russian-related parties are exempt from Russian transfer pricing rules.

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 a transfer pricing study.

8.15 Does Russia apply thin capitalization rules?

Thin capitalization rules revised as of 1 January 2017 apply to Russian companies with respect to the following loans:

- From a foreign related party, i.e., an individual or a company (previously only loans from corporations counted) (i) which owns directly or indirectly (via other companies) 25% or more of a Russian borrower (previously 20%); or (ii) which owns more than 50% consecutively in each preceding company in a

direct holding chain of a Russian borrower (a “**Foreign Participant**”).

- From a person (either foreign or Russian) related to the Foreign Participant (including direct or indirect participants, subsidiaries and sister companies) (a “**Related Person**”).

The reference to the foreign-related company officially eliminates the so-called “foreign sister company” loophole, where loans from related foreign companies which do not have direct or indirect participation were not technically considered “controlled debt”. The “foreign sister company” loophole was effectively closed by Russian court practice in 2011–2012.

- From any other persons if the debt is guaranteed or otherwise secured by any person mentioned under the previous two categories. The court may also consider other debts “controlled debts” if it is proven that the payment was effectively transferred to persons covered by one of the above categories.

The Russian Tax Code introduces a 12.5:1 debt-to-equity ratio limit for banks and leasing companies and a 3:1 debt-to-equity ratio limit for all other companies. Interest on debt in excess of the limitation is non-deductible and is also deemed to be a dividend payment to the foreign shareholder and is subject to a 15% withholding tax, unless the latter is reduced 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 with foreign currency denominated loans from related parties faced thin capitalization issues, even on loans that were previously within the 3:1 debt-to-equity ratio and were extended on arm’s-length terms. The Russian authorities responded with a quick and temporary solution by fixing an artificial ruble exchange rate. The fixed ruble exchange rate applies (and no exchange rate differences



are considered) to calculating deductible interest accrued in the period from 1 July 2014 to 31 December 2019 on loans concluded before 1 October 2014, provided that the term of the loan agreement is not changed. The ruble exchange rates for thin capitalization purposes are based on the Central Bank rates set on 1 July 2014 (USD 1 = RUB 33.8434; EUR 1 = RUB 46.1827).

Starting on 1 January 2016, loans from an unrelated bank guaranteed or otherwise secured by a foreign participant of the debtor or its related person are exempt from thin capitalization rules if there has been no payment on such guarantee or security.

Starting on 1 January 2017, the following two additional exemptions from the “controlled debt definition” were introduced:

- Loans from a Russian-related person, provided that such a person does not have a comparable (based on amount and term) loan from a foreign participant or its related person.
- Loans from foreign special purpose vehicles – issuers of Eurobonds that are residents in tax treaty countries.

8.15.1 What are the Russian asset depreciation and loss carry-forward rules?

Assets with a value exceeding RUB 100,000 (for fixed assets introduced before 2016 the value threshold is RUB 40,000) and a useful life of more than 12 months are subject to depreciation starting from the first day of the month following the month the 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 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 the 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 profit tax.

A lump-sum deduction in the amount of 10% of the initial book value of newly acquired fixed assets is allowed for profit tax purposes in the period the fixed assets were acquired. For capital assets with a useful life of more than 3–20 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 IT companies with proper accreditation are entitled to write off the full value of computer equipment at the time it is put into service. Starting from 1 January 2018 taxpayers may opt for an investment tax deduction instead of depreciation (subject to certain conditions and if enacted by regional tax laws).

Starting from 1 January 2017, losses may be carried forward indefinitely if incurred after 1 January 2007. For the tax years of 2017–2020 the amount of losses carried forward should not exceed 50% of the corporate profit tax base calculated for the relevant tax year. There are separate tax baskets for certain expenses, e.g., for expenses on the acquisition of certain securities. Otherwise, there should be 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.

8.16 Does Russia apply any corporate profits tax investment benefits?

Regional authorities may reduce their regional profit 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 below.

There is an ongoing development of various tax benefits for businesses in various 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 special tax incentives for qualifying participants of regional investment projects in the Russian Far-East regions that apply as of 1 January 2014. In 2013, 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. Starting from 2016, Russia provides for certain tax incentives to participants of special investment contracts.

8.17 What are the specifics of foreign companies’ taxation in Russia?

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 profit 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 after 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 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 profit tax. Other income received by non-Russian residents that is not specified on 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.

Corporate profit 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.

8.18 Does Russia apply any controlled foreign companies rules?

Yes. On 24 November 2014, the President of the Russian Federation signed Federal Law No. 376-FZ (the "Deoffshorization Law")



introducing new rules on taxation of profits of controlled foreign companies (“**CFC rules**”) in Russia. These rules affect most 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.

Under the current rules, the Russian Tax Code 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) if certain requirements are met. A Russian tax resident is considered to be a controlling person of a foreign company if he or she owns, 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 he or she otherwise controls in his or her own interests or in the interest of his or her family (spouse or minor children), subject to certain exemptions and temporary rules. The founder of a foreign unincorporated structure is by default treated as a controlling person. A person, other than a founder, will be considered a controlling person of the foreign unincorporated structure if he or she exercises control over the structure, is the beneficial owner of income received from the structure, has a right to dispose of the assets of the structure, or may obtain possessions of the structure in case of its liquidation.

Although the founder of a foreign unincorporated structure would not be treated as a controlling person if the following conditions are met in full (and he or she does not preserve the right to obtain any of them), the founder is not entitled: (1) to receive directly or indirectly any income from the structure; (2) to dispose of income received from the structure in full or in part; (3) to obtain ownership of assets contributed to the structure; and (4) to exercise control over the structure, i.e., he or she does not influence or have the ability to

influence decisions in regard to the distribution of income of the structure made by the person managing the assets of the structure after taxation. Russian CFC rules are very broad and cover not only companies in traditional low-tax jurisdictions (e.g., the British Virgin Islands, Panama), but also companies in tax treaty jurisdictions (Cyprus, Luxembourg, The Netherlands, United States of America) whose effective tax rate is less than three-quarters of the weighted average Russian corporate profit tax rate (composed of 20% standard rate and 13% rate for dividends based on the structure of the CFC's income). The rules could also cover certain types of trusts and other popular wealth management tools.

On 1 September 2017, the Russian Federal Tax Service published a revised list of states and territories that either do not exchange information for tax purposes with Russia or exchange information that does not meet Russian expectations (the blacklist) on the official website for information disclosure. The blacklist is effective as of 1 January 2018. The draft blacklist contains 107 states and 18 territories and is much more extensive than the existing blacklist of offshore states issued by the Russian Ministry of Finance in 2007. Along with traditional low-tax jurisdictions (e.g., Andorra, Belize, the Channel Islands, Gibraltar, the Isle of Man, Liechtenstein, Macao, Monaco, etc.) the blacklist includes a few non-offshore states (e.g., Brazil). The blacklist is subject to annual review by the Russian Federal Tax Service, so states may be regularly added or removed.

The blacklist is used for the application of the Russian CFC rules. Russian tax residents holding shares in companies/structures registered in the states and territories mentioned on the blacklist will not be able to apply certain exemptions from the CFC regime (e.g., the effective tax rate exemption).

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 was for 2016). CFC profits



are subject to ordinary tax rates in Russia: 13% for individuals; 20% for legal entities.

CFC profits are determined according to financial statements in the following cases:

- financial statements (an audit is not required): the CFC is registered in a tax treaty jurisdiction that exchanges information with Russia; and
- financial statements confirmed by an audit: the CFC is not registered in a tax treaty jurisdiction that exchanges information with Russia, but it voluntarily prepares and files audited financial statements (e.g., in accordance with IFRS or any other international standards) that contain no negative comments from the auditor (or refusal to give comment).

CFC profits should be determined in local currency and then transferred into rubles based on the annual average exchange rate (there is no requirement for per-transaction conversions).

The taxpayer, upon its own decision, may determine the CFC's tax base under Russian tax rules i.e., Chapter 25. The CFC's 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. Dividends paid to the CFC by the Russian entity, the beneficial owner of which is a controlling person, are not treated as income in the profit tax base of the CFC.

Importantly, Russian tax residents are not taxed on the CFC profits of active business companies, i.e., companies 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. The profits of foreign active holding and sub-holding companies will not be attributable to its controlling persons. As another exemption, Russian tax residents are also not taxed on the

profits of small CFCs: starting from 1 January 2017, the threshold is RUB 10 million (RUB 30 million for 2016 and RUB 50 million for 2015).

Russian taxpayers are required to file the following individual notifications with the Russian tax authorities on (1) owning more than 10% of the shares in foreign companies (directly or indirectly); and (2) participation in CFCs:

- Notification on owning shares in foreign companies: must be filed within three months of the acquisition date.
- Notification on participation in CFCs: due by 20 March of the year following the year for which the CFC profits were included in the tax base of the controlling person (i.e., the first notification for the CFC's tax year ending 31 December 2015 was due by 20 March 2017).

The CFC Law provides an exemption from tax penalties arising in connection with tax underpayments on CFC 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 RUB 50,000 and RUB 100,000, respectively, for each company.

Finally, the CFC Law allows Russian controlling persons and shareholders (individuals and companies) to receive liquidation proceeds (except for money for individuals) from their CFCs free from taxation in Russia and create a “tax basis” for the future sale of these assets if the liquidation of the CFC takes place by 1 March 2019.



8.19 Are there any specific tax residency rules for foreign companies?

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) management of the day-to-day activities takes place in Russia; or (2) the executive bodies' management decisions are made in Russia.

There are also certain secondary criteria which may impose an even higher compliance burden to avoid Russian tax residency. The secondary criteria for foreign companies to be recognized as Russian tax residents include: (1) the accounting and management accounting is performed in Russia; (2) document (records) management is performed in Russia; and (3) operational HR management is performed from Russia. The secondary criteria, the so-called “tie breaker rules”, apply to the determination of tax residency if a foreign company satisfies either of the primary criteria for both Russia and a secondary jurisdiction.

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.

A foreign company, domiciled in another country, but conducting activity through a branch unit in Russia, may voluntarily claim Russian tax resident status following the procedure and format established by the Federal Tax Service. In this case, the company should provide documents serving as a basis for the calculation and payment of relevant taxes to a branch unit. The self-proclaimed foreign company is not considered to be under the control of the CFC rules until it complies with the provisions of the Russian Tax Code and Russian legislation with regard to tax residents of Russia.

8.20 Does Russia apply beneficial ownership rules?

The Russian Deoffshorization Law introduced the concept of beneficial ownership into domestic tax legislation starting from 1 January 2015. 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 with limited authority to dispose of income and exercising intermediary functions. Starting from 1 January 2017, Russian tax agents are required to obtain additional beneficial owner status confirmations from recipients. The form of such confirmation remains unclear, which 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.

Foreign companies – issuers of publicly traded bonds – are allowed to provide their tax residency certificates to Russian withholding tax agents and benefit from the exemption from the tax withholding obligation (without confirmation of beneficial ownership).

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; and
- 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 companies¹⁹).

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 have their tax residency and other relevant information on applicable tax benefits.

8.21 How many double taxation treaties has Russia signed and ratified as of 1 January 2017?

Russia has signed 89 double taxation treaties (although of these, six 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 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 EUR 100,000 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

¹⁹ The exemption for dividends on Russian shares applies as of 1 January 2015.

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 depositories) 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 entered into force 1 July 2015 for the Russian Federation and has effect for administrative assistance related to taxable periods beginning on or after 1 January 2016.

On 12 May 2016, the Russian Federation became a signatory to the Common Reporting Standard Multilateral Competent Authority Agreement. Russian national legislation regarding the Common Reporting Standard is implemented as of 1 January 2018. For the purposes of information exchange, Russia should still sign bilateral agreements with the competent authorities of countries for which the



agreement is in effect. The list of jurisdictions that Russia expects to exchange information with has been published on the OECD website²⁰.

On 26 January 2017, Russia signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports that allows automatic exchange of country-by-country reports among signatories. Russian national legislation has been implemented as of 1 January 2018.

On 7 June 2017, Russia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the “**MLI**” and the “**BEPS**” respectively). The first double taxation treaty modifications pursuant to the MLI are likely to enter into force and start affecting cross-border structures as of 2018, subject to completion of the ratification procedures in the participating states.

Russia has entered into the following bilateral treaties currently in force to avoid double taxation:

No.	Country ²¹	Dividends		Interest ²²	Royalties
		Individuals Companies	Qualifying Companies		
1.	Albania	10	10	10	10
2.	Algeria	15	5 ²³	15	15

²⁰ URL: <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships/#d.en.345426>

²¹ Unless stated otherwise, the application of a reduced tax rate requires provision of a tax residency certificate and a written confirmation of beneficial owner title to the distributed income.

²² Many treaties provide for exemption for certain types of interest, eg, 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.

No.	Country ²¹	Dividends		Interest ²²	Royalties
		Individuals Companies	Qualifying Companies		
3.	Argentina	15	10 ²⁴	15	15
4.	Armenia	10	5 ²⁵	10	0
5.	Australia	15	5 ²⁶	10	10
6.	Austria	15	5 ²⁷	0	0
7.	Azerbaijan	10	10	10	10
8.	Belarus	15	15	10	10
9.	Belgium	10	10	10	0
10.	Botswana	10	5 ²⁸	10	10
11.	Brazil	15	10 ²⁹	15	15
12.	Bulgaria	15	15	15	15

²³ 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.

²⁴ The rate applies if the recipient company directly owns at least 25% of the capital in the company paying the dividends.

²⁵ The rate applies if the recipient company directly owns at least 25% of the capital in the company paying the dividends.

²⁶ 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 AUD 700,000, and the dividends to be paid by the Russian company are exempted from Australian taxes.

²⁷ 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 USD 100,000.

²⁸ The rate applies if the recipient company owns at least 25% of the capital in the company paying the dividends.

²⁹ The rate applies if the recipient company directly owns at least 20% of the capital in the company paying the dividends.



No.	Country ²¹	Dividends		Interest ²²	Royalties
		Individuals Companies	Qualifying Companies		
13.	Canada	15	10 ³⁰	10	0/10 ³¹
14.	Chile	10	5 ³²	15	5/10 ³³
15.	China ³⁴	10	5 ³⁵	0	6
16.	Croatia	10	5 ³⁶	10	10
17.	Cuba	15	5 ³⁷	10	0/5 ³⁸
18.	Cyprus	10	5 ³⁹	0	0
19.	Czech Republic	10	10	0	10
20.	Denmark	10	10	0	0
21.	Egypt	10	10	15	15

³⁰ 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.

³¹ The lower rate applies to computer software, patents, know-how and copyright royalties.

³² The rate applies if the recipient company owns at least 25% of the capital in the company paying the dividends.

³³ The lower rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.

³⁴ Starting from 1 January 2017.

³⁵ 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 EUR 80,000.

³⁶ 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 USD 100,000.

³⁷ The rate applies if the recipient company (other than a partnership) owns at least 25% of the capital in the company paying the dividends.

³⁸ The lower rate applies to copyright royalties.

³⁹ The rate applies if the value of the holding is at least EUR 100,000.

No.	Country ²¹	Dividends		Interest ²²	Royalties
		Individuals Companies	Qualifying Companies		
22.	Finland	12	5 ⁴⁰	0	0
23.	France	15	5/10 ⁴¹	0	0
24.	Germany	15	5 ⁴²	0	0
25.	Greece	10	5 ⁴³	7	7
26.	Hong Kong	10	5 ⁴⁴	0	3
27.	Hungary	10	10	0	0
28.	Iceland	15	5 ⁴⁵	0	0
29.	India	10	10	10	10
30.	Indonesia	15	15	15	15
31.	Iran	10	5 ⁴⁶	7.5	5

⁴⁰ 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 USD 100,000.

⁴¹ The 5% rate applies if the French company: (1) has directly invested at least EUR 76,225 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.

⁴² 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 EUR 80,000.

⁴³ The rate applies if the Greek company (other than a partnership) owns at least 25% of the capital in the company paying the dividends.

⁴⁴ The rate applies if the recipient company directly owns at least 15% of the capital in the company paying the dividends.

⁴⁵ 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 USD 100,000.

⁴⁶ The rate applies if the recipient company directly owns at least 25% of the capital in the Russian company.



No.	Country ²¹	Dividends		Interest ²²	Royalties
		Individuals Companies	Qualifying Companies		
32.	Ireland	10	10	0	0
33.	Israel	10	10	10	10
34.	Italy	10	5 ⁴⁷	10	0
35.	Japan	15	15	10	0/10 ⁴⁸
36.	Kazakhstan	10	10	10	10
37.	North Korea	10	10	0	0
38.	Korea (Rep.)	10	5 ⁴⁹	0	5
39.	Kuwait	5	5	0	10
40.	Kyrgyzstan	10	10	10	10
41.	Latvia	10	5 ⁵⁰	5/10 ⁵¹	5
42.	Lebanon	10	10	5	5

⁴⁷ 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 USD 100,000.

⁴⁸ The lower rate applies to copyright royalties.

⁴⁹ 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 USD 100,000.

⁵⁰ 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 USD 75,000.

⁵¹ The 5% rate applies to loans between financial institutions.

No.	Country ²¹	Dividends		Interest ²²	Royalties
		Individuals Companies	Qualifying Companies		
43.	Lithuanian Republic	10	5 ⁵²	10	5/10 ⁵³
44.	Luxembourg	15	5 ⁵⁴	0	0
45.	Macedonia	10	10	10	10
46.	Malaysia	-/15 ⁵⁵	-/15 ⁵⁶	15	10/15 ⁵⁷
47.	Mali	15	10 ⁵⁸	15	0
48.	Malta	10 ⁵⁹	5 ⁶⁰	5	5
49.	Mexico	10	10	10	10
50.	Moldova	10	10	0	10

⁵² 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 USD 100,000.

⁵³ The lower rate applies to the royalties for the use of industrial, commercial, and scientific equipment.

⁵⁴ 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 EUR 80,000 or its equivalent in national currency.

⁵⁵ The 15% rate applies to profits of joint ventures. Otherwise, the domestic rate applies; there is no reduction under the treaty.

⁵⁶ The 15% rate applies to profits of joint ventures. Otherwise, the domestic rate applies; there is no reduction under the treaty.

⁵⁷ The lower rate applies to industrial royalties.

⁵⁸ The rate applies if the value of the holding is at least FRF 1 million.

⁵⁹ The rate shall not exceed the rate established for Maltese income tax purposes if the recipient company is a Maltese resident.

⁶⁰ 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 EUR 100,000.



No.	Country ²¹	Dividends		Interest ²²	Royalties
		Individuals Companies	Qualifying Companies		
51.	Mongolia	10	10	10	- ⁶¹
52.	Montenegro ⁶²	15	5 ⁶³	10	10
53.	Morocco	10	5 ⁶⁴	0/10 ⁶⁵	10
54.	Namibia	10	5 ⁶⁶	10	5
55.	Netherlands	15	5 ⁶⁷	0	0
56.	New Zealand	15	15	10	10
57.	Norway	10	10	10	0
58.	Philippines	15	15	15	15
59.	Poland	10	10	10	10
60.	Portugal	15	10 ⁶⁸	10	10
61.	Qatar	5	5	5	0

⁶¹ The domestic rate applies, there is no reduction under the treaty.

⁶² The Yugoslavia-Russia Tax Treaty is applied by both Serbia and Montenegro.

⁶³ 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 USD 100,000.

⁶⁴ The 5% rate applies if the value of the holding exceeds USD 500,000.

⁶⁵ The lower rate applies to interest on foreign currency deposits.

⁶⁶ 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 USD 100,000.

⁶⁷ 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 EUR 75,000 or its equivalent in national currency.

⁶⁸ 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 two years prior to the payment.

No.	Country ²¹	Dividends		Interest ²²	Royalties
		Individuals Companies	Qualifying Companies		
62.	Romania	15	15	15	10
63.	Saudi Arabia	5	5	5	10
64.	Serbia ⁶⁹	15	5 ⁷⁰	10	10
65.	Singapore ⁷¹	10	5 ⁷²	0	5
66.	Slovakia	10	10	0	10
67.	Slovenia	10	10	10	10
68.	South Africa (Rep.)	15	10 ⁷³	10	0
69.	Spain	15	5/10 ⁷⁴	0/5 ⁷⁵	5
70.	Sri Lanka	15	10 ⁷⁶	10	10

⁶⁹ The Yugoslavia-Russia Tax Treaty is applied by both Serbia and Montenegro.

⁷⁰ 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 USD 100,000.

⁷¹ Starting from 1 January 2017.

⁷² Starting from 1 January 2017, the rate applies if the recipient company owns at least 15% of the capital in the company paying the dividends (does not apply to dividends distributed by real estate investment funds).

⁷³ 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 USD 100,000.

⁷⁴ The 5% rate applies if: (1) the Spanish company has invested at least EUR 100,000 in the Russian company; and (2) the dividends are exempt in Spain. The 10% rate applies if only one of the conditions is met.

⁷⁵ The lower rate applies to long term loans (minimum seven years) granted by credit institutions resident in a contracting state.

⁷⁶ The rate applies if the company in Sri Lanka owns at least 25% of the capital in the Russian company.



No.	Country ²¹	Dividends		Interest ²²	Royalties
		Individuals Companies	Qualifying Companies		
71.	Sweden	15	5 ⁷⁷	0	0
72.	Switzerland	15	5 ⁷⁸	0	0
73.	Syria	15	15	10	4.5/13.5/ 18 ⁷⁹
74.	Tajikistan	10	5 ⁸⁰	10	0
75.	Thailand	15	15	10 ⁸¹	15
76.	Turkey	10	10	10	10
77.	Turkmenistan	10	10	5	5
78.	Ukraine	15	5 ⁸²	10	10
79.	United Kingdom of Great Britain and Northern Ireland	10	10	0	0

⁷⁷ 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 USD 100,000.

⁷⁸ 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 CHF 200,000.

⁷⁹ 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.

⁸⁰ The rate applies if the recipient company owns at least 25% of the capital in the company paying the dividends.

⁸¹ The 10% rate applies to loans granted by Russian banks.

⁸² The rate applies if the value of the holding is at least USD 50,000.

No.	Country ²¹	Dividends		Interest ²²	Royalties
		Individuals Companies	Qualifying Companies		
80.	United States of America	10	5 ⁸³	0	0
81.	Uzbekistan	10	10	10	0
82.	Venezuela	15	10 ⁸⁴	5/10 ⁸⁵	10/15 ⁸⁶
83.	Vietnam	15	10 ⁸⁷	10	15

In addition to the above, Russia has entered into the following tax treaties which do not yet apply to avoid double taxation (ie, they have not yet been ratified or the exchange of ratification instruments process is pending):

No.	Country	Dividends		Interest ⁸⁸	Royalties
		Individuals Companies	Qualifying Companies		
1.	Belgium ⁸⁹	15	5 ⁹⁰	10	0

⁸³ 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.

⁸⁴ 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 USD 100,000.

⁸⁵ The 5% rate applies to bank loans.

⁸⁶ The lower rate applies to the fees for technical assistance.

⁸⁷ The rate applies if the Vietnamese company has invested at least USD 10 million directly in the capital of the Russian company.

⁸⁸ Many treaties provide for an exemption for certain types of interest, eg, 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.



No.	Country	Dividends		Interest ⁸⁸	Royalties
		Individuals Companies	Qualifying Companies		
2.	Estonia	10	5 ⁹¹	10	10
3.	Ethiopia	5	5	5	15
4.	Georgia	10	10	10	5
5.	Laos	10	10	10	0
6.	Mauritius	10	5 ⁹²	0	0
7.	Oman	10	5 ⁹³	0	5

8.22 Does Russia apply value added tax (“VAT”)?

Yes. VAT is imposed on all goods imported into Russia and is also applied to the sale of goods, work and services. According to recent 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 eg, artificial islands and drilling platforms on the continental shelf. Under the new rules, (1) 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

⁸⁹ Russia-Belgium Double Taxation Treaty, dated 19 May 2015. Signed, not ratified.

⁹⁰ The beneficial owner is a company that directly owns for at least 12 consecutive months at least 10% of the shares in the paying company and the value of the holding is at least EUR 80,000;

⁹¹ 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 USD 75,000.

⁹² The 5% rate applies if the value of the recipient company’s holding is at least USD 500,000.

⁹³ The rate applies if the value of the recipient company’s holding is at least USD 500,000.

and (or) the Russian sector of the Caspian Sea bed; and (2) electronic services provided by foreign companies to Russian customers are subject to Russian VAT.

The tax period for VAT for all taxpayers and tax withholding agents is the calendar quarter. As a general rule, taxpayers must pay VAT in equal instalments 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 a 0% rate of VAT. In addition, certain types of goods, work and services are exempt from VAT, including 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 the 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 the 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). E-invoicing is possible, but requires a digital signature and data transfer via authorized operators and is subject to agreement of the counterparties.

An enterprise ends up transferring to the state only the difference between input VAT paid and VAT collected. However, as a general rule 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. 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 VAT exemption applies.

For barter transactions, taxpayers are not required to transfer VAT to each other in cash and remit VAT under general rules. 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.

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. The Russian Tax Code provides that the 0% VAT may be confirmed by contract either as one document, signed by the parties or several documents, expressing the consent of the parties with the material terms of the contract. The 0% VAT for certain transactions may be confirmed in electronic form, including custom declarations, shipping documentation and other documents, confirming provision of services. 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 RUB 10 billion; or (ii) the taxpayer provided a bank guarantee from an authorized Russian bank covering the full amount of the reclaimed VAT. The list of 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 with 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.

VAT tax returns may be filed with the tax authorities only in electronic form.

8.23 Are there any specific taxes for licensed subsoil users?

Chapter 26 of the Tax Code provides for mineral extraction tax, which came into effect on 1 January 2002. 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 forth 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 tax rate for natural gas determined as follows:

$$\text{Tax rate} = \text{RUB } 35 \text{ per } 1,000 \text{ cubic meters of gas} \times U_{\text{sf}} \times C_c + T_e,$$

where U_{sf} is the basis value of the unit of standard fuel, which is determined according to the formula prescribed by the Tax Code.

C_c is a multiplier reflecting the complexity of natural gas and gas condensate recovery. 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. C_c varies from 0.1 to 1.

T_e is the relevant gas transportation expenses. Starting from 1 January 2015, T_e is determined according to the formula prescribed by the Tax Code.

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

$$\text{Tax rate} = \text{RUB } 42 \text{ for } 1 \text{ ton of condensate} \times U_{\text{sf}} \times C_c \times F_{\text{ad}},$$

where the adjustment multiplier (F_{ad}) is determined according to the formula prescribed by the Tax Code.

At the same time, taxpayers received a long-awaited tax exemption with respect to natural gas that is injected into a formation 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 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 2017, 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:

$$\text{Tax rate} = \text{RUB } 919 \text{ for } 1 \text{ ton of crude oil} \times C_p - D_m$$

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

$$C_p = (P - 15) \times K / 261$$

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 K is the average RUB/USD exchange rate determined by the Central Bank of Russia over the calendar month.

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

$$D_m = C_{\text{met}} \times C_p \times (1 - C_d \times K_z \times F_c \times F_{\text{cd}} \times F_r) - K_k$$

where the mineral extraction tax multiplier (C_{met}) equals 559 from 2016.

The reserves depletion rate (C_d) multiplier applies if the reserves depletion rate for an oil field equals or exceeds 80%. The reserves depletion rate is calculated under the following formula:

$$C_d = 3.8 - 3.5 \times N/V,$$

where N is the accumulated volume of crude oil produced from the field (including mining losses) based on the information in the state balance of mineral reserves, and

V is the total volume of reserves (sum of reserves in all categories).

The C_d 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 C_d multiplier is 1.

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

$$K_z = 0.125 \times V_z + 0.375,$$

where V_z is the total volume of reserves in million tons.

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 C_d , but with respect to each oil deposit.

The regional and oil quality multiplier (F_r) as a 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.

K_k equals 306 for the period from 1 January 2017 to 31 December 2017, 357 for the period from 1 January 2018 to 31 December 2018, 428 for the period from 1 January 2019 to 31 December 2020, and 0 from 1 January 2021.

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.

8.24 What are the main specifics of the special tax regime used by participants to 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 (the “**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 VAT refund, 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 PSAs

an attractive proposition to Investors, especially since Russia has only three PSAs (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 PSAs since the mid-1990s.

8.25 What are the main specifics of corporate property taxation in Russia?

Corporate 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 centres, 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 2018 calculated under the new rules should not exceed 2% for property located both in the Moscow region and 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 or bodies of water. Starting from 1 January 2015, fixed assets with a useful life of one to two years (first depreciation group) and more than two years but not exceeding three years (second depreciation group) are not taxed. Starting from 1 January 2018, the corporate property tax exemption applicable to movable property booked since 1 January 2013 (unless received from a related party) is cancelled at the federal level. Russian regions may continue to provide this exemption to local taxpayers under the regional laws on corporate property tax.



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.

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.

8.26 Does Russia apply any social security taxes?

Yes. Russia levies social security contributions that include separate contributions to the State Pension Fund, the Social Security Fund and the Federal Mandatory Medical Insurance Fund. These contributions are paid to the Federal Tax Service.

The social security contributions apply at an aggregate rate of 30% of an employee's annual salary of up to the following thresholds (the "social contributions thresholds"):

- for contributions to the State Pension Fund – RUB 1,021,000;
- for contributions to the Social Security Fund – RUB 815,000; and
- for contributions to the Federal Mandatory Medical Insurance Fund – no threshold.

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; and (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 the transitional 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 contribution payers listed in the law will pay social security contributions at various reduced rates from 0% to 30%.⁹⁴

⁹⁴ For example, the following social security contribution rates apply depending on the category of employees: 0% – to the remuneration of employed crew members of



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 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., a foreign citizen or a stateless person with substantial work experience, skills and achievements, whose salary is higher than the threshold set forth in the Law No. 115 dated 25 July 2002.

8.27 What are the main specifics of individual income taxation in Russia?

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 of their income, both earned in Russia and 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. Foreign nationals who have not yet obtained Russian tax resident status but are

vessels registered in the Russian International Register of Ships; 13.8% – 4% to the remuneration of employees of IT companies in 2015, etc.

recognized as highly qualified foreign specialists for the purposes of Russian employment legislation (i.e., a foreign citizen or a stateless person with substantial work experience, skills and achievements, whose salary is higher than the threshold set forth in the Law No. 115 dated 25 July 2002) enjoy a 13% Russian individual income tax on their Russian salary.

The Russian Tax Code applies specific rules to individuals recording financial results on transactions with different categories of securities and derivatives for tax purposes. Individual investors may carry forward losses on tradable securities and tradable derivatives for ten years. Similarly to companies, Russian individuals enjoy full tax exemption on income from the sale or redemption of shares in Russian companies (acquired after 1 January 2011) satisfying the requirements discussed for the companies above. Russian tax resident individuals may benefit from investment tax deductions designed to attract long-term investments in securities (listed on Russian stock exchanges).

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 or 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.

8.28 What are the main terms of the voluntary disclosure mechanism?

On 19 February 2018 the Russian President signed amendments to the law “On Voluntary Declaration by Individuals of Property and Bank Accounts (Deposits).” This law provides for a second phase for



individual taxpayers in Russia (“**Declarants**”) to declare property and foreign bank accounts (deposits), which were not previously disclosed and subject to taxation in Russia, without paying taxes and penalties. Repatriation of assets back to Russia is not required, even if the movable assets (including cash and shares) are located in an offshore jurisdiction. The law guarantees exemption from criminal, administrative and tax liability with regard to the acquisition (accumulation of funds), use and disposal of declared property for Declarants for periods before 1 January 2018 (unless the person is being prosecuted or is under investigation). The Declarant must file a special declaration to the Russian tax authorities between 1 March 2018 and 28 February 2019. The disclosure of the funds must be very carefully planned with a professional legal advisor to qualify for tax amnesty and relevant exemptions and guarantees.

8.29 What other regional and local taxes apply in Russia?

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, federal legislature has enacted limits on their overall rates.

9. Customs, Trade and WTO Aspects

9.1 Introduction

9.1.1 What is Russian customs legislation based on?

Russian customs legislation is based on the unified rules of the Eurasian Economic Union (the “**EAEU**”). The EAEU was launched on 1 January 2015 and includes Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan. All Russian foreign trade regulations, including the customs tariff and non-tariff regulations, are primarily based on rules established at the supranational level of the EAEU (for more details on the EAEU, please refer to section 4 below). The EAEU replaced the Customs Union of Russia, Belarus and Kazakhstan (the “**CU**”). The CU commenced operation on 1 January 2010 and gained its main legislative framework on 1 July 2011.

9.2 Accession to the World Trade Organization (“WTO”)

9.2.1 When did Russia accede to the WTO?

Russia officially became the 156th member of the WTO on 22 August 2012.

9.2.2 What are the main benefits of membership with the WTO?

The WTO is a major international organization that establishes international trade rules between countries. The WTO has issued a set of international agreements that were negotiated and signed by the majority of the world’s countries and ratified in their parliaments. The main aim of the WTO is to ensure equal access of national and foreign manufacturers to local and foreign trade in goods and services and in conducting their business. All member states of the WTO must comply with the WTO rules and generally receive equal access to the markets of other member states.



9.2.3 What are the conditions of Russia's membership in 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 (the “**WTO Working Party Report**”). The WTO Accession Protocol includes Russia's tariff and non-tariff obligations to gradually reduce and maintain rates of import and export customs duties and tariff quotas for specific types of goods, as well as “horizontal commitments” on market access to financial, insurance and other types of services. The WTO Working Party Report includes the overall description of Russia's economic policies, foreign trade regime and conditions for foreign investments in all sectors of the national economy, including certain specific terms and commitments of Russia's membership in the WTO.

The official documents on Russia's accession to the WTO are publicly available on the WTO website at

https://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm.

9.2.4 Does Russia's membership in the EAEU comply with WTO rules?

Since Russia is a member of the EAEU, EAEU regulations are based on the WTO rules.

In July 2015, Kazakhstan signed an Agreement on accession to the WTO that was ratified in October 2015. Starting from 30 November 2015, Kazakhstan became the 162nd member of the WTO. According to Kazakhstan's WTO commitments, the average final legally binding tariff for imported products will be 6.5% (10.2% for agricultural products and 5.6% for manufactured goods). The Unified Customs Tariff of the EAEU established higher average final rates that are based on Russia's commitments within the WTO. In order to reach a balance in trading such products within the EAEU, Kazakhstan took a commitment towards the EAEU, whereby all products imported to Kazakhstan at lower import customs duty rates cannot be freely

moved to other EAEU countries (the difference in tariffs must be compensated first). Relevant regulations, including the full list of all such products, were issued in October 2015 and came into force on 11 January 2016.

Notably, the EAEU has already started expanding its cooperation with other trade blocs. In May 2015, the EAEU signed a free trade agreement with Vietnam. At the end of 2017, the temporary free-trade zone agreement with Iran came into force, prescribing a preferential trade regime for the goods that are the most interesting for the EAEU and Iran from an export perspective. The validity term of the agreement is three years, during which the negotiations on a full-scale free-trade zone agreement will take place. In January 2018, the EAEU and India started official negotiations on the free-trade zone agreement, and negotiations on the same matter with Israel are ongoing.

9.2.5 What are Russia's main tariff commitments before the WTO?

Market access for goods – tariff and quota commitments

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

- the average tariff ceiling for agricultural products was reduced to 10.8%, lower than the average of 13.2% on the date of accession; and
- the ceiling average for manufactured goods was reduced to 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 fully implementing tariff reductions have been reduced to:

- 14.9% for dairy products (tariff on the date of accession 19.8%);



- 10% for cereals (tariff on the date of accession 15.1%);
- 7.1% for oilseed fats and oils (tariff on the date of accession 9%);
- 5.2% for chemicals (tariff on the date of accession 6.5%);
- 12% for automobiles (tariff on the date of accession 15.5%);
- 6.2% for electrical machinery (tariff on the date of accession 8.4%);
- 8% for wood and paper (tariff on the date of accession 13.4%); and
- USD 223 per ton for sugar (tariff on the date of accession USD 243 per ton).

By 2015, import customs tariffs were bound at zero for cotton (by the date of accession) and information technology products.

In September 2015, the EAEU further reduced rates of import customs duties with respect to 4,061 products (mostly for electronic devices, furniture, home appliances and textiles) in accordance with Russia's commitments to the WTO. In September 2016, the EAEU reduced rates of import customs duties for approx. 1,700 tariff lines. The aggregate rate of import customs duties was further reduced to 5.2%–5.3% in 2016–2017 (5.42% in 2015–2016). In September 2017, the EAEU additionally reduced rates of import customs duties for approx. 800 tariff lines with respect to products like commodities, textiles, light motor vehicles and food products.

9.2.6 Does Russia comply with its tariff obligations established in the WTO Protocol of Accession?

Yes. However, 90% of the rates of the import customs duties listed in the Unified Customs Tariff of the EAEU 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. However, this 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 three to seven 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).

9.2.7 What are Russia's main commitments on tariff quotas ("TRQs") and export customs duties?

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



Export customs 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. In September 2016, Russia reduced export customs duties for approx. 200 tariff lines to 0% for certain types of fish products, wood and ore minerals, diamonds, precious stones and metals and products made thereof.

9.2.8 What are Russia's commitments related to 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 is still 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 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 are 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 be privatized). In order to control the foreign quota in the Russian banking sector, prior authorization of the Russian Central Bank is required for the establishment/increase of the

charter capital of credit organizations with foreign participation and the 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 engage in professional and business services, including legal, architecture, accounting, engineering, healthcare, 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.

9.2.9 Did Russia maintain any support to its national industries after accession to the WTO?

Russia made a commitment to gradually decrease domestic support for the agricultural sector from USD 9 billion in 2012 to USD 4.4 billion by 2018. In 2015 and 2016, the domestic support did not exceed USD 3.6 billion and USD 3.9 billion, respectively. In 2017, the domestic support for the agricultural sector was equal to USD 4.4 billion. In 2018, in accordance with Russia's membership commitments to the WTO, Russia plans to spend USD 4.4 billion on domestic support for the agricultural sector.

Currently, Russia applies the regime of industrial assembly for motor vehicles and components thereof, providing manufacturers with preferential rates of import customs duties that are subject to certain localization requirements. Pursuant to the commitments of Russia's membership in the WTO, Russia should eliminate the above mentioned preferences starting from 1 July 2018. Importantly, all agreements on industrial assembly of motor vehicles and components that were concluded between Russia and the car or component manufacturers can be valid until the end of 2020. A similar industrial assembly regime is established at the level of the EAEU. After the elimination of the industrial assembly program, the Russian government could provide the local manufacturers with certain other preferences compensating the eliminated import customs tariff



exemptions (the development of such new preferences is expected in the course of 2019).

The representative of the Russian Federation confirmed that all WTO-inconsistent measures, including preferential tariffs or tariff exemptions, applied pursuant to Auto Investment Program No. 1 and Auto Investment Program No. 2 and agreements concluded under these programs would be eliminated by 1 July 2018. The representative of the Russian Federation also confirmed that the Russian Federation would not conclude any new agreements with investors in any sector that contained provisions contrary to the WTO Agreement, including the WTO Agreement on Trade-Related Investment Measures. The Working Party took note of these commitments.

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, Russia eliminated the foreign equity limitation (49%) 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.

Russia has already issued a number of limitations on access to its public procurement market for the following types of foreign products:

- heavy machinery (dual use and for military purposes);
- machines and motor vehicles;
- light industry products;

- medical devices;
- software programs;
- certain medicinal preparations;
- certain radio-electronic products;
- certain types of food products; and
- certain types of furniture and products of sawmill industry.

In addition, starting from 2017, all products with the status “Made in Russia” or “Made in the EAEU” may enjoy a 15% preference toward similar foreign products in all public tenders.

9.3 Dispute Settlement in the WTO

9.3.1 How do the WTO member states resolve international trade conflicts?

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.

Disputes within the WTO are settled by the Dispute Settlement Body (the “**DSB**”). Between January 1995 and December 2016, WTO members initiated some 520 disputes. The right of WTO members to initiate disputes is based on a presumption that a 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 to resolve 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 consulting interested WTO members under the guidance of the DSB. Only WTO member countries can participate in the disputes; private companies do not have this right.

WTO dispute settlement procedures include four stages: (i) consultations (60 calendar days), (ii) consideration of complaints by the panel (nine months), (iii) appellate procedures (90 days) and (iv) implementation of a 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 given “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) requesting compensation or (ii) suspending 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).

9.3.2 Does Russia have experience in settling disputes within the WTO?

Starting from 22 August 2012, any trade measures applied by Russia with respect to any other WTO member state must comply with Russia's commitments within the WTO and the WTO rules. If 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. Russia can also challenge any inconsistent measures applied by WTO members against Russia. Despite acceding to the WTO, Russia can still impose immediate measures of protection, provided that:

- the measure is aimed against measures of another WTO member state that are inconsistent with the WTO rules; and
- it was impossible to predict adverse consequences for or economic damage to the Russian economy at the moment of Russia's accession to the WTO.

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. The “utilization fee” on motor vehicles and spare parts was also challenged by Japan (case No. DS463).

In the course of 2014 and 2015, Russia was involved in a number of disputes within the DSB initiated by the EU, Japan and Ukraine. 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). In August 2016, the Panel circulated its report and declined to rule on the EU’s claim. In February 2017, the Appellate Body circulated its report confirming that Russia’s import bans on live pigs, pork and other pig products from the EU is illegal under international trade rules.

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). In January 2017, the Panel declared non-compliant the Russian anti-dumping duties that hinder exports of Italian and German light commercial vehicles.

Tariff regulation that Russia applies to certain goods in both the agricultural and manufacturing sectors (case No. DS485). In August 2016, the Panel circulated its report and declared that some Russian tariffs failed to comply with certain provisions of the GATT 1994. The Panel recommended that Russia bring these tariffs into conformity with its obligations under the GATT 1994. This was the first time the WTO issued a negative decision on Russia.

In October 2015, Ukraine filed a claim with the DSB challenging the restrictions imposed by Russia in 2013 on the importation of railway equipment and parts thereof (case No. DS499). The Panel is expected to issue its final report to the parties in April 2018.

In the course of 2016 and 2017, Ukraine initiated two disputes against Russia within the DSB challenging the following measures applied by Russia, which were, in the eyes of Ukraine, inconsistent with the WTO regulations:

- Alleged multiple restrictions on traffic in transit from Ukraine through the Russian Federation to third countries (case No. DS512); and
- Measures affecting trade in certain products such as juice, alcoholic beverages, confectionery and wallpaper from Ukraine (case No. DS532).

9.3.3 Did Russia initiate any disputes within the WTO?

In 2015, Russia initiated four disputes against the EU challenging “cost adjustment” methodologies used by the EU to calculate dumping margins in anti-dumping investigations and reviews in connection with the so-called “Third Energy Package” Directives, Regulations, implementing legislation and decisions (case No. DS476). This case has not been examined yet. Russia also acted as a plaintiff against Ukraine on anti-dumping measures imposed by Ukraine on imports of ammonium nitrate originating from Russia (case No. DS493). The Panel expects to issue its final report to the parties no sooner than the first quarter of 2018.

In January 2017, Russia requested consultations with the EU concerning anti-dumping measures imposed by the EU on imports of certain cold-rolled flat steel products from Russia (case No. DS521). In May 2017, Russia brought a case against Ukraine challenging the restrictions, prohibitions, requirements and procedures adopted and maintained by Ukraine in respect of trade in goods and services as well as transit (case No. DS525). None of these cases has been examined yet.



9.4 CIS Free Trade Agreement

9.4.1 What is the CIS Free Trade Agreement and what are its member states?

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. As of November 2017, the Protocol was ratified by Russia, Kazakhstan, Belarus, Moldova, Ukraine and Armenia.

In 2014 and 2015, the CIS FTA was ratified by Kyrgyzstan and Tajikistan, respectively.

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%, oil, coal, etc.).

- 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 the 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 through mutual consultation. Where such consultations do not lead to a settlement, a dispute may be referred to an expert commission (in accordance with the procedure envisaged by the CIS FTA) or to the Economic Court of the CIS. The Economic Court of the CIS issued a number of consultative conclusions and decisions on interpreting the CIS FTA. 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.).

9.4.2 Does the CIS FTA establish equal terms and conditions for all member states?

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.



In 2014, two members of the CIS FTA, Moldova and Ukraine ratified agreements of association with the EU. The statutory requirements of association with the EU could create certain collisions with implementation by Moldova and Ukraine of the CIS FTA. In this regard, other member states of the CIS FTA could adjust the conditions of membership of Moldova and Ukraine in the CIS FTA.

Starting from 1 January 2016, Russia suspended the application of the CIS FTA with respect to Ukraine based on the fact that Ukraine entered into the Association Agreement with the EU providing Ukraine with access to the European Single Market in certain selected sectors. The agreement between the EU and Ukraine was provisionally in force since 1 January 2016 and entirely entered into force on 1 September 2017. According to the provisions of CIS FTA, Ukraine cannot simultaneously participate in the free-trade zones with the EU and with the CIS countries.

9.5 Eurasian Economic Union (“EAEU”) and Customs Union (“CU”)

9.5.1 What was the main aim of establishing the CU?

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.

9.5.2 What is the main difference between the CU and the CIS?

Once goods have been imported and released in any of the CU member states, such goods may be freely moved within the whole CU territory, except for certain specific types of goods (for example, medicinal preparations, medical devices, dual-use products, etc.). The CU also adopted unified technical regulations, rules for veterinary and phytosanitary control, etc. The CIS does not establish a unified customs territory.

9.5.3 When was the EAEU established and what are its member states?

On 29 May 2014, Russia, Belarus and Kazakhstan signed the Treaty on the Eurasian Economic Union (“EAEU”), according to which, starting from 1 January 2015, the CU was transformed into the EAEU. The CU and CU regulations became an integral part of the EAEU. The EAEU establishes a unified set of rules governing the most important economic sectors that should cover all its member states by 2020. Starting from 1 January 2015, the EAEU was composed of the territories of Russia, Belarus, Kazakhstan and Armenia. Kyrgyzstan joined the EAEU on 12 August 2015.

Armenia does not have a common border with other EAEU members (it is separated from the EAEU by the territories of Azerbaijan and Georgia). Thus, in order to freely trade in goods with Armenia, the other EAEU countries need to apply the customs transit procedure across the territories of Azerbaijan and Georgia.

9.5.4 What was the rationale for transforming the CU into the EAEU?

Creation of the EAEU is the next stage of creation of the unified economic area. In addition to the unified customs territory of the CU, which has already been in place since 2010, the EAEU 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 EAEU is the successor of the CU, the regulations implemented at the CU level are referred to below as the “EAEU” regulations.



9.5.5 What are the governing bodies of the EAEU?

The main regulatory body of the EAEU is the Supreme Eurasian Economic Council. Similar to the CU, the Eurasian Economic Commission retains the status of executive body of the EAEU and is authorized to issue implementing regulations of the EAEU.

9.6 Unified Tariff Regulations of the Customs Union

9.6.1 What is Russia's customs tariff based on and is it consistent with the Harmonized System and the WCO?

The classification of goods for customs purposes in Russia is carried out in accordance with the Unified Customs Tariff of the EAEU, 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 EAEU 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 EAEU 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.

9.7 Preliminary Classification Decisions

9.7.1 Can Russian importers obtain preliminary classification decisions?

Yes. 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 US and the EU.

9.7.2 What is the procedure for issuing preliminary classification decisions, and what are the timelines?

In order to obtain a preliminary classification decision, a Russian importer of record should prepare a standard set of documents that normally includes an application form, purchase and sale contract for the products, documents outlining the goods' characteristics and features, certain set of constituent documents and documents confirming the payment of state duty. 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 an 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.

9.8 Sanitary-Epidemiologic Measures

Unified sanitary measures of the EAEU are applied in order to confirm that goods imported and distributed in the EAEU territory comply with all safety requirements and do not pose any threat to life and health.

9.8.1 Which types of goods are subject to sanitary control in Russia?

The unified sanitary rules include the following three lists of controlled 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 for children, household chemical products, alcoholic beverages, etc. The state registration must be carried out prior to the goods' importation into the EAEU.
- The list of exemptions from state registration (for example, when goods subject to state registration are imported for exhibition purposes).

9.8.2 Where is sanitary control applied and what are the supervising authorities?

Sanitary-epidemiologic control is performed at EAEU customs entry points when goods cross the EAEU customs border, as well as within the EAEU territory. State registration certificates for the controlled goods, if any, must be issued prior to the goods' importation into the EAEU territory. Sanitary-epidemiologic control is performed in Russia by regional subdivisions of the Federal Agency for Surveillance over Consumers Rights Protection and Human Wellbeing ("Rosпотребнадзор").

9.9 Technical Regulations (Confirmation of Compliance)

9.9.1 What are Russian product safety requirements based on?

Confirmation of compliance is designed to verify 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 EAEU.

9.9.2 How are controlled goods identified?

The technical rules of the EAEU 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 certificate and declaration of compliance that are issued by the accredited certification agencies of the EAEU member states and are valid throughout the EAEU.

In addition to the EAEU unified list of goods, the technical rules of the EAEU include a number of technical regulations with requirements for goods on the unified list, including 47 priority CU/EAEU technical regulations. As of November 2017, 44 technical regulations of the EAEU have already been issued and 36 of them entered into force, including regulations on the safety of machinery and equipment, elevators, low-voltage equipment, clothes, grain, food products, juices, perfume and cosmetics, toys, tobacco products, pyrotechnics, packaging, electromagnetic compatibility, etc. In 2017, the following developments in the technical regulations of the EAEU took place:

- the technical regulations on fish products came into force; and
- four technical regulations of the EAEU were approved but will come into force in the period between 2018 and 2021 (namely, technical regulations on chemical products, equipment for children's playgrounds, fire security products and packed water, including natural mineral water).

In 2018, the following technical regulations of the EAEU will enter into force: technical regulations on liquefied petroleum gas, amusement attractions, equipment for children's playgrounds, and technical regulations on hazardous substances used in electrotechnics and radiotronics.



According to the EAEU Board, Decision No. 66 dated 15 September 2017, technical regulations on the safety of equipment designed for work in explosive environment are scheduled to be prepared before the end of 2018.

9.9.3 Are there any contradictions between the Russian national and the EAEU technical requirements on goods' safety?

Once the EAEU technical regulations come into force, the relevant Russian national requirements (standards) for the same products should be repealed. Starting from 1 January 2015, EAEU member states cannot issue any additional technical requirements at the national level for any products that are not included in the unified list of goods of the EAEU subject to mandatory confirmation of conformity.

Currently, the technical rules of the EAEU and national (i.e., local) standards and national lists of products that are subject to mandatory confirmation of compliance may still exist separately in EAEU countries. Therefore, two different systems of compliance confirmation currently co-exist in the EAEU, i.e., the unified system of the EAEU and separately applied national (local) technical rules of Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan. Prior to importing goods into any of the EAEU member states, it is important to ensure that the goods comply with both systems.

9.9.4 What are the main regulatory and supervising bodies in Russia in the sphere of technical regulations?

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

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

- minimum technical safety requirements;
- mandatory certification/declaration of compliance;
- mandatory marking and labeling requirements; and
- use of specific signs, including the use of a market circulation mark (i.e., “**EAC**”).

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 protecting 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 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 this, in practice, the importers of record are sometimes required to provide certificates or declarations of compliance in hard copies (for example, in case of additional customs control for certain shipments).

The main Russian supervising authorities in the sphere of technical regulations are Rospotrebnadzor and the Russian Agency for Technical Regulation and Metrology. The Russian customs authorities control the validity of certificates and declarations of compliance during customs clearance of controlled products.



9.10 Phytosanitary and Veterinary Control

9.10.1 What are the Russian veterinary and phytosanitary rules based on and what are the main regulatory bodies?

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 EAEU. Thus, a consignment with controllable goods can be imported into Russia in accordance with the unified veterinary requirements of the EAEU and with special permission (a veterinary or phytosanitary certificate) issued in the established procedure by the Russian Federal Service on Veterinary and Phytosanitary Supervision (Rosselkhozadzor), 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 EAEU (for example, such requirements are applied to the importation of seeds).

In 2015, the Federal Law “On Quarantine of Plants” came into force which established general requirements over importation and exportation of quarantined plants to/from Russia including special requirements applied to importation of plants subject to low and high quarantined risk, special procedures of customs border control over imported and exported plants, etc., that replaced relevant provisions of the Federal Law “On Quarantine of Plants” dated 15 July 2000.

9.11 Import and Export Licensing

9.11.1 Does Russia control importation/exportation of potentially hazardous or economically sensitive goods?

The legal basis for the import licensing system is the EAEU legislation on non-tariff measures. The purpose of the licensing measures is to monitor and control imports and exports of goods

classified as sensitive by the EAEU 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 at the EAEU level, 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 EAEU border. In Russia, licenses are issued by the Ministry of Industry and Trade in accordance with the unified licensing rules of the EAEU. 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 EAEU member states. In 2013, the Eurasian Economic Commission issued regulations on the procedure for providing licenses and notifications.

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 the moment Russia became a member of the WTO.



9.12 The new Customs Code of the EAEU

9.12.1 What is the main reason for the new Customs Code of the EAEU?

In 2015, members of the EAEU decided to adopt the new Customs Code of the EAEU, which should replace the existing Customs Code of the CU (effective from 2010). The draft of the new Customs Code has resulted in codification of some 17 supranational regulations of the EAEU, including the customs valuation rules, importation and exportation of cash by individuals, international mail, etc.

9.12.2 When is the new Customs Code of the EAEU expected to come into force?

Initially, the EAEU had planned to adopt the new Customs Code at the beginning of 2016, but this term was subsequently extended to 2017. As of November 2017, the Customs Code of the EAEU has been ratified by Belarus and Russia. In November 2017, the leaders of all EAEU member states officially declared that the ratification process will be finished by the end of 2017 and the Customs Code of the EAEU is expected to come into force on 1 January 2018.

9.12.3 What is the structure of the new Customs Code of the EAEU?

The Customs Code of the EAEU is structured to contain nine sections:

- general provisions;
- customs payments, special safeguard, anti-dumping and countervailing measures;
- customs formalities and parties engaged in activities in the customs sphere;
- customs procedures;
- peculiarities of movement of certain types of goods across the Customs Border of the Union;

- conducting customs control;
- customs authorities;
- activity in the customs sphere and status of an authorized economic operator; and
- transition provisions.

The Customs Code also includes two annexes on: (i) interaction between the customs authorities of the EAEU member states regarding collection of customs payments when the customs transit procedure is applied; and (ii) the list of data for exchange between the customs authorities of the EAEU member states on a regular basis.

9.12.4 What are the main new regulations provided in the new Customs Code of the EAEU?

The new Customs Code should include the following main innovations:

- All customs clearance procedures should be performed electronically (documents in hard copies will be allowed only in certain exceptional cases).
- Goods may be released automatically without the involvement of customs inspectors by the use of information systems of customs authorities;
- Goods must be released by the customs authorities within four hours after registration of a customs declaration (currently, this process takes one day).
- No supporting documents are required in order to file import/export customs declarations unless the customs authorities specifically request any.
- Rights and simplifications for the status of authorized economic operators should be extended, in particular,



authorized economic operators will (i) be given priority to perform customs operations, (ii) not be obligated to provide security for paying customs duties and taxes in certain cases, (iii) have priority in developing pilot projects and experiments performed by customs, etc.

- Customs regulations would be established primarily on the supranational level of the EAEU. The new Customs Code of the EAEU should include far fewer references to national legislation of the EAEU member states than the Customs Code of the CU.
- The importers of record should apply a special procedure to preliminarily inform the customs authorities of the importation of goods.
- A single point of contact between importers and customs authorities should be established, through which all procedures and formalities should be completed.

9.13 The Russian Customs Authorities

9.13.1 What is the structure of the Russian customs authorities?

The introduction of the CU/EAEU 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
- clearing customs posts.

9.13.2 Can imported and exported goods be cleared at the customs border?

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 will entail a significant reorganization of the Federal Customs Service and the entire local customs clearance infrastructure. Under this concept, it was expected that the customs clearance of goods transported by road would be performed at Russia's external border starting from 1 January 2012. However, this term was re-scheduled due to the considerable infrastructural changes needed and the concept was implemented in 2013. The customs clearance of goods transported by rail is due to be performed at the external border of Russia starting from 1 January 2020. When this reorganization is completed, the physical shipment of goods into Russia is expected to often coincide with their release for free circulation.

As a result of implementing this 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 will 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 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.

9.13.3 Do Russian authorities implement any incentives and arrangements in order to enhance the performance of their bodies?

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 EAEU.

According to the Strategy, before 2020, the Russian customs authorities should significantly simplify and speed up customs clearance procedures. Thus, all services rendered by customs were transferred into electronic form by 2014. In 2012, only 1% of these services were rendered electronically. It was planned to increase the total number of customs declarations filed electronically without providing documents in hard copy from 40% in 2012 to 100% by 2014 (except for potentially risky supplies/hazardous goods). This was achieved by the customs authorities by 2014.

At the same time, the Russian customs authorities should increase their performance indicators for collecting customs payments, performing 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 will 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 imported goods and importers' foreign trade activities.

In 2015, the Russian Government announced an initiative to divide the Russian Federal Customs Service into two parts – fiscal and law enforcement. If the initiative is adopted, fiscal functions related to the collection of import customs duties and taxes could be delegated to the Russian Federal Tax Service, while law enforcement functions

could be delegated to the Federal Security Service. It is also planned that the Russian Federal Tax Service and the Federal Customs Service will establish an integrated information system by 2018 that will ease the procedure of confirmation of the 0% export VAT (certain types of goods (including oil products) placed under the export customs procedure may be subject to the 0% VAT rate).

9.14 Declarant (Importer of Record)

9.14.1 Who can be the importer of record in Russia?

The resident principle applies in the EAEU, i.e., only companies that are local residents of an EAEU 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).

9.14.2 Can foreign entities act as importers of record?

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.

9.14.3 Will the new Customs Code change the legal status of the importer of record for foreign companies?

The term “importer of record”, or “declarant” has been substantially revised and will apply with certain changes under the new Customs Code of the EAEU.

The new Customs Code provides more detailed criteria for qualifying a foreign person as an importer of record, including:

- a branch or a representative office established and/or registered by a foreign company in the territory of a EAEU member state that transfers goods through the customs border



under any customs procedure for the needs of such a branch or a representative office (i.e., not only under the procedure of temporary import or re-export, as opposed to the “old” Customs Code’s provisions);

- the right of a foreign company to possess and use goods transferred through the customs border not only where such goods are placed under the customs procedure of temporary import or re-export, but also where the customs procedure of customs warehouse or special customs procedure to such goods is applied; and
- possession of a document by a foreign person envisaged by an international treaty entered into between an EAEU member state and a third party that authorizes the foreign person to export goods from the territory of the EAEU under the customs procedure of customs warehouse, re-export or export.

Furthermore, the new Customs Code prescribes additional conditions that must be observed in order to act as a declarant of goods placed under a customs procedure. The legislation of EAEU member states may set additional conditions for determining a declarant status but only in a limited number of cases set out in the new Customs Code.

9.15 Registration of Importer of Record with Local Customs Authorities

9.15.1 Is there any special procedure an importer of record has to pass in order to start performing customs clearance formalities in Russia?

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.

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.

According to the new Customs Code of the EAEU, an importer of record is no longer required to provide customs authorities with documents and/or information for the purposes of customs clearance where such documents or information may be obtained by customs authorities from a unified electronic database of customs authorities or from a unified electronic database of state authorities of EAEU member states that cooperate in information exchange with the customs authorities. However, the current practice of “registration” of an importer could remain for some period of time until this regulation under the new Customs Code has been implemented.



9.16 Customs Brokers (Representatives/Agents)

9.16.1 Are Russian customs brokers required to be officially registered?

A declarant may clear goods through a customs broker (in accordance with the Customs Codes of the CU and the EAEU, the term “customs representative” 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 representative may pay customs duties and taxes on declared goods. Every customs representative should be included by the customs authorities in the official list of customs representatives (in Russia, the responsible body is the Federal Customs Service). A customs representative is jointly and severally liable together with the declarant for the observance of the customs legislation. According to the official list, in 2017 there were more than 400 registered customs representatives in Russia.

9.16.2 Can Russian importers perform customs clearance formalities without licensed customs brokers?

At the same time, a customs declarant can choose whether to engage a customs representative or to perform customs clearance on his/her own behalf.

9.16.3 Will the new Customs Code of the EAEU change the status of licensed customs brokers?

The legal status of customs representatives will not be changed significantly under the new Customs Code of the EAEU.

9.17 Authorized Economic Operator (“AEO”)

9.17.1 What statutory simplifications can be granted to AEOs?

An 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; and
- other customs benefits that could be provided to the AEO by the CU/EAEU customs regulations.

As of July 2017, AEO status had been granted to some 158 Russian legal entities.

9.17.2 Will the new Customs Code of the EAEU change the legal status of AEOs?

According to the new Customs Code of the EAEU, AEOs will be subject to new qualification, registration and other requirements and will become entitled to more customs simplifications and privileges, which will include, among others: (i) priority when performing certain customs operations; (ii) not being obligated to provide security for paying customs duties and taxes under certain conditions; (iii) priority in developing pilot projects and experiments performed by customs; (iv) a lower risk score in the customs risk management system; (v) the right to apply to a customs post other than the post in the region where goods are located for customs clearance purposes (provided that both customs posts are located on the territory of the same EAEU member state); and (vi) the use of means of identification recognized by customs authorities (subject to certain conditions).

The types of available simplifications and privileges depend on the type of certificate obtained by an AEO when registering with the customs authorities. The new Customs Code of the EAEU provides for three types of certificates. Each type requires an AEO to comply



with certain strict criteria, including: (i) compliance with customs and tax requirements; (ii) absence of criminal offenses related to the economic activity committed by the AEO's shareholders, top managers or chief accountants; (iii) demonstration and evidence of practical competence in the field of customs; (iv) financial solvency; and (v) a satisfactory system for managing commercial records.

9.18 Customs Clearance

9.18.1 How is the customs clearance of imported goods performed after they cross the customs border of the EAEU?

Goods that are moved into Russia through the territory of EAEU member states are placed under the transit customs regime at the external border of the EAEU 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 representative 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). Notably, the new Customs Code of the EAEU stipulates a general rule according to which importers/exporters are not required to enclose supportive documents with the customs declaration. Any documents supporting declared information may be separately requested by the customs authorities. This move is aimed at simplifying customs declarations for the business community and eliminates burdensome responsibilities and formalities.

9.18.2 What are the statutory timelines for customs clearance operations and release of the goods by the Russian customs authorities?

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. Under the new Customs Code of the EAEU, the standard term of release of goods by the customs authorities will be reduced to four hours (subject to certain conditions).

The legislation gives a customs inspector the right to extend that term by up to 10 business days at the discretion of the chief of a customs terminal. Under the new Customs Code of the EAEU, the term can only be extended if a customs inspector requires additional supporting documentation for the imported goods, or if a declarant decides to amend information provided in the customs declaration during customs clearance. Furthermore, the new customs legislation also envisages the right of customs authorities to further extend the 10-business-day term for customs clearance in exceptional cases (e.g., for the period of a customs expertise if such period exceeds the 10-day limitation).

9.19 Electronic Declaration

9.19.1 Do the Russian customs authorities apply electronic customs 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, such as 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.

9.19.2 Will the new Customs Code of the EAEU introduce any new rules to the electronic customs clearance procedures?

According to the new Customs Code of the EAEU, almost all customs clearance formalities should be performed electronically. Hard copies will likely be allowed only in the following exceptional cases:

(i) customs transit of goods; (ii) importing/exporting goods designated for personal use by individuals; (iii) goods sent by international mail; (iv) declaration of vehicles of international transportation; (v) the use of transport (carriage), commercial and/or other documents (including those envisaged under international treaties entered into between the EAEU members and third parties) as a customs declaration; and (vi) other cases determined by the Eurasian Economic Commission.

In addition, pursuant to the new Customs Code of the EAEU, the release of goods by the customs authorities should be performed automatically (currently, customs release is executed by customs officers). Relevant reports issued by customs should be sent by electronic mail.

9.20 Customs Regimes

9.20.1 Please provide a description of customs regimes applicable in Russia

Introduction

As in most countries, Russia/EAEU customs regulations established standard customs regimes of import and export, re-import and re-export as well as economic customs regimes designated for special/irregular situations (e.g., customs warehouse, temporary import, free customs zone, etc.). Goods may be placed under any of the applicable customs regimes (i.e., “customs procedures”) established by the Customs Code of the CU/EAEU 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.

Internal (Home) Consumption

9.20.2 What is the main scope of this customs regime?

Importation of goods for internal (home) consumption (usually, the synonymous term “release for free circulation” is used in practice) on the 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.

9.20.3 Can foreign companies clear products under this customs regime in Russia?

Local branches and representative offices of foreign companies can release goods for internal consumption in Russia, subject to certain conditions.



Temporary Import

9.20.4 What is temporary import used for?

Temporary import is considered 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).

9.20.5 Are there any special conditions or limitations set forth for temporarily imported goods?

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 products’ consumer features, and keeping the products in the condition they were in before they were cleared at customs for temporary importation into Russia.

9.20.6 Are there any customs payables due with respect to temporarily imported goods?

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.

9.20.7 What is the term of temporary import?

The generally permitted term for temporary import is two years. Some statutory requirements 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.

Bonded Warehouse

9.20.8 What is the main scope of this customs regime?

Under the bonded warehouse customs regime, goods imported into the EAEU are stored at special places (bonded warehouses) under customs control without an obligation to pay import customs duties and taxes. 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.

9.20.9 How long can goods be stored at a customs warehouse?

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 authorities. 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 the 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).

9.20.10 Can the importers of record sell or transfer goods being placed at a customs warehouse?

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 and with the prior consent of the customs authorities, followed by a legal substitution of the importer of record by the third party that acquired these goods. Please note, however, 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 subject to payment of the relevant import customs duties and taxes.

Transit

9.20.11 What is the main scope of this customs regime?

Under the customs transit regime, goods cross the customs border of the EAEU and are under customs control during their movement across Russian customs territory without an obligation to pay import customs duties and taxes. 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 EAEU. 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.

9.20.12 Can the transit customs regime be applied with the use of Carnet TIR?

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. Notably, the

use of TIR carnets was allowed until 28 February 2015 and then renewed on 22 January 2016.

9.20.13 When can goods be destroyed or abandoned to the state?

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 the 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, import customs duties and taxes under general rules. Customs clearance requirements do not apply to waste that cannot be further used for commercial purposes or is subject to burial, neutralization, utilization or removal in another way. Such waste has the status of goods of the EAEU and is not subject to customs control.

Abandonment to the State

Foreign goods imported into Russia may be abandoned to the Russian state, which is a special customs regime that the importer of record can select. Under this regime, the title to the imported goods is gratuitously transferred to the state without an obligation on 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 customs request a permit/license that the importer does not possess, and it is too costly/burdensome to ship the goods back from Russia).



Export

9.20.14 What is the main scope of the export customs regime?

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).

Re-export

9.20.15 What is the main scope of the re-export customs regime?

Re-export is the customs regime when goods initially delivered into the Russian territory may be taken out with the right to exemption from customs duties, fees and taxes or refund of customs duties, fees and taxes (if any paid). Generally, the re-export regime applies only to “foreign goods,” i.e., goods that were delivered into the Russian territory but have not undergone the entire customs clearance procedure and have not been released under a particular customs regime.

9.20.16 Are there any statutory limitations for re-export?

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) have not been used or modified, except if such use or modification was required for detection of defects; (ii) may be identified by the Russian customs authorities; (iii) have been re-exported within one year from the date of release into Russia; (iv) have been supported with the required documents that confirm the

existence of lawful grounds for such re-export and observance of restrictions and prohibitions for import of goods as established by the legislation of Russia/the EAEU.

Re-import

9.20.17 What is the main scope of the re-import customs regime?

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 the laws of the EAEU.

Customs regimes introduced by the new Customs Code of the EAEU

9.20.18 What customs regimes were established by the new Customs Code of the EAEU?

The new Customs Code of the EAEU formalized three customs regimes that were previously established and regulated by the legislation of the EAEU member states, namely special customs regime, free customs zone and free bonded warehouse regimes.

9.20.19 What are the main scopes of these customs regimes?

Special customs regime applies to certain types of foreign goods, i.e., goods that were imported into the EAEU territory, located and/or used within/or outside the EAEU territory. Free bonded warehouse is a customs regime, under which foreign goods and the goods originating from the EAEU are located and used in a free bonded warehouse without paying customs payments and observance of anti-dumping, countervailing and special safeguard measures. Under the customs free customs zone regime, foreign goods and the goods originating from the EAEU are located and used within a free economic zone. This customs regime allows such operations as local processing,



manufacturing and repairing with respect to such goods to be performed within a certain period of time.

Under all the above customs regimes, the importers of record are exempt from paying customs payments and observance of anti-dumping, countervailing and special safeguard measures (provided that all requirements of this regime are fulfilled and goods are used in accordance with the regime).

9.21 Customs Valuation Rules

9.21.1 Why is the customs valuation important for the Russian customs authorities?

The customs value of goods imported into the EAEU, which is used as a basis for calculating import customs duties and taxes, includes the cost of goods, insurance costs and costs of transporting the goods to the EAEU customs border. Depending on the actual circumstances, including contractual arrangements, an importer of record may also 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 directly or indirectly (e.g., via third parties) pays those royalties, other license fees and/or other income as a direct consequence of importing the goods being valued at the customs.

9.21.2 Can the Russian customs authorities unilaterally change the declared customs value?

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

9.21.3 What are the main Russian customs valuation rules?

Currently, the customs value of goods should be determined in accordance with six methods provided by the Agreement “On

Determining the Customs Cost of Commodities, Moved Across the Customs Border of the Customs Union” (the “Agreement”). The new Customs Code of the EAEU, once in force, will establish relevant customs valuation rules and will replace the Agreement. However, the main principles of the customs valuation Rules of the EAEU are unlikely to be changed since they should be based on the WTO regulations.

9.21.4 Can an importer of record obtain a preliminary ruling on the customs valuation?

The Customs Code of the EAEU established a new type of preliminary ruling on the methods for customs valuation. The procedure on the application for this ruling has yet to be developed by the Ministry of Finance.

Customs Payments

9.21.5 What types of customs payments can be applied in Russia?

Customs payments applied in Russia include the following types:

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

Importers may be required to pay other payments at the customs terminal when transferring record through the border of EAEU (e.g., utilization fees).

Import Customs Duties

9.21.6 How are Russian import customs duties calculated and how are they rated?

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 are normally established as an *ad*



valorem (interest) rate ranging from 0% to 80% or a specific rate (in euros depending on the physical features of imported goods) based on the Unified Customs Tariff of the CU/EAEU. The unified rates of import customs duties apply to goods originating from all countries outside the CU/EAEU, except when tariff preferences or the free trade regime are applied (e.g., the CIS FTA).

As of 1 July 2010, import customs duties are paid to the unified budget of the CU/EAEU and are subsequently distributed among the members of the CU/EAEU. As mentioned above, the rates of import customs duties are based on Russia's commitments to the WTO.

Export Customs Duties

9.21.7 Which types of goods are subject to export customs duties?

Even after the formation of the CU/the EAEU, setting of 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 export customs duties for particular types of products. The Russian government establishes export customs duties rates for oil and petrochemicals at one-month intervals. Export customs duties may be deducted for corporate profit 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.

Import VAT

9.21.8 How is Russian import VAT calculated and what are the applicable rates?

Starting from 1 July 2010, payments of import VAT and the distribution of VAT between member states are performed based on a special agreement signed by the member states. Customs VAT applies to the sum total of the customs value and 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 applies to the sale of goods, works and services in Russia. The general VAT rate is 18% and applies to most types of goods, works and services. The 10% VAT rate applies to limited categories of goods, e.g., pharmaceuticals, children's products, and some food products, while some 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, products that do not have analogs manufactured in Russia and which are on the list approved by the Russian Government are VAT exempt. This exemption came into effect from 1 July 2009.

Export 0% VAT

9.21.9 Are Russian exporters of record subject to export VAT?

Exportation of goods from Russian customs territory is subject to 0% VAT. Russian exporters of record must comply with a special statutory procedure in order to apply the 0% VAT rate to exports.

9.21.10 Which documents are required to confirm the 0% rate of export VAT and what is the statutory procedure?

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 established for exporting goods that were previously imported into the territory of CU member states.

The taxpayer must submit these documents within 180 days after exporting the goods. If the taxpayer fails to meet the requirements outlined above, the taxpayer loses the right to apply the 0% VAT rate on export and the standard VAT rates (10% or 18%) apply, depending on the type of goods.

9.21.11 How is export VAT administered in the internal trade between EAEU countries?

Exporting goods from Russia to the other EAEU 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/EAEU 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.

Import Excise Taxes

9.21.12 Which products are subject to excise tax in Russia?

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.

Utilization Fee

9.21.13 When did the Russian authorities start applying the utilization fee?

Russia introduced a utilization fee on wheeled vehicles starting from 1 September 2012.

9.21.14 What is the utilization fee?

A utilization fee must be paid for all imported or locally manufactured vehicles, which aims to protect the environment and contribute to the

state budget. 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 by multiplying the base rate (RUB 20,000 for cars and RUB 150,000 for commercial vehicles) by increasing coefficients, depending on certain technical characteristics of the vehicle (e.g., engine capacity and age).

9.21.15 Are any other types of products, except vehicles, subject to a utilization fee?

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 use waste from such goods in accordance with utilization limits. If such manufacturers and importers fail to use 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 ecological fees and utilization limits are currently established by the Russian government in April 2016 and then revised in 2016. Utilization limits apply starting from 2016 and depend on the particular type of used goods. In this regard, according to a Resolution of the Russian government, the ecological fee is payable: (i) before 15 October 2015 for the first nine months of 2015; (ii) before 1 February 2016 for October, November and December 2015; and (iii) starting from 2017, before 15 April of each following year. The government also issued the relevant implementing regulations on the procedure to pay the ecological fee.



9.22 In-Kind Contribution

9.22.1 Is the in-kind contribution of imported goods into charter capital duty free?

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

9.22.2 Are there any statutory limitations imposed on goods imported as an in-kind contribution?

Goods imported with no import duty as in-kind contributions into charter capital are treated as conditionally released. If the goods are alienated by the importer in any manner, the importer will be required to pay the import customs duties (and, in some cases, import VAT) together with applicable fines and late payment 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 by the Resolution of the Council of the Customs Union issued in 2011 and in Russia at the local level by government decree).

9.23 Customs Inspection and Liability

9.23.1 How long should imported goods be under customs control?

As a general rule, customs authorities are allowed to carry out customs inspections within three years after clearance of the respective goods.

Under the new Customs Code of the EAEU, customs authorities are allowed to conduct customs control within the same period of three years after one of the events specified by the new Customs Code occurs, including: (i) change of the foreign goods’ status to the status of “goods of the EAEU”; (ii) actual export of goods out of the

territory of the EAEU; (iii) actual destruction of goods declared for destruction; and (iv) discharge of the transit of foreign goods through the territory of the EAEU. The legislation of member states of the EAEU may extend the term of customs control to five years.

9.23.2 What can customs do during customs control?

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, and 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).

9.23.3 What types of customs inspections are there?

A customs inspection may either be 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 may be extended by one month in certain cases. 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.

Arrest of Goods during Customs Inspection

9.23.4 When can the Russian customs authorities arrest imported goods?

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; and
- conditionally released goods were used 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.

Seizure of Goods during Customs Inspection

9.23.5 Can customs seize and/or confiscate imported goods?

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.

Administrative Penalties

9.23.6 Who is authorized to enforce administrative penalties for violations in the sphere of customs regulations in Russia and what are the maximum administrative penalties?

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 record) 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 300% of the goods' value or up to 200% of the amount of customs duties and import VAT that were not paid with respect to the cleared goods in question and may include confiscation of those goods.

9.23.7 Can self-disclosure exempt the importers of record from administrative penalties?

In February 2015, the Russian Parliament adopted a law that provides Russian importers of record a possibility to avoid administrative sanctions in cases of self-disclosure of violations related to 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 2016, certain articles of Chapter 16 of the Russian Administrative Code were amended with the aim to liberalize administrative liability in the sphere of customs regulation. Starting from July 2016, the following amendments apply:

- reduced administrative fines for a number of offenses, including:
 - statement of inaccurate information in a customs declaration or provision of invalid documents that affect compliance with restrictions and prohibitions – the minimum amount of fine that may be charged from a legal entity is RUB 50,000 (instead of RUB 100,000);



- submission of inaccurate information to a customs representative which resulted or could have resulted in obtaining customs incentives and/or could affect compliance with restrictions and prohibitions – the minimum amount of fine that may be charged from a legal entity is RUB 50,000 (instead of RUB 100,000); and
- failure to provide an accounting statement in due time in cases required by law or provision of an accounting statement containing inaccurate information – a fine may be charged from a legal entity of between RUB 5,000 and RUB 30,000 (instead of between RUB 20,000 and RUB 50,000); and
- introduction of an administrative penalty in the form of a “warning” that may be applied for a number of offenses, such as: (i) failure to provide customs authorities with documents in due time determined by the customs authorities for the purposes of customs control; or (ii) destruction, removal, change or replacement of the means of identification without the customs authorities’ permission.

Furthermore, on 29 January 2017, new amendments liberalizing administrative liability for violations in the customs sphere entered into force. Under these new provisions, an importer of record may face administrative charges where the importer fails to provide customs authorities with statistics for movement of goods (including where a statistics form is not provided in due time or contains inaccurate information). The administrative charges include fines for legal entities (up to RUB 100,000) and their corporate officials (up to RUB 30,000). The newly established fines are lower than those established by the Russian Administrative Code (up to RUB 150,000 and RUB 50,000 for legal entities and corporate officials, respectively).

9.23.8 What is the statute of limitations period for administrative violations of customs regulations, and when does it commence?

There is a general two-year statute of limitations period established for customs violations (subject to certain exceptions, e.g., a one-year statute of limitations has been established for failure to provide statistics for movement of goods as of 29 January 2017).

Normally, the limitation period commences from the moment of committing the violation. However, in the case of lasting/repeated violations, this period commences from the date of discovering the violation by the Russian customs authorities. Importantly, customs payments cannot be enforced after expiration of the statute of limitations term established for customs audits (which is generally three years).

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

In a six-month period in 2017, the Russian Customs authorities initiated 53,716 administrative cases, which is 33% more than during the same period in 2016.

Criminal Penalties

9.23.9 Can Russian criminal penalties be applied to corporations, or only to private individuals?

Russian law does not have the concept of corporate criminal liability. Only private individuals (i.e., 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 offense. Relevant crimes could constitute evasion of customs payments, tax evasion and bribery.



9.23.10 What are the maximum penalties and the statute of limitations period for customs payments evasion?

The maximum liability for evasion of customs payments is 12 years of imprisonment or a fine of up to RUB 1 million or the amount of the salary or other income of the convicted person for a period of up to five years. The maximum period of statute of limitations for this crime is 15 years.

9.23.11 What is the general enforcement statistics on crimes related to customs payments evasion?

In a six-month period in 2017, the Russian Customs authorities launched 1,327 criminal cases, which is 24% more than during the same period in 2016.

9.23.12 Can self-disclosure exempt importers of record from criminal penalties?

In 2016, the criminal legislation was significantly liberalized in the sphere of economic-related crimes. Currently, importers of record can be exempt from criminal liability for certain categories of crimes related to customs payment evasion, subject to certain specific conditions.

Additionally, the Criminal Code establishes the possibility of being released from criminal liability for active repentance. Decisions to release responsible persons from criminal penalties should be taken by the courts at their discretion.

9.24 Safeguard Measures

9.24.1 What are safeguard measures required for and what types of safeguard measures are there in Russia?

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.

9.24.2 Are safeguard measures limited to being imposed in Russia or can they cover the whole territory of the EAEU?

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/EAEU 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.”

9.24.3 When can Russia impose safeguard measures and is it possible to impose such measures against WTO members?

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/EAEU 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 circumventing the imposed safeguard measures. Any facts and evidence should be supported and confirmed by independent expert review based on thorough economic analysis and evaluation.



9.24.4 Is information on safeguard measures and relevant investigations publicly available?

Information on all safeguard measures imposed by the EAEU and investigations conducted is publicly available on the EAEU official website in the Russian language at:

<http://www.eurasiancommission.org/ru/act/trade/podm/Pages/default.aspx>.

As of November 2017, there were 16 valid measures of protection, all of which are anti-dumping duties imposed on some products made of steel and polyamide originating from China and Ukraine; bulldozers, truck tires and citric acid from China; light commercial vehicles from Germany, Italy and Turkey; and graphite electrodes from India.

9.24.5 Can foreign companies challenge safeguard measures applied in Russia/the EAEU?

Foreign companies may challenge safeguard measures imposed by the EAEU that affect their business with the EAEU Court in accordance with its Rules.

Alternatively, 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.

9.25 Export Controls

9.25.1 Is the Wassenaar Arrangement binding for Russia?

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.

9.25.2 Which types of products are subject to Russian export controls?

Russia established and currently maintains several lists of controlled items that are based on the Wassenaar Arrangement. The lists of controlled items are established by Presidential Decrees. Apart from

the List of Dual Use Items, there are relevant lists of controlled chemicals, nuclear-related items, military items, etc.

9.25.3 How does one determine whether a product/technology is subject to Russian export controls?

Should the products fall under the Russian lists of products subject to export control (the so-called “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, 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.

9.25.4 Are Russian export controls unified at the EAEU level?

Currently, the members of the EAEU 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 EAEU level has not yet been selected.

9.25.5 Do Russian export controls apply to importation of controlled items?

Yes, importation of some specifically listed types of controlled items requires an export control license.



9.25.6 What are the main supervising bodies in the sphere of Russian export controls?

The FSTEC performs inbound control and supervision in the sphere of intangible transfer of controlled items (i.e., cross-border electronic downloads, etc.). The Federal Customs Service is responsible for supervising controlled items at the customs border.

9.25.7 Does the FSTEC issue end-user certificates with respect to foreign items subject to export controls?

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10. Sanctions

10.1 What are the international sanctions against Russia?

International sanctions against Russia represent the set of restrictive measures that were first introduced by the US, EU, Canada, Australia, Switzerland, Norway and Japan (the “implementing countries”) in the course of 2014. The sanctions target certain Russian and Ukrainian entities and individuals as a result of the political situation in Ukraine. The sanctions were primarily 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.

In addition to the sanctions imposed relating to the situation in Ukraine, the implementing countries also apply other sanctions programs (e.g., US cyber-related sanctions; US and EU sanctions with respect to Syria, Iran, North Korea; the Magnitsky Sanctions, etc.), which may impose certain restrictions on doing business with Russian individuals and companies.

In order to comply with international sanctions programs, it is important to (i) determine whether or not a particular transaction may be affected by the sanctions (e.g., whether it involves sanctioned persons and/or products) and (ii) analyze the relevant sanctions from the perspective of each implementing country.

10.2 Who must comply with the sanctions?

Generally, the sanctions are binding for all nationals of the implementing countries or legal entities registered in the implementing countries (including their foreign branches and representative offices). Each implementing country has established its own specific rules determining which particular persons must comply with the sanctions.



For example, the US sanctions are mandatory for all “US persons”, defined as:

- companies organized under US law and their non-US branches;
- employees of a US company, as well as employees of its non-US branches;
- US citizens or US permanent residents, regardless of where they are located; and
- non-US companies or people located in the US.

The EU sanctions are applicable:

- within the territory of the EU, including its airspace;
- on board any aircraft or vessel under the jurisdiction of an EU Member State;
- to any natural person who is a national of an EU Member State, irrespective of whether he/she is located within the EU;
- to any legal person, entity or body incorporated or constituted under the laws of an EU Member State; and
- to any legal person, entity or body in respect of any business conducted, in whole or in part, within the EU.

Similar requirements apply in other jurisdictions that also impose Ukraine-related sanctions (e.g., Japan, Canada, Austria, Switzerland, Norway, etc.).

10.3 How long will the sanctions remain effective?

The sanctions will remain in force until otherwise determined by the supervising authorities of the implementing countries.

10.4 What types of restrictions are provided by the sanctions?

First, the implementing countries introduced sanctions targeting individuals and legal entities (so-called “general sanctions”). The US issued a list of “specially-designated nationals” (“SDNs”) and the EU and other countries established lists of “designated persons” (“DPs”). Generally, the sanctions introduced for SDNs and DPs are similar in nature and require that (i) the assets of the sanctioned persons to be blocked (“frozen”) and (ii) the listed individuals be banned from entering the implementing countries. The sanctions affect not only SDNs and DPs, but also assets and property directly or indirectly controlled or majority owned by SDNs and DPs.

In addition to the above, the majority of the implementing countries introduced sanctions targeting certain sectors of the Russian economy, primarily in finance, energy and defense (so-called “sectoral sanctions”). The sectoral sanctions prohibit the provision of debt exceeding 30 or 90 days’ maturity, as well as the supply of certain listed products and financial or technical assistance relating to such products.

Furthermore, the sanctions have affected Crimea and Sevastopol, which have been almost completely isolated from business relations with the implementing countries.

The sanctions rules introduced by certain implementing countries, including on Crimea and Sevastopol, provide for certain exemptions, authorizations and licenses that should be considered when doing business with Russia.

10.5 What are the recent developments in the US Sanctions Regime Imposed against Russia?

On August 2, 2017 the US President signed “Countering America’s Adversaries Through Sanctions Act” (“CAATSA”) that imposed certain additional sanctions targeting Iran, Russia and North Korea.



The main developments under CAATSA include codification of existing Ukraine related sanctions, tightening of the sectoral sanctions and possible imposition of additional (secondary) sanctions subject to certain conditions.

10.6 How to comply with the sanctions

In order to comply with international sanctions and 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 the following:

- comprehensive analysis of the supply model, including all third parties and intermediaries;
- screening of the ownership structure of the counterparties, including any financial institutions (banks) involved;
- possible adoption and implementation of corporate sanctions compliance policies;
- possible special sanctions/export control compliance clauses to become standard conditions for Russian contracts; and
- paying particular attention to the origin, classification, designation and end-users of supplied goods, technology and/or services, payment terms and currency of payment.

In certain cases, controlling authorities of the implementing countries may authorize certain activities that would otherwise be prohibited under the sanctions. This authorization usually comes in the form of a license or other type of authorization document. To receive a specific license/permit, the legal entity or individual should file an application with the respective controlling authorities.

In addition, special attention should be given when screening transactions that involve the following jurisdictions designated under

various international sanctions programs: Afghanistan, Balkans, Belarus, Burma/Myanmar, Burundi, Cuba, Central Africa Republic, Democratic Republic of the Congo, Egypt, Eritrea, Guinea, Guinea-Bissau, Iran, Iraq, Cote d'Ivoire (Ivory Coast), Lebanon, Liberia, Libya, North Korea, South Sudan, Somalia, Sudan, Syria, Tunisia, Venezuela, Yemen and Zimbabwe.

10.7 What are the penalties for not complying with the sanctions?

Depending on the particular implementing country, non-compliance with international sanctions may result in the imposition of heavy criminal fines or even imprisonment for those persons who must comply with the sanctions. For other persons involved in the violation and/or circumvention of the sanctions, there is a risk of being separately included in the sanctions lists (SDN/DP lists).

10.8 What was the Russian response to the sanctions?

In response to the Ukraine-related sanctions introduced against Russia, on 7 August 2014 Russia imposed a ban on imports of certain agricultural and food products, such as meat and meat products, certain types of fish and sea food products, milk and dairy products, vegetables, fruit and nuts, sausages and similar products (covering about 54 specified HS positions with some special exemptions) originating from the EU, US, Canada, Australia, Norway and, starting from 6 August 2015, Albania, Montenegro, Iceland, Liechtenstein and Ukraine. In 2017, the embargo was extended to be effective until 31 December 2018 (this term may be further extended). Starting from 6 August 2015, illegally imported products found in Russia must be destroyed. As of 9 November 2017, a total amount of destroyed plant origin products is more than 17,000 tons and animal origin products is almost 500 tons.

In June 2016, the Government of Russia lifted the embargo on the importation of poultry, beef and frozen and dried vegetables intended for the production of baby foods (targeted permission of the Russian



Ministry of Agriculture is required). In September 2016, the government also lifted the import ban for sports nutrition (targeted permission of the Russian Ministry of Sport is required) and, in November 2016, fish fry and juvenile shrimp were removed from the list of embargoed goods.

In May 2017, the Government of Russia excluded salt and sea water intended for medical purposes (destined for the production of medicines, medical devices and biologically active additives) from food importation embargo (targeted permission of the Russian Ministry of Industry and Trade is required). The embargo was also lifted with respect to salt and sea water in the form of biologically active additives.

Starting from November 2017, the importation of live pigs, certain edible meat co-products is prohibited (except for those intended for the production of pharmaceutical products importation of which requires a targeted permission of the Russian Ministry of Industry and Trade), certain types of animal fat and lard stearin. 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. In July 2017 Russia ordered US to reduce the number of diplomatic and technical personnel across US diplomatic missions in Russia to 455 people, matching the number of Russian diplomats left in the US after Washington expelled 35 Russians in December 2016. Russia also suspended the use of a storage facility in Moscow and a country house outside Moscow (the US diplomatic properties in Russia).

10.9 What do Russian sanctions against Turkey include?

On 28 November 2015, Russia imposed economic sanctions on Turkey. The restrictions included a temporary ban on importing certain products originating from Turkey (chicken, turkey, salt, carnations, etc.), a prohibition on providing certain types of services

on Russian territory (the exact list of services is determined by the Russian government), a ban on employing Turkish citizens and cancelation of visa-free travel for Turkish citizens.

On 9 October 2016, Russia partly lifted its sanctions on Turkey by excluding some fruits (oranges, mandarins, apricots, peaches, etc.) from the list of embargoed food products. Earlier, on 30 June 2016, Russia lifted a ban on tourism to Turkey. The ban on charter flights to Turkey was also lifted.

Russia also suspended trade negotiations with Turkey on services and investments, as well as economic, cultural, scientific and technical cooperation.

In the course of 2017, Russian restrictions in respect to Turkey, including the prohibition on providing certain types of services on Russian territory and the ban on employing Turkish citizens were lifted. The food embargo was also abolished, except for the importation of tomatoes that should be performed within a quota established by the Russian Ministry of Agriculture.

10.10 What are the Ukrainian sanctions against Russia?

In the period between 2014 and 2017, Ukraine imposed a number of restrictive measures against Russia, including the following:

- In August 2014, introduced targeted sanctions on the listed Russian individuals and entities, in particular, asset freezing, temporary ban on the use of property / assets, entry ban and ban on exportation of assets from Ukraine, etc. (a specific list of applicable restrictions may vary, depending on the particular sanctioned person). As of November 2017, the Ukrainian sanctions list includes more than 1,200 individuals and 470 companies covering the Russian industrial and energy sectors, tobacco producers, aviation and navigation companies, payment service providers, etc.



- In September 2015, stopped accepting for shipment and loading cargo transferred in the wagons belonging to the one Russia - based company (i.e., “Freight One” JSC). In May 2017, the ban was further extended to the transit of any cargo on the territory of Ukraine that are transferred in the wagons owned by 8 Russian transport companies;
- In October, 2015, established the ban on flights (including transit) of a number of Russian airlines, including the biggest - “Aeroflot” JSC;
- In January 2016, introduced the embargo on the importation of the specified food products, alcoholic beverages and tobacco originating from Russia;
- In October 2016, operations of certain Russia’s payment systems were restricted on the territory of Ukraine.

In 2017, Ukraine extended the sanctions list by including on the following companies and sectors:

- On March 2017, on five Ukrainian subsidiaries of the Russian banks (Sberbank, VTB, BM Bank, Prominvestbank (VEB’s subsidiary) and VS Bank (Sberbank’s subsidiary));
- On May 2017, on Russian IT, mass media companies and television broadcasters, car manufacturers, Russia’s biggest social media networks (VK.com and Odnoklassniki), search engine Yandex and email service provider Mail.ru;
- On September 2017, (i) on 18 companies supplying mineral fertilizers and (ii) on 18 companies operating in the Russian food industry and are engaged in the construction materials manufacturing for actions that “may harm the interests of national economic security”.

10.11 What measures did Russia impose against Ukraine?

In April 2015, the Russian Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rospotrebnadzor) banned supplies of certain household chemicals made in Ukraine. In October 2015, Russia also established a ban on flights between Russia and Ukraine.

Starting from 1 January 2016, Russia suspended the application of the CIS Free Trade Agreement (“CIS FTA”) with respect to Ukraine, because Ukraine entered into the Association Agreement with the EU providing Ukraine with an access to the European Single Market in the certain sectors. The CIS FTA partially entered into force on 1 January 2016 and became entirely effective on 1 September 2017. According to the CIS FTA, Ukraine cannot simultaneously participate in the free-trade zones with the EU and with the CIS countries.

As a result of the suspension of the CIS FTA, importation of goods originating from Ukraine to Russia has become subject to regular customs duties as specified in the Common Customs Tariff of the EAEU. Russia also imposed a ban on transit of certain goods (i.e., goods subject to customs duties other than 0% and the embargoed goods) by road and rail from Ukraine through Russia to Kazakhstan and Kyrgyzstan. Transit of “non-restricted” goods (by road and rail) from Ukraine through Russia to Kazakhstan and Kyrgyzstan should be carried out only through the territory of Belarus provided that such goods have identification and tracking means, including those which are operating on the basis of GLONASS system. The drivers of the vehicles, which are involved in road shipments, must have registration vouchers.

At the same time, the CIS FTA remains effective with regard to exportation from Russia to Ukraine of natural gas in gaseous state.



In May 2017, in response to Kyiv's ban on operations of Russia's payment systems, Russia enacted a law restricting money transfers from Russia if a country restricts the operation of Russian payment systems on its territory. As a result, money transfers from Russia to Ukraine can only be performed via Russian systems. The new restrictions applies only to financial transfers conducted without opening a bank account

In May 2017, Russia requested WTO dispute consultations with Ukraine regarding the restrictions, prohibitions, requirements and procedures adopted and maintained by Ukraine in respect of trade in goods and services from Russia (case No. DS525).

11. Currency Regulations

11.1 What currencies can be used for settlement in Russia?

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 a foreign currency, all transactions conducted inside the Russian Federation must generally 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 the currency regulation and control regime in Russia. This law also mentions cases in which foreign currency can be used to settle transactions in Russia.

11.2 Which transactions are subject to currency regulation in Russia?

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 Who are considered to be residents and non-residents under Russian currency control regulation?

The Currency Law divides individuals and legal entities into two 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 Are there any special currency control rules in Russia?

As of 1 January 2018, 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;
- Filing of the documents related to the conducted transaction (as this term is defined in the Currency Law) is required to process certain transactions (foreign 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 What are the repatriation requirements under Russian law?

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”) with certain exceptions. For example, Russian companies may credit the payments to their accounts with foreign banks if the proceeds will be used for repayment under a loan agreement with an OECD or FATF resident and its term exceeds two years. 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. There are certain exceptions to this rule.

Offsetting claims is only allowed in limited instances, including for Russian transport and fishing companies as well as under reinsurance contracts. Russian gas exporters may also set off claims under gas sale-purchase contracts and gas transit contracts with non-residents.

Another exception allows Russian suppliers to assign their claims under foreign trade contracts to a Russian factor under a factoring contract. In this case, the supplier should procure that funds payable under such foreign trade contract are transferred to the factor’s account with a Russian bank. The factor must notify the supplier in writing of receipt of such funds or upon further assignment of claims under such foreign trade contract.

11.6 What are the requirements under the Russian Currency Law to transactions between local and foreign counterparties?

A Russian counterparty (which is not a bank) must comply with certain requirements in connection with payments to a foreign lender or another counterparty (export/import transactions).

On 1 January 2018, Instruction of the Central Bank of Russia No. 181-I dated 16 August 2017 (“**Instruction No. 181-I**”) became effective, and it abolished transaction passports and currency operation certificates and set up a new procedure under which banks are required to record contracts related to:

- provision of documents related to currency operation;
- filing information and recording of contract in an authorized bank, if the amount of liabilities under such contract is not less than RUB 3 million (approx. USD 50,000) for import and loan contracts and RUB 6 million (approx. USD 101,000) for export contracts.

Russian residents will not need to provide their banks with currency operation certificates for each payment; instead, they will have to submit documents relating to the relevant currency operation.

This requirement does not apply to payments in foreign currency under contracts for an amount equal to or less than RUB 200,000 (approx. USD 3,300), for which the Russian resident shall provide only the currency operation code (“**VO Code**”) for the payment.

If the payment is made in rubles under a contract for an amount equal to or less than RUB 200,000, there is no need to provide a VO Code.



11.7 What rules are applicable to foreign bank accounts of Russian residents?

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, except (starting from 1 January 2018) where the individual is a resident who spent more than 183 days abroad.

The Currency Law contains a list of permitted operations that Russian residents can perform using their overseas bank accounts.

Certain groups of individuals (state officers, certain officials at state corporations, officers of the Bank of Russia, their spouses and underage children) are prohibited from maintaining bank accounts with foreign banks.

11.8 What rules are applicable to all Russian residents?

Russian residents may transfer the following funds to their overseas accounts:

- their funds from Russian or overseas accounts;
- Russian rubles from Russian or overseas accounts of another Russian resident;
- payments under foreign trade contracts, if the proceeds will be used for repayment under a loan agreement with an OECD or FATF resident and its maturity exceeds two years;
- cash;
- proceeds of foreign exchange transactions performed using funds on the overseas account; and
- in other cases set by the Currency Law.

If the overseas account is opened with a foreign bank located in an OECD or FATF country, the Russian resident may transfer the amounts borrowed under a loan agreement with an OECD or FATF resident to such account. The term of such loan should exceed two years.

11.9 What rules are applicable to Russian resident individuals?

Along with what is generally allowed under the Currency Law, Russian resident individuals can receive the following funds on their overseas accounts from non-residents:

- salary and other employment-related payments;
- sums awarded under foreign court judgments (save for international commercial arbitration);
- pensions, scholarships, alimony and other social payments;
- insurance payments; and
- refunds and payments made in error.

If a Russian resident individual opens an account with a foreign bank located in an OECD or FATF country, they may also receive the following funds on such overseas accounts from non-residents:

- lease payments for property located abroad;
- income derived from foreign securities;
- income from the sale of foreign securities listed on the Russian stock exchange or one of the foreign stock exchanges on the list provided for by Federal Law No. 39-FZ “On the Securities Market” dated 22 April 1996, as amended (this will cover transactions (sales) that occur after 1 January 2018); and



- income received from the transfer of money and (or) securities into the fiduciary management of a non-resident.

11.10 What are the penalties for violation of Russian currency regulations?

The currency control system is supervised by the Bank of Russia, the government, the Federal Tax Service and the Federal Customs Service. Currency control is executed through agents of the currency control regime, including authorized banks and professional participants of the securities market.

Violation of Russian currency control requirements may result in 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 the 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 RUB 3,000 for individuals and up to RUB 50,000 for legal entities depending on the term of the violation. In cases of repeated violation, the fine may reach up to RUB 10,000 for individuals and up to RUB 150,000 for legal entities. The fine for failure to submit reports on the cash flow in overseas accounts on time for the first time is the same, but for a repeated violation, the fine can reach up to RUB 20,000 for individuals and up to RUB 600,000 for legal entities.

Failure to notify the Russian tax authorities of opening, closing or a change of details of an overseas bank account on time entails a fine of up to RUB 1,500 for individuals and up to RUB 100,000 for legal entities. Failure to notify the Russian tax authorities of these actions

will result in a fine of up to RUB 5,000 for individuals and up to RUB 1 million for legal entities.

In addition, failure to comply with the repatriation requirements proceeds may result in the imposition of fines in the amount of 1/150 of the Bank of Russia's refinancing rate (currently 7.75% p.a.) of the amount of proceeds returned with a delay for each day of such delay or up to 100% of the amount of non-returned proceeds, or up to RUB 5,000 for company executives and up to RUB 50,000 for legal entities in respect of the Russian national currency. For failure to return foreign currency proceeds, the fine may be in the amount of 1/150 of the Bank of Russia's refinancing rate (currently 7.75% p.a.) of the amount of proceeds returned with a delay for each day of such delay, or up to 100% of the amount of non-returned proceeds. Failure to return foreign currency proceeds in the amount of more than RUB 9 million may also lead to criminal liability for the company's senior management.



12. Employment

12.1 Sources of Russian Labor Law

12.1.1 What sources of Russian Labor Law exist on the federal level?

Russia has a comprehensive set of laws regulating labor relations between employers and employees. The principal piece of legislation governing labor relationships is the Labor Code of the Russian Federation (the “**Labor Code**”). It sets minimum employment standards that cannot be overridden by agreement between the parties. Accordingly, any provision in an employment agreement that negatively affects an employee’s entitlement to these minimum employment standards is not enforceable. In addition to this, labor relations are regulated by the 1996 Russian Federal Law on Professional Unions, Their Rights and Guarantees of Activity, Russian legislation on the minimum wage and labor safety, and other related laws. Many aspects of labor relations are also regulated by regulations of the Government of the Russian Federation and orders of the Ministry of Labor.

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.

12.1.2 Are employers obliged to enter into collective agreements?

A collective agreement may be concluded by employees and the employer (by the bodies representing them) in order to regulate social and labor relations in an organization. There is no obligation to enter into a collective agreement under Russian law, but as long as one duly authorized party makes an offer to conclude such an agreement, the other party may not refuse to do so. A collective agreement may

provide for employees' and employer's obligations relating to the following issues:

- the forms, systems and rates of remuneration for labor;
- the disbursement of benefits and compensation;
- employment, retraining and the terms for dismissing employees;
- working hours and leisure hours, including issues concerning the granting of leave and the duration thereof; and
- other issues defined by the parties.

12.1.3 What local acts are employers obliged to adopt?

All employers in Russia are required to issue Internal Labor Regulations, a personal data processing policy, a work safety policy and work safety instructions, fire safety instructions, anti-corruption policy, develop civil defense training programs and a remuneration policy in case relevant provisions are not included in the Internal Labor Regulations. Additionally, it is highly recommended to adopt job descriptions for employees if the relevant duties are not incorporated into employment agreements. All employees should acknowledge their familiarization with these documents against their wet signatures (except for distant employees who have obtained an enhanced encrypted electronic 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 Russian (or in a bilingual version) and should be approved by an internal order of the CEO of the company or the head of the representative office/branch office.



Under Federal Law No. 348-FZ of July 3, 2016, which entered into force on January 1, 2017, micro-enterprise employers do not have to adopt any employment-related policies. An employing entity qualifies as a micro-enterprise if it meets the following criteria:

- the share of the Russian Federation, of the constituting entity of the Russian Federation or a municipal unit in the charter capital does not exceed 25%; the share of legal entities not qualifying as small or medium-sized enterprises or of foreign legal entities in the charter capital of the employing entity does not exceed 49% (with some exceptions related to legal entities carrying on activities related to implementing the results of intellectual activity, participating in Skolkovo projects and providing support to innovation-related activity on terms specified by the Russian government);
- it employs up to 15 employees; and
- the amount of profit it received in the previous calendar year does not exceed RUB 120 million (approx. USD 2 million).

The relations between a micro-enterprise employer and its employees may only be regulated by employment agreements. A standard form of such an employment agreement is adopted by Resolution of the Government of the Russian Federation No. 858 of August 27, 2016.

12.2 Recruitment process

12.2.1 What are the procedural requirements of hiring an employee?

Pursuant to the Labor Code, employers in Russia need to document the hiring process properly. They are required to issue an internal order (decree) each time an employee is hired or transferred to a new job. The order on hiring must be issued and given to the employee for countersignature no later than three days after the employee actually starts work. Employers also need to adhere to the personal data protection legislation when recruiting staff (i.e., they need to collect

applicants', and in some cases employees', consents for processing their personal data).

Employers are responsible for keeping their employees' labor books and making all records on time. A labor book is a document that contains information about a person's employment history. The employer must make a note of employment in the labor book when the employment lasts for over five days. The parties to an employment agreement on distant work may agree not to make any entries into the employee's labor book.

12.2.2 What specifications may a vacancy contain?

Due to the changes to the Labor Code effective from July 1, 2016, when identifying a vacancy, the employer should find out if a mandatory professional standard for a particular vacancy is applicable under the Labor Code or other federal laws.

Professional standards mean requirements for the level of qualifications of an employee for specific professional activities. Each of them contains requirements for the qualifications and work experience, skills and knowledge of the employee who holds a particular position as well as stating the tasks that may be carried out by such employee.

A specification for a position shall not contain any requirements that are not connected with the professional skills of the individual concerned. Requirements for a particular gender, race, nationality, language, social origin, age, property status, place of residence, religious beliefs, or affiliations with social associations are deemed discriminative.

If a mandatory professional standard is adopted for a particular position, the job description and specification for the position should comply with it in terms of requirements for employee's qualifications.



12.2.3 May an employer refuse to hire an employee due to results of pre-hire checks?

Pre-hire background checks are not required by law. However, in practice, they are often conducted by employers. Pursuant to applicable legislation, such checks may only be carried out with the candidate's prior written consent.

Some types of checks (e.g., check of criminal records) are not permissible without the candidate's direct involvement. For instance, in Russia, information on criminal records may only be provided to the individual with respect to whom this information is sought, or at the request of government law enforcement agencies.

Further, the employer should not make an offer of employment, enter into an employment agreement or admit the candidate to work before the background check is completed. Otherwise, even if the results of the background check are not satisfactory, the company will not be able to dismiss the employee on this ground. In addition, as a general rule, the employer cannot refuse to employ a candidate merely due to unsatisfactory background check results.

Like background checks, reference checks are not required by law, but are still widely used by employers. Pursuant to applicable legislation, these checks may only be carried out with the candidate's prior written consent. Due to Russian personal data protection legislation, former employers cannot usually provide data regarding former employees, unless the applicant has given prior written consent.

Russian labor legislation provides for mandatory medical checks prior to entering into an employment agreement and periodic medical checks for certain categories of employees. The list of such categories is approved by the Order of the Ministry of Health. It includes minors, employees engaged in dangerous or harmful activities, teaching employees, etc.

If an individual is not hired, they have the right to request the company to provide them with written reasons as to why they were

not hired. Refusal to enter into an employment agreement may be challenged in court.

12.3 Entering into an employment agreement

12.3.1 In which forms may an employment agreement be concluded?

A written employment agreement setting out the basic terms and conditions of the employment relationship must be entered into with each employee working in Russia. Russian legislation permits the conclusion of an employment agreement in electronic form with distance employees. However, even in this case, an employer shall send a duly executed employment agreement (hard copy) to the employee by registered mail with delivery confirmation.

The employment agreement and all other employment-related documents (i.e., employer's local policies, all HR orders) must be in Russian or in a bilingual format.

12.3.2 In what situation is it possible to enter into a fixed-term employment agreement?

Generally, employment agreements are entered into for an indefinite period. A definite term contract (fixed-term contract) can be entered for a term of up to five years, and it may only be executed under the circumstances set out in the Labor Code (for instance, for replacement of a temporarily absent employee who is legally entitled to retain the position during his/her absence; for the performance of temporary (up to two months) work and seasonal work, when the work can only be performed during a certain period of time (season) due to natural conditions, and some other scenarios). These situations usually occur when the nature or conditions of work make it impossible for the parties to enter into an indefinite term contract.

Fixed-term employment agreements with foreign workers similarly may only be executed in the circumstances specifically provided for in the Labor Code.



12.3.3 What is the legal framework of secondary employment?

Pursuant to Russian labor law, an individual can only have one primary employment, which is generally full-time.

At the same time, an individual may have several secondary employments with the same or different employers. In this case, under the requirements of the Labor Code, the employee shall not work more than four hours per day at the place of their secondary employment, provided that it is not a day off at the place of their primary employment. An employee in Russia cannot be prohibited from holding a second job in addition to their full-time employment, with certain limited exceptions and restrictions provided by the Labor Code and other federal laws.

12.3.4 What are the particularities of distance employment?

The Russian Labor Code allows 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 provide for specific grounds for termination at the employer's initiative and specific provisions allowing more control over distance employees. In addition, a distance work arrangement entails fewer work safety obligations for employers and more flexibility.

12.3.5 When is an employer entitled to provide for a probationary period in an employment agreement?

The employer has the right to establish a three-month probationary period for the majority of newly hired employees. 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 position for which they were hired, the employee can be dismissed by the employer without severance pay and with three days' written notice before the expiry of the probationary period. Such notice to the employee must state the reasons why the employee is deemed to have failed the probationary period. The employee is also entitled to resign during the probationary period, without stating any reason, with three days' written notice to the employer.

Under the Labor Code, for certain categories of employees (for instance, pregnant women and women having children aged up to a year and a half; persons under 18; persons invited to a specific job on transfer from another employer by agreement between employers, etc.), a probationary period cannot be established.

12.3.6 How can an employer make changes to an employment agreement?

Generally, in order to amend an employment agreement, the employer and the employee shall enter into a relevant addendum to an employment agreement. The employer cannot make unilateral changes to the terms of the employee's employment agreement unless there are organizational or technological changes in the conditions of work. In such cases, the employer must notify the employee in writing no less than two months in advance before unilaterally implementing the change.

Importantly, a change in the employee's job function cannot be unilaterally made by the employer, but requires the agreement of the parties.



If there are no organizational or technological changes, the amendments to the terms of the employment agreement may only be introduced by agreement of the parties.

12.4 Working terms and conditions

12.4.1 What is the minimum amount of wages for full-time employees?

Wages may not be lower than the minimum monthly wage established by the applicable Russian legislation. The minimum monthly wage is subject to frequent indexation. The statutory minimum monthly wage at the federal level is RUB 7,800 per month from July 1, 2017 (approx. USD 130) and will be increased to RUB 9,489 from January 1, 2018 (approx. USD 158). In addition, the minimum monthly wage can be locally set at a higher level. For instance, in Moscow, the minimum monthly wage, from October 1, 2017, is set according to the tripartite agreement between the Moscow government, Moscow associations of employers and Moscow associations of trade unions at RUB 18,742 (approx. USD 312). Employees in Russia must be compensated in the currency of the Russian Federation (Russian rubles).

12.4.2 How often shall an employer pay salary to the employees?

Salary payments must be made to employees at least once every half month. Employers are obligated to pay salary and other employment-related payments on a date set by the internal labor regulations or collective agreement, or by the individual employment agreement. The Labor Code specifies that a particular salary payment date will have to be established no later than 15 calendar days after the final day of the period for which it is accrued. An employer is obligated to pay compensation (i.e., interest) for delaying the payment of salary and other employment-related payments in accordance with the rules established in the Labor Code. In addition, employees have the right to stop working, with prior written notice to their employer, if their employer has delayed payment of their salary for more than 15 days.

12.4.3 What is the standard length of working time pursuant to the Labor Code?

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.

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, under which an employee may be occasionally engaged to perform his/her job duties beyond the normal working hours under the employer's instructions. The primary advantage of this is that there is no need to obtain consent whenever the employer asks an employee to work beyond the normal working hours. 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. 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.



12.4.4 Public holidays: how to compensate work on 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 — Orthodox 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; and
- 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 work 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.

12.5 Leave

12.5.1 How many days of vacation are employees in Russia entitled to?

Employees in Russia are entitled to annual paid vacation of at least 28 calendar days per year. 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.

12.5.2 What is the procedure for providing an employee with sick leave?

Sick leave is generally provided by medical institutions and should be confirmed by a statutory medical leave certificate. 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, and 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. These contributions are paid on a year-to-date salary within the threshold of RUB 815,000 (approx. USD 13,586) in 2018 for each employee per calendar year. Since January 1, 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 December 29, 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 based on 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 before the year an employee takes sick leave. In 2018, the statutory maximum average daily earnings for the purpose of sick leave compensation are RUB 2,017.81 (approx. USD 34) per day 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 childcare 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 compensation 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 compensation either at each place of employment or at one of his/her current places of employment at the employee's choice.

12.5.3 What is the procedure for providing an employee with maternity leave?

Maternity leave is to be provided by an employer based on an employee's request and medical certificate issued by the relevant medical institution. 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, an employer pays maternity leave compensation. Since maternity leave compensation is covered by the Russian State Social Insurance Fund, these payments are further offset against social contributions to be paid by the employer to the Social Security Fund. The amount of maternity leave compensation is determined based on the employee's average earnings and total term of employment.

Average earnings are calculated with reference to two calendar years preceding the year an employee takes maternity leave. In 2018, the statutory maximum average daily earnings for the calculation of maternity leave compensation are RUB 2,017.81 (approx. USD 34) per day.

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 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 childcare leave, and the full childcare leave period is included when calculating the employee's length of service.

The procedure for calculating sick leave, maternity leave and childcare leave allowances is rather complicated in Russia; it is highly recommended to verify the procedures and documentary requirements on a case-by-case basis.

12.6 Termination of employment agreement

12.6.1 How can an employment agreement be terminated?

Termination of employment in Russia is strictly regulated by the Labor Code and can only be carried out on specific grounds as set out in the Labor Code. Thus, employment may be terminated by mutual consent between the parties to an employment agreement, at the employer's initiative, at the employee's initiative, due to expiry of a fixed-term employment contract, etc.

Various aspects of some of these options to terminate employment are covered below.

An employer must carry out a number of steps on the employee's last day of employment to properly formalize the termination of employment. Firstly, all outstanding payments must be made to the employee on the date of dismissal. These payments should include:

- (a) all outstanding salary and bonuses;
- (b) compensation for all accrued but unused vacation;
- (c) severance payments (if applicable) as discussed below; and
- (d) any other outstanding payments.

An employer should provide the employee with a pay slip outlining the payment components and issue required HR documents.

12.6.2 In which situations is an employer entitled to unilaterally terminate employment?

An employment relationship may only be terminated by the employer 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 for the company CEO, who can be dismissed by the unilateral decision of the company's authorized body provided he/she is paid a severance compensation equal to at least the employee's three months' average earnings, or a higher amount if envisaged by the respective employment agreement.

Employers must strictly comply with the 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.

In cases of liquidation of the organization and/or staff redundancy, the employer is required to give at least two months' prior written notice to the relevant employees. Failure to comply with this requirement may invalidate the termination and result in the employee's reinstatement in the job.

12.6.3 In which situations is an employee entitled to severance payment?

In the majority of cases of employment termination at the employer's initiative (i.e., due to staff redundancy or a liquidation of the organization (termination of activities of an individual entrepreneur)), or in cases where an employee refuses to work under the changed



terms of employment or move with the employer to another locality, and in some other cases provided by the Labor Code, an employee is entitled to severance.

12.6.4 How to terminate the employment by mutual consent

Termination of employment relations by mutual consent is the most efficient and safest option for an employer if such an agreement can be reached with an employee.

To formalize the mutual consent termination, the employer and the employee should sign a mutual consent termination agreement.

There is no statutory notice period for termination by mutual consent. In practice, mutual consent terminations imply the payment of compensation for an employee. There is no statutory requirement regarding the amount of such compensation; it is the result of bargaining between an employer and an employee.

12.6.5 How may an employee terminate employment?

Regular employees are entitled to terminate their employment at any time, are not required to give a reason and may only give two weeks' written notice to the employer. A company's CEO may terminate an employment at his/her initiative with a one-month notice period.

12.7 Employment of foreigners in Russia

12.7.1 What documents are necessary for foreign employees, who need visas to enter Russia, in order to work in Russia under the ordinary procedure?

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. 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 Russian authorities have adopted a list of quota-exempt professions/positions, which

allows employers to hire foreign employees without observing the quota requirement.

This 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). The requirements to obtain relevant migration documents equally apply to legal entities, branch offices and representative offices of foreign firms. In contrast to Russian legal entities, the branch office and the representative office may only employ a limited number of foreign employees set by the accreditation authorities.

The process of obtaining permission to hire foreign nationals, individual work permits and work visas in Moscow involves several consecutive steps and may take from four to six months to complete. In other regions of the Russian Federation, this period may differ. Generally, a work permit and work visa are issued for a one-year period. Renewal of a work permit involves the same procedure and takes the same amount of time as obtaining the first work permit.

Additionally, employers are required to provide financial, medical and social guarantees in respect of their foreign employees in Russia, and bear a number of migration law obligations, including filing notifications, within a prescribed term, on hiring/termination of foreign nationals, and general migration monitoring requirements, etc.

In order to obtain ordinary work permits, foreign nationals are required to provide relevant certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles, and medical certificates to the migration subdivisions of the Ministry of Interior.



12.7.2 Are there any categories of foreign employees for whom a simplified procedure of employment is established?

Employees from countries enjoying a visa-free regime with Russia should 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. Patents are obtained by foreign employees and not by their employers. The citizens of Belarus, Kazakhstan, Armenia and Kyrgyzstan do not need patents/work permits to work in Russia.

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 invitation. 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 simplified procedure is available to Russian companies and accredited branches and representative offices of foreign commercial companies. Specialists are not required to provide certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles, and do not have to provide medical certificates.

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 RUB 167,000 (approx. USD 2,780) per month or more. A work permit and a work visa invitation letter are issued within 15-17 business days. The Specialist can receive a work permit and a work visa for up to three years, valid for several regions of the Russian Federation, provided that the employer has registered subdivisions in these regions.

Additionally, legal entities may employ foreign citizens from WTO countries in positions of key personnel under a simplified procedure and requirements (i.e., extended visa terms, absence of quotas, etc.).

Employers bear the relevant migration law obligations in respect of Specialists and employees from countries enjoying a visa-free regime with Russia (including citizens of Belarus, Kazakhstan, Armenia and Kyrgyzstan), e.g., file within a prescribed term the notifications on hiring/termination and migration registration notifications, etc.

12.7.3 What are the consequences for failing to comply with migration requirements?

Russian law provides for severe penalties for non-compliance with the migration requirements. Administrative sanctions for violation of Russian migration rules may be imposed on the employer, its authorized officers (e.g., HR Director and/or the effective CEO), and a foreign employee. Administrative sanctions include heavy fines (up to RUB 1,000,000 (approx. USD 17,000) in Moscow) and, in the worst cases, may even lead to temporary suspension of the employer's activities for up to 90 days and deportation of the foreign employee from Russia. Imposition of an administrative fine on a foreign employee (regardless of its amount) may trigger difficulties in visiting Russia and/or obtaining work permits/Russian visas in the future.

Thus, employing a foreign national in Russia requires advance planning to allow sufficient time for all the procedures. Russian migration legislation is still undergoing significant amendments, and 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.

12.8 What measures shall an employer take in order to protect the personal data of employees?

All employers must ensure compliance with legislation on personal data. Pursuant to Federal Law No. 152-FZ "On Personal Data", employers are required to obtain prior consent from employees (in some cases) and other individuals in order to process their personal data. In particular, an employer must obtain written consent from the



respective individuals if it transfers personal data to any third parties (including cross-border personal data transfer).

In addition, employers are required to notify the state authority supervising personal data processing matters in Russia (Roskomnadzor) of the employer's personal data processing activities in case the personal data of employees is transferred to any third parties or in case of processing of personal data of applicants and other individuals. This notification must be submitted to Roskomnadzor before the actual start of personal data processing operations.

All companies that collect and process the personal data of Russian citizens are obliged to use databases located in Russia. All employers in Russia must keep their information systems in which personal data is processed in compliance with the requirements set by the law "On Personal Data" to ensure due protection of personal data.

13. Property Rights

13.1 What is particular about property rights in Russia?

Both the Constitution of the Russian Federation and the Civil Code of the Russian Federation uphold the right to own private property.

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, the concept of a single object of real estate is 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.

13.1.1 What is the variety of land rights?

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 are not granted 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 What are the key principles of transactions with public land?

The key principles of transactions with public land are set forth in the Land Code, which is the core legislative act governing land relations in Russia. Due to changes to the Land Code introduced by Federal Law No. 171 “On Amendments to the Land Code of the Russian Federation and Other Legislative Acts of the Russian Federation” of 23 June 2014 (“**Law 171**”), 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 (an 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). We outline some peculiarities of the acquisition of rights to public land in chapter 13.1.6 below.

The procedures for preparing, organizing and conducting an auction are described in detail in new Articles 39.11–39.13 of the Land Code. The auction may be held in electronic form. The procedure for holding an auction in electronic form is to be determined by a federal law. As of the date of this guide, such a federal law has not yet been adopted.

13.1.3 Is the foreign ownership of land allowed?

Although no express provision permits land ownership by foreign nationals (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-foreign national interpretation of the Land Code. Foreign nationals 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 and other federal laws:

- Foreign nationals 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.
- Foreign nationals 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%.
- Foreign nationals 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 entirety) adjacent to the border.

Among the border territories are the city of Sochi (and other near-shore municipalities in Krasnodarsky Krai), four districts in Leningrad Oblast (the Lomonosovsky, Kingiseppsky, Slantsevsky and Vyborgsky districts), the Kronshadtsky District in St. Petersburg, a number of municipal districts in the Bryansk, Tyumen, Rostov,



Voronezh and Belgorod Oblasts, most of the municipalities in 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 foreign nationals 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, 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 that deal 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, 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 What are the general principles of land leases?

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, neither the Civil Code nor the Land Code stipulates a statutory maximum length for a land lease; the lease term in most cases does not exceed 49 years. However, the new Article 39.8 of the Land Code establishes different lease periods for which state or municipal land plots may be granted. In particular, the period for which a land plot may be leased depends on the permitted use of the land plot and may be determined: (i) in years (from three to 49 years); (ii) as the period of implementation of an investment project; (iii) as the 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, the 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.

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). The rent became an essential term of a land lease agreement from 1 March 2015.



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 for 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, a lessee that properly fulfils 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. In accordance with 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, insofar 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 on the wording 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 in accordance with Article 22 of the Land Code 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 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 Does the law recognize any other rights to land?

Prior to 1 March 2015, the right of perpetual (indefinite) use could 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 of 1 July 2012 as a general rule, and as of 1 January 2015 with regard to land plots under transportation, communications and utility lines. Failure to convert the rights by the established deadlines will trigger an administrative penalty of RUB 20,000–RUB 100,000. 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 What is the procedure for acquisition of rights to land plots for construction purposes (other than residential construction)?

Law No. 171 and Federal Laws No. 217, No. 224 and No. 234, all of 21 July 2014, amended the Land Code significantly with respect to the rules governing 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 existing before 1 March 2015 should apply (until 1 March 2018) to the 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, acquisition of rights to state or municipally owned land plots is carried out in accordance with the procedures currently envisaged in the Land Code. In particular, the

Land Code distinguishes two kinds of procedure: (i) at public auction (for construction purposes, land plots are granted only for lease); and (ii) without a public auction at a resolution of the authorized body (only in exceptional cases stipulated in the Land Code for lease or ownership depending on the basis for such granting).

As a general rule, land plots are granted into ownership or lease only at public auctions. The Land Code describes in detail how such auctions should be prepared and conducted. It should be noted that if the main permitted use of the land plot is for construction of buildings/structures, then such land plot may be granted only on lease for twice the term established by the competent federal authority for carrying out engineering survey works, architecture/construction planning and construction of building/structures. Thus, by Order No.137/pr of 27 February 2015, the Ministry of Construction, Housing and Utility Infrastructure of the Russian Federation adopted regulations on the standard lease periods for public land plots, the maximum being 54 months.

An auction can be held only through live bidding. Upon adoption of the relevant law, such auctions will be held through electronic (online) bidding. An auction can be initiated by a person interested in acquiring the land plot in question, but if the target land plot has not been formed, such interested party should prepare the layout plan of the land plot⁹⁵ (if the territorial land-surveying plan is not formalized) and arrange for the cadastral works to be performed on the target land plot.

Starting from 1 March 2015, the rights to state or municipally owned land plots can be granted without an auction only in exceptional cases, envisaged in the Land Code (irrespective of the existence of the territorial planning documents and town-planning rules and regulations and formation of the land plot). The most common case is

⁹⁵ Apart from land plots located within the boundaries of cities with federal status or within the boundaries of settlements. In these cases, the layout plan of the land plot is prepared by the authorized body.



state or municipally owned land plots being granted in ownership or lease to the owners of the building/structures located on such land plots. Other cases of granting state or municipally owned land plots without an auction are much rarer. Such land plots can be granted:

- in ownership to a legal entity that entered into an agreement on complex development of the territory (developing transport, utility and social infrastructure facilities as provided for by Article 46.4 of the Russian Town-Planning Code); or
- on lease:
 - further to a resolution of the Russian Government for implementation of large-scale investment projects, for construction of social and cultural facilities subject to their compliance with the relevant criteria established by the Russian government;
 - further to a resolution of a higher public official of the Russian constituent entity for implementation of large-scale investment projects, for construction of social and cultural, public and welfare facilities subject to their compliance with the relevant criteria established by regional laws;
 - to the party to a concession agreement (i.e., to the concessionaire);
 - to an entity that has entered into an agreement on development of a built-up area (residential development, replacing condemned buildings);
 - for a new term to the lessee to whom the land plot was initially granted without an auction;
 - to a legal entity that entered into an agreement on complex development of the territory (for construction of transport, utility and social

infrastructure facilities as provided for by Article 46.4 of the Russian Town-Planning Code);

- to a subsoil license holder for works related to subsoil use;
- to the owners of uncompleted structures – only once for completion of construction (see 13.1.8 below); and
- in some other cases.

13.1.7 What does the rule of exclusive right mean?

As mentioned in Section 13.1.6 above, the owners of buildings and structures that are located on land plots owned by the state, a constituent entity of the Russian Federation or by a municipality have an exclusive right to buy or lease the underlying land plots (Article 39.20 of the Land Code). With regard to facilities erected on such land plots after the Land Code became effective, this rule means that an owner of the facility, upon state registration of title (see Section 13.4 below), may opt for: (i) extension of the lease; (ii) extension of the lease and subsequent acquisition of the land plot into ownership; or (iii) 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 when 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 2016).



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.

13.1.8 What are the implications of buildings being unfinished (construction in progress)?

Further to Article 239.1 of the Civil Code (effective from 1 March 2015) adopted to support the new provisions of the Land Code on granting public land for construction purposes which came into effect from 1 March 2015, a building located on a state or municipally owned land plot, and which is not completed (an unfinished facility), can be withdrawn pursuant to a court order and sold at public auction upon the expiry of the land lease agreement (this rule applies to land lease agreements concluded after 1 March 2015) unless the owner proves that it was unable to finish the facility due to reasons specifically provided by the law.

The Land Code provides for granting the state or municipally owned land plot on lease without an auction to the owner of the unfinished building, which acquired its ownership right to such building at public auction or (if the withdrawal has not been initiated or satisfied) to the initial owner of the unfinished building. The land lease right is granted only for completion of the building and on the condition that such land plot has not been provided on the same basis to any of the owners of such unfinished building before.

13.2 What about other real estate?

13.2.1 What are the peculiarities of ownership?

Russian legislation permits both Russian and foreign nationals and legal entities to own real estate (apart from land plots) such as buildings, premises (such as parts of buildings), structures and other

facilities (including car parking lots). 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. Legal entities formed in the course of privatization of state or municipally owned enterprises usually obtain title to buildings and structures as a result of 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 the 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. 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 was governed by Federal Law No. 122-FZ “On State Registration of Rights to Real Estate and Transactions Therewith of 21 July 1997,” as amended (“**Old Registration Law**”) and, starting from 1 January 2017, by Federal Law No. 218-FZ “On State Registration of Real Estate” (“**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 extract from the Register evidencing the registration of title (see Section 13.3 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 Old 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).

State registration of the ownership right to real estate is a fairly straightforward process, as long as an applicant seeking to register its title can clearly demonstrate that the real estate in question was purchased, constructed, or privatized in accordance with the procedures established by law. As a general rule, before the ownership right to real estate is state registered, such real estate must undergo the cadastral recording in the Register (described in more detail in Section 13.3 below). Starting from 1 January 2017, cadastral recording of real estate 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 in good faith, openly and without interruption (acquisitive prescription) on the basis of a court order.

13.2.2 What is the regime of 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 What is noteworthy about leases?

Foreign legal entities and individuals may be granted leases to other real properties (apart from land plots). Like leases of state or municipally 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 fulfils its obligations under a lease has a pre-emptive 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; (iii) by a court order in the circumstances provided by the Civil Code or in the lease; or (iv) by the lessor's receiver (lessor's bankruptcy trustee) in accordance with the Bankruptcy Law.

Lease agreements for one year or longer must be state-registered and, as provided by Article 433 of the Civil Code, are deemed concluded upon such state registration. In 2015, Article 433 was amended to provide that unless the law provides otherwise, transactions subject to state registration are deemed concluded for third parties upon such state registration (and for the parties to the transactions they come into effect upon execution, unless the transaction documents provide otherwise). However, Part II of the Civil Code (Article 651) still provides that a lease comes into effect upon its state registration without distinguishing between the effects of state registration for third parties and parties to the lease. Therefore, in accordance with a conservative interpretation of the law, even for the parties to a long-term lease, such lease comes into effect only upon its state registration. However, as we comment in Section [1.3 below], the Russian Supreme Court gave a different interpretation of the law



holding that for parties to a transaction requiring state registration, such transaction becomes binding on them upon its execution (so even before its state registration) and the market now operates largely on this basis.

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 the conclusion of a new lease for a period of less than a year.

13.3 When is state registration of rights to real estate required?

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, and 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. However, the recent interpretation of the law made by the Supreme Court (item 3 of Resolution No. 25 of 23 June 2015 “On Interpretation by Courts of Several Provisions of Chapter 1, Part 1 of the Civil Code”), which was in line with earlier interoperations made by the Supreme Arbitrazh Court, confirms that the parties to a real estate transaction (e.g., a lease) requiring state registration are bound by the terms of their transaction, regardless of state registration. Further to this interpretation, it has become more common for landlords and tenants to enter into long-term leases but not proceed with their registration, in an attempt to save time and effort.

The Registration 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. The Registration Law does not apply to subsoil resources, marine vessels or aircraft.

Prior to state registration of title, land plots and real estate objects (buildings, structures, premises) must undergo cadastral registration. Under the Land Code, only land plots that have undergone state cadastral registration can be bought or sold or be subject to other transactions. The procedures and rules for the state cadastral registration of land and buildings (including premises as parts of buildings) are outlined in the Registration Law. The government agency that performs cadastral recording and state registration of rights to real properties is the Federal Service for State Registration, the Cadastre and Cartography (Rosreestr).

Applications for cadastral recording of real estate objects and state registration of rights to such real estate objects may be submitted simultaneously or divided into two different stages. If applications for



the cadastral recording and state registration are submitted simultaneously, these two actions are to be completed within 10 business days. If an applicant seeks cadastral recording only, the statutory term for its completion is five business days. If an applicant seeks state registration only, the statutory term for its completion is seven business days. However, in each scenario, the cadastral recording as well as the state registration may be extended up to six months as a result of suspension or refusal. The grounds for suspension or refusal of cadastral recording and registration of rights/transactions are specified in the Registration Law. Refusal can be contested only in court.

Further to the Registration Law, starting from 1 January 2017 the cadastral recording and registration of rights to real estate facilities are consolidated into a unified system of recording and data management – the Unified State Register of Real Estate (EGRN) (the “Register”). The Register contains information on the cadastral details of all real properties, including land plots, buildings, structures, premises and other facilities, and indicates the history of a real estate object and its current legal status. Information on state-registered transactions with immovable property is likewise included in the Register. 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 estate object and certain injunctions). From 1 March 2013, the Register has also included the objections of ex-owners to the state-registered ownership right of a new owner, provided that such ex-owner applies to the 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.

Basic information on the cadastral details of a real estate object, the right holder(s) and restrictions (encumbrances) of such rights is open to the public, and can be provided for a fee within three business days to any person submitting a written application to the registration

authority. It is possible to apply for information from the Register electronically.

In accordance with the Registration Law starting from 1 January 2017, an application for state registration of a right to real estate or a real estate transaction, and an application for cadastral recording of a real estate property in question, may be submitted at any territorial department of the governmental authority in charge. The Registration Law also provides for the submission of such applications 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 in the territory of the Russian Federation by December 2018 (in practice, this may happen earlier in certain regions of the Russian Federation, including Moscow).

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 both in hard copy (paper) and electronically, not only with the state registration authorities directly but also through multifunctional governmental and municipal service centres (MFCs).

Upon completion of the cadastral recording and/or state registration, the registration authority issues an extract from the Register in a statutorily defined form that outlines the cadastral details of a real estate object, certifies by which right an object in question is held by a legal entity or individual, and which encumbrances and/or restrictions, if any, are established with regard to such object.

13.4 Is there any 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, in the Register (confirmed by the relevant extract), 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 What are the foreign currency restrictions for effecting payments for leasing and buying 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 How is residential real estate regulated?

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-story (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 the use of residential property for residence by individuals. Residential premises may also be 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 What is mortgage of real properties under Russian law?

13.7.1 What are the general principles of mortgages?

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 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 What is the procedure for 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; and
- (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 by the registration authority 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 cancelled) 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

Further to certain amendments to Part 1 of the Russian Civil Code, which were introduced by Federal Law No. 367-FZ of 21 December 2013 (“**Law 367**”), starting from 1 July 2014, a new concept of “ranking of pledges” has been established, which allows 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 Old 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, mortgage registration procedures have certain specifics. The mortgage of land plots and buildings is to be registered within seven working days and the mortgage of residential property within five working days. State registration of any mortgage certified by a notary is carried out within five working days.

13.8 How Was the Russian Civil Code Amended in 2013–2015?

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 to 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, most of them 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 Old Registration Law.



Subsequent amendments to the Russian Civil Code relating to real estate were introduced by the following laws:

- Federal Law No. 100-FZ of 7 May 2013 (“**Law 100**”). Under Law 100, general provisions on transactions, representation, terms and limitation periods were amended. In particular, transactions that are made in breach of law are now 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 2 July 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 concept of “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 pledges and is described in more detail in Section 7.5 above;
- Federal Law No. 99-FZ of 5 May 2014 (Law 99) deals with numerous amendments regarding legal entities which, to a certain extent, affect real estate transactions;
- Federal Law No. 42-FZ of 8 March 2015 came into force on 1 June 2015 and introduced a number of amendments dealing with general regulation of commercial agreements: new types of security (suretyship securing the due discharge of non-monetary obligations, independent guarantee, security deposit); pre-contractual liability for bad faith negotiations; warranties and indemnities and remedies for their breach. These updates are to be considered while drafting and entering into any type of real estate agreement;

- Federal Law No. 258-FZ of 13 July 2015 gives municipal authorities the right to acknowledge buildings and facilities as “unauthorized structures” (i.e., buildings or facilities constructed without the necessary approvals or permits) out of court, if such buildings or facilities were built on land plots granted in violation of the established procedure or contrary to town-planning and construction regulations. Under Russian law, no transactions are permitted with “unauthorized structures” and the developer of an “unauthorized structure” does not acquire ownership title to it.



14. Privatization

14.1 What is privatization?

Privatization is the disposal of publicly owned property to private ownership for a consideration.

14.2 How is privatization regulated?

The core legal act regulating privatization in the Russian Federation is the Law On Privatization of State and Municipal Property dated 21 December 2001, as amended.

14.3 What property is subject to privatization?

As a general rule, any state-owned property may be subject to privatization. However, Russian law sets certain exceptions from this general rule, such as land, natural resources, property located outside Russia, etc. At the same time, disposing such excluded property is often subject to separate regulation and there may be special procedures for granting rights to private persons with respect to such excluded property (e.g., subsoil licenses with respect to subsoil resources).

In practice, privatization is usually used with respect to shares or equity owned by the Russian state.

14.4 Who acts as the seller of property subject to privatization?

The seller is the owner of the relevant property. This may be the Russian Federation, its constituent territory or a municipal unit. They are usually represented by their respective bodies. For example, the Russian Federation is represented by the Federal Agency for State Property Management (“*Rosimuschestvo*” in Russian).

14.5 Who may purchase property subject to privatization?

Both Russian and non-Russian individuals and legal entities, save for:

- (i) Russian state-owned entities;
- (ii) offshore companies (the list of restricted offshore states / territories is maintained by the Russian Ministry of Finance);
- (iii) entities controlled by an offshore company or its group.

14.6 How is the privatization procedure implemented?

The privatization procedure usually depends on the way in which the relevant property is being privatized. In general, privatization is implemented (at the federal level) through the following consecutive steps:

- (i) The Government of the Russian Federation develops and approves the plan (program) for privatization for the relevant period with respect to particular properties.
- (ii) The Federal Agency for State Property Management determines the way in which the relevant property is to be privatized.
- (iii) The Federal Agency for State Property Management publishes information on the privatization on the official website.⁹⁶
- (iv) Prospective buyers submit their applications and other necessary documentation.
- (v) The winner (buyer of the relevant property) is determined by the Federal Agency for State Property Management on the basis of the submitted applications (in an auction sale, the winner of an auction becomes the buyer of the relevant

⁹⁶ <https://torgi.gov.ru/>.



properties) and a sale and purchase agreement is concluded with the buyer.

14.7 What are the most common ways of privatizing a relevant publicly owned property?

The most commonly used method of privatization is selling publicly owned property at an auction.

15. Language Policy

15.1 Russian is the official state language. What does it mean?

Under Article 68 of the Constitution of the Russian Federation, the state language throughout the territory of the Russian Federation is Russian. However, it does not mean that the use of Russian is exclusive and obligatory in all spheres of public life. The Federal Law On the State Language of the Russian Federation provides for certain areas where Russian is obligatory. Thus, all official election materials, legislation, and other legal acts must be published in Russian. Geographical objects must also be named in the official state language. Judicial proceedings in Constitutional Court, Supreme Court, military courts and federal arbitrazh courts are held in Russian. As was stated by the Supreme Arbitrazh Court, evidence in a foreign language may only be accepted by a Russian court if it is accompanied with a certified Russian translation.

15.2 Is Russian the only state language on the territory of Russia?

Yes, but Russia also respects language diversity. The Constitution upholds the rights of each individual republic within the Russian Federation to establish its own state language. Thus, regional state bodies and local institutions of self-government within Russia's 22 republics may conduct official state business in two languages: Russian and the republic's national language.

The Law of Russia on National Languages provides for the possibility to hold judicial proceedings in federal courts of general jurisdiction, justice of the peace courts and courts of constituent entities of the Russian Federation in the national language of the republic where the respective court is located. In certain spheres (industry, telecommunications, transport, energetics), the use of the local language is allowed alongside the Russian language.



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 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.

15.3 In what particular areas is the use of Russian mandatory?

The Federal Law On the State Language of the Russian Federation establishes a wide list of areas where the use of Russian is mandatory. They include:

- (i) advertising: 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.
- (ii) consumer protection: 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.
- (iii) media and public performances: all media is expected to be in Russian. Cinema exhibitions and public performances of literature and art also require the mandatory use of Russian. The use of a republic's and other national languages on the territory of constituent entities of the Russian Federation is permissible alongside Russian.
- (iv) education: Russian is mandatory while receiving education in all educational institutions. At the same time, under the Law of Russia on National Languages, Russia guarantees the free choice of language of education pursuant to the legislation on

education. Therefore, a republic's national language may be learnt and taught within the federal educational program once the education authority of the Republic provides so. However, learning the republic's national language may not interfere with the obligatory learning of Russian.

15.4 What language should I use while operating my company in Russia?

All companies operating in Russia (as well as all Russian state and municipal bodies), 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 also be conducted in a foreign language as provided in respective agreements between commercial partners.

15.5 Can my company's name be in a foreign language?

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.



15.6 Can I use the official country name to individualize my business?

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 in which more than 25% of the voting shares or of the charter capital is held by the Russian Federation, or companies which are incorporated by the Russian Federation in virtue of special law, whose name contains “Russian Federation” or “Russia” and other derived words 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 as “Russian”) does not require a permit, as was clarified by the Russian Supreme and Supreme Arbitrazh Courts.

15.7 Are there any exceptions to the mandatory use of the Russian language?

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 foreign citizens who are subject to criminal proceedings in Russia to have a Russian interpreter free of charge.

15.8 What authority supervises the mandatory use of Russian according to its rules?

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, particularly 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 an order requiring it to cease and desist from violating the law.

Russian language policy supervision is also performed by the state registration authority, which may force the company to amend its commercial name if it does not comply with the respective language rules on legal entities' names.



16. Contract law

16.1 Are there any mandatory contractual terms under Russian law?

In order to enter into a contract, parties must agree on all of its essential terms, otherwise the contract may be deemed unconcluded.

By default, the subject matter is considered to be an essential term for any agreement, while other essential terms may be provided by law or may be declared by either party as essential for the agreement to be concluded. For example, under Russian law a construction agreement must contain at least the following essential terms: (i) the subject matter and (ii) the period (deadline) for performing construction works.

Parties are free to agree on the terms of a contract they enter into at their own discretion, unless such contractual terms contradict mandatory provisions of Russian law.

16.2 What types of contracts are recognized under Russian law?

Parties are free to enter into any type of contract, irrespective whether or not such type of contract is expressly recognized by law.

Certain types of contracts are directly specified by law, including, sale and purchase; donation; rent; contractor's agreement; performance of services; transportation; forwarding; loan; bank deposit; storage; insurance; agency; trust management; franchising and simple partnership contracts.

Russian law also specifies various contractual instruments, such as an option agreement, framework agreement and subscription agreement (contract to be performed on demand).

While the parties are free to conclude any contract, including those which are not specified or different from the framework set out in the law, the prevailing enforcement practice underlines that parties cannot agree on terms which breach the mandatory rules of the law or contradict the law's objectives (the so-called "purpose of regulatory legislation").

16.3 Are there any rules for entering into a contract?

The Russian Civil Code specifies various rules for entering into a contract. For example, a contract is concluded when a single document is signed by both parties. Other requirements include an offer to enter into a contract and its acceptance, conditional acceptance, option to enter into an agreement, late acceptance, and conclusion of contracts at an auction.

When negotiating and entering into a contract, the parties must act in good faith, which includes an obligation to provide accurate and complete information as required by law or regarding the substance of the negotiated transaction. If a party suffers due to the other party acting in bad faith, it may claim for compensation of damages from the offending party.

16.4 How to secure proper performance of a contract under Russian law?

Russian law provides for various instruments to secure the proper performance of a contract, including pledge, surety, independent guaranty, earnest money, security deposit, withholding of property and penalty (fine). The parties are free to agree to any of the above security options, as well as any other mechanism, even if it is not specifically listed in the law. Among other security instruments which are not expressly specified by law, there are credit limit management instruments with respect to deferred payment contracts, due diligence, change of control, etc.



16.5 What are the rules relating to alteration or termination of contracts?

A contract may be altered or terminated by mutual agreement. In addition, a party may unilaterally claim for the agreement's alteration or termination through the court. A party may submit such claim in court if there is either a material breach committed by the other party or a substantial change in the circumstances which were the basis for the parties to enter into that agreement.

Unless otherwise provided by law, a party may also unilaterally alter or terminate the agreement, if such a right is established by law or the agreement. Based on the terms of a particular agreement, a party unilaterally altering or terminating the agreement may have to pay additional compensation to the other party. Please note, however, that in certain cases Russian law protects the rights of a weaker party to an agreement, and limits the right of a stronger party to unilaterally alter or terminate the agreement (for example, in case of an adherence agreement).

A similar approach has been developed in the practice of Russian courts where the parties cannot agree on a unilateral alteration or termination of the agreement, and such alteration or termination contradicts the law's objectives. For example, Russian courts confirmed that a lease agreement concluded for an indefinite period cannot limit parties' rights to terminate such agreement because this limitation would effectively lead to the lease agreement becoming eternal.

Based on the same approach, Russian courts have established that the parties cannot agree on a penalty which effectively blocks a party's right to terminate or alter the agreement, if such right is established by law. For example, under Russian law, a contractor may unilaterally terminate the service agreement, provided that the contractor compensates the customer's loss. While it is acknowledged under Russian law that the contractor's right to terminate the agreement may be conditioned to the contractor's payment of an additional penalty to

the customer, according to Russian courts such penalty may not constitute an amount which is incomparable to the customer's potential losses; otherwise such penalty effectively deprives the contractor from his/her right to terminate the service agreement established by law.

16.6 What are the rules relating to invalidity of contracts?

There are two types of invalid contracts: (a) so-called “voidable transactions” which may be declared invalid based on the court's decision; and (b) “void transactions” which are invalid, irrespective of the court decision.

The following limitation periods apply to claims for invalidation of a contract: (i) for a void transaction – three years from the moment when a party knows or should have known about the transaction; and (ii) for a voidable transaction – one year. In any case, the limitation period cannot be more than 10 years from the moment when a party's right has been breached.

Please note that under Russian law a party acting in bad faith loses its right to claim that a transaction is invalid. For example, if such party knew that the transaction is invalid, or its actions demonstrated the intention to maintain the transaction or gave others a ground to believe that the transaction is valid.

Parties to an invalid contract have to return everything received under such contract and if the return of particular assets is impossible, e.g., because they were consumed, then they must compensate their value.

16.7 Contract liability and its limitation

Unless otherwise specified by law or parties' agreement, a suffering party is entitled to claim for a full compensation of its losses and specific performance (if the latter is possible).



In particular, a suffering party may claim compensation of (i) its actual losses (“real damages” under Russian law), (ii) its lost profit caused by infringing party and (iii) damages to business reputation or individual’s moral harm. Please note, that Russian courts support not only a compensation of fully proven losses, but also grant compensation up to the amount of losses which is proven with a reasonable degree of credibility (see, for example, the Resolution of the Supreme Court of the Russian Federation No. 7 dated 24.03.2016).

Under Russian law, business-parties to an agreement may agree to limit their liability under the agreement. That is, the company will be liable for any breach of the agreement, but up to an amount not exceeding the limit set forth in such agreement (such as the contract price, for example).

Importantly, if the contract limits the party’s liability to a very low nominal amount, there is a risk that the court may deem such limitation as essentially a total exclusion of liability, which is prohibited under the law. In this case, the party’s liability will be considered unlimited. In particular, the court may hold that a contract, in which the party’s liability is many times less than the amount its counterparty “invests in the transaction”, is too burdensome for such counterparty. Thus, the court may hold that the limitation of liability clause is invalid.

Please note that under Russian law the parties cannot limit or exclude the following types of liability:

- non-contractual liability (e.g., liability for tort, IP infringement);
- liability before third parties which are not the parties to the contract;
- liability for willful breach of the contract;

- liability for “harm” caused to the person, the property of an individual, or the property of a legal entity;
- liability for moral harm (damages to business reputation); and
- other liability that may not be limited under Russian law.



17. Intellectual Property

17.1 What is the regulatory environment of IP rights protection in Russia?

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 national law requirements 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 (PCT), the Eurasian Patent Convention regulating Eurasian patent applications and Eurasian patents for inventions, the Hague Agreement Concerning the International Registration of Industrial Designs (starting from 28 February 2018), the Patent Law Treaty (PLT), 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 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, the WIPO Copyright Treaty and the WIPO Beijing Treaty on Audiovisual Performances.

17.2 What IP rights may be protected in Russia?

Russian law distinguishes two groups of assets that are or may be granted IP protection in Russia:

- (i) results of intellectual activity, namely:
 - works of science, literature and art; software (protected under author’s rights regime);
 - databases; performances; phonograms; radio- or television transmissions broadcasts by cable (protected under neighboring rights regime);
 - inventions; utility models; industrial designs (see section “Patents” below);
 - selection attainments;
 - topographies of integrated circuits (see section “Topologies of Integrated Microcircuits” below); and
 - secrets of production (know-how);



- (ii) means of individuation of companies, goods, works and services, namely:
- trademarks and service marks; appellations of origin (see section “Trademarks, Service Marks and Appellations of Origin of Goods” below);
 - commercial names; trade names (see section “Company Names and Trade Names (Commercial Designations)” below).

17.3 Overview of IP Objects Protected in Russia

Patents

In Russia, patents may be obtained with respect to inventions, utility models and industrial designs.

17.3.1 What is an invention?

An invention is a *technical* solution in any field related to a product (inter alia, to a device, substance, composition, system, microbial strain, cell culture of plants and animals) or a method/process, including the use for new purpose of the known product and method. Patent protection is given to an invention if it meets the novelty, inventive step (non-obvious from prior art), industrial applicability criteria and is sufficiently disclosed in the description for its implementation. Any one of the listed requirements may be further challenged in order to nullify the granted patent by initiating an invalidation action before the Chamber for Patent Disputes.

The maximum duration of patent protection for an invention is 20 years from the application filing date, subject to payment of annuities beginning from the third year from the filing date and only after the patent is granted. 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, and is granted for any corresponding invention(s) protected by the patent (so-called “patent term extension” - PTE).

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 of the Russian Federation (“**Rospatent**”) which is the Russian Patent Office. It is allowable to obtain both types of patents, Russian and Eurasian. The latter is granted by the Eurasian Patent Organization (EAPO) which is located in Moscow.

17.3.2 What Is A Utility Model?

A utility model is a *technical* solution pertaining to a device only. Utility model protection is similar to that of inventions, with certain limitations and restrictions. A utility model is granted patent protection if it meets the novelty, industrial applicability criteria and is sufficiently disclosed in the description for its implementation. The term of a utility model’s patent protection is 10 years from the application filing date, subject to payment of annuities beginning from the first year. One application can cover only one device; variants are not allowed since 1 October 2014.

17.3.3 What is a design?

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 visually observed on the images support worldwide novelty and originality, which are two patentability requirements. An industrial design is deemed novel if the combination of its essential features in the images is not known from information sources publicly available in the world before the priority date of the industrial design. An industrial design is considered original if its essential features in the images reflect the creative character of a product as compared to known designs. 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 10 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). The Hague Agreement Concerning the International Registration of Industrial Designs is applicable in Russia since 28 February 2018.

17.3.4 How are patentable works protected?

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 (the CIS). For more information, please visit <https://www.eapo.org/en/>. Russia is a member state of the Convention. Both Russian and Eurasian patents for inventions can be obtained to protect inventions in Russia. Utility models and industrial designs are not covered by the Convention and can be protected only under national patent law.

17.3.5 Can granted patents be invalidated?

A granted Russian patent can be invalidated on a limited number of grounds, such as the patented invention, utility model or industrial design not complying with the patentability requirements 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.

17.3.6 What rights are vested in a patent?

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 commercially 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. 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 but it is possible to extend an agreement to earlier relations of the parties by stating so in the term of validity clause.

17.3.7 What constitutes use of a patent?

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 (since 1 October 2014 equivalence is applicable to inventions only). Equivalence of a feature is generally assessed according to the criteria of identical or adequate replacement and achievement of the same technical function/effect which became known as such before the priority date.

17.3.8 What patent infringement remedies are available in Russia?

Infringement of patent rights may entail civil, administrative and even criminal liability in accordance with the applicable legislation (see question on IP rights enforcement below).

Civil remedies are contained in the Civil Code of the Russian Federation (see question on IP rights enforcement 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.

17.3.9 What should one know about 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; and
- 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 when 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 question on IP courts below).

Trademarks, Service Marks and Appellations of Origin of Goods

17.3.10 What is a trademark?

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.

17.3.11 How to get a trademark protected in Russia?

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 10 years from the filing date of the application, and may be renewed during the last year of validity for a subsequent 10-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. The request for cancellation may be filed before the IP Court with respect to registered trademarks or service marks that, as of the date the cancellation request is filed, have not been used in Russia for a consecutive three-year period. 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.

17.3.12 How are famous/well-known trademarks protected in Russia?

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 as well-known may be used in order to ban the 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.

17.3.13 What is an appellation of origin?

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.

17.3.14 How to obtain protection of an appellation of origin and right to use it?

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 who 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 10 years from the date of filing the application, and may be renewed for a subsequent 10-year period. The owner may not grant licenses for use of the appellation of origin of goods.

17.3.15 How to enforce rights to a trademark and/or an appellation of origin?

Infringement of rights to a trademark, service mark or appellation of origin of goods may entail civil, administrative or criminal liability (see question on the IP rights enforcement below).

17.3.16 What are company names and trade names (commercial designations) and how are they protected?

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.

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.

Copyrights and Neighboring Rights

17.3.17 What works are granted protection by copyright?

Part IV of the Civil Code protects works of science, literature and the arts (copyright works), 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.

17.3.18 What rights does an author have?

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.

17.3.19 What is the term of copyright protection in Russia?

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.



Software Programs and Databases

17.3.20 Are software programs and databases protected in Russia?

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.

Topologies of Integrated Microcircuits

17.3.21 Are topologies of integrated microcircuits protected in Russia?

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 10 years from the date of its initial use or from the date of the topology's registration, whichever is earlier.

Trade Secrets (Know-How)

17.3.22 What information is recognized and protected as trade secret (know-how) in Russia?

Rules on trade secrets (know-how) are included in 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, information of any nature (production, technical, economic, organizational, etc.) relating to the results of intellectual activity in the scientific and engineering spheres, as well as the methods of carrying out professional activity, 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, in particular, by establishment of a special trade secrets regime with regard to such information.

All these 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.).

17.3.23 What steps should be taken for legal protection of trade secrets (know-how)?

Pursuant to the Trade Secrets Law, the trade secrets regime includes the following steps and actions can be taken by an entity in order to protect (and have others respect) its trade secrets (know-how):

- create a list of information constituting a trade secret;
- limit access to the trade secret by establishing and implementing controlling procedures;



- list the persons who have been given access to the trade secret, including, e.g., employees and counterparties of the trade secret owner;
- regulate the relations on use of the trade secret by employees on the grounds of employment agreements and by contractors on the grounds of civil agreements; and
- affix “trade secret” markings on tangible media (documents) containing the trade secret with a reference to the owner of such information and his/her/its full name and address.

The trade secrets regime is deemed established if and when the trade secret owner performs all the above-mentioned actions. Otherwise, it may be the case that the company is unable to prove that certain information constitutes know-how under Russian law and, consequently, to protect its valuable information as valid intellectual property.

17.3.24 What steps need to be taken to ensure legal protection of trade secrets (know-how)?

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):

- create a list of information constituting a trade secret;
- limit access to the trade secret by establishing and implementing controlling procedures;
- list the persons who have been given access to the trade secret, including, e.g., employees and counterparties of the trade secret owner;
- regulate the relations on use of the trade secret by employees on the grounds of employment agreements and by contractors on the grounds of civil agreements; and

- affix “trade secret” markings on tangible media (documents) containing the trade secret with a reference to the owner of such information and his/her/its full name and address.

The trade secrets regime is deemed established if and when the trade secret owner performs all the above-mentioned actions. Otherwise, the company might be unable to prove that certain information constitutes know-how under Russian law and, consequently, to protect its valuable information as valid intellectual property.

17.4 Are domain names protected and recognized as IP objects in Russia?

Part IV of the Russian Civil Code does not list domain names among objects of intellectual property. A registered domain name by itself is not considered as a prior right impeding registration of a trademark.

The domain names in the .RU and .PΦ gTLDs 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 but non-exhaustive 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.

17.4.1 What is the current court practice in domain name disputes?

In 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 disputes concerning domain name in .RU and .РФ domain zones that are not amicably resolved need to be taken to a court.

A few years ago, there was a consistent judicial court practice based on the position of the Higher Arbitrazh Court⁹⁷. According to that practice, disputes on domain names used for commercial activities were generally considered by the arbitrazh (state commercial) courts, regardless of whether the defendant is an individual or a legal entity/individual entrepreneur.

However, according to the recent clarifications from the Russian Supreme Court, disputes involving respondents that are individuals (i.e., not legal entities or individual entrepreneurs doing business professionally) should be considered by the court of general jurisdiction, not by the arbitrazh courts considering commercial disputes.

According to the position initially adopted by the Higher Arbitrazh Court and then supported by the Russian IP Court, courts should verify the following criteria to find a domain name holder responsible for trademark infringement:

- whether the domain name at issue is confusingly similar to the trademark;
- whether the domain name holder has any rights or legal interests with respect to the domain name; and
- if the domain name is registered and used in bad faith (e.g., the domain was registered for its subsequent sale or rent to the legitimate right holder or its competitor, or the domain was

⁹⁷ On 6 August 2014, the Higher Arbitrazh Court, the supreme judicial authority in the system of Arbitrazh (state commercial) courts, terminated its activity and its authorities were transferred to the Russian Supreme Court.

registered to create obstacles for the competitor's business, or to intentionally mislead consumers, etc.).

17.5 Who owns the intellectual property rights to employee creations under the Russian law?

As a general rule of Russian law, an employer obtains rights (including the exclusive right) to the intellectual property 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.

17.5.1 What are the rules for remuneration of employees who create intellectual property assets?

The amount of remuneration for creation of intellectual property and its payment to an employee is established in an agreement between the employee and the employer. Should the employee and employer fail to reach such an agreement, the amount of such remuneration and other payment terms may be established by a court at the request of either party.

The Russian Government adopted rules on the calculation of remuneration payable to employee inventors who have created patentable solutions, including an invention, utility model, or industrial design.

Specifically, these rules entitle the employee inventor to receive a payment equal to 30% of his/her average monthly salary (for the last 12 months preceding the creation) for the creation of an invention, and 20% of his/her average monthly salary (for the last 12 months preceding the creation) for the creation of a utility model or an industrial design. In addition, the employee inventor is entitled to



receive an average monthly salary for each 12-month period during which the invention, utility model or industrial design is used by the employer. The employee inventors are also entitled to 10% of the licensing fees the employer receives under a patent license, and to 15% of the remuneration received by the employer as consideration for the assignment of the patent. These rates of remuneration apply in the absence of a specific agreement between the employer and employee covering these issues.

17.5.2 How to ensure that rights to employee creations are vested in the employer?

To ensure that all rights to the intellectual property created by employees are vested in the employer, the latter should take the following steps:

- draft an employment agreement as well as other employment documents (i.e., job descriptions) to ensure that any intellectual property which has to be, or might be, created by an employee would fall into the scope of his/her employment duties;
- 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 (it is highly advisable to enter into such agreements with employees who are likely to create patentable solutions in order to avoid application of the rules on remuneration established by the Russian Government);
- the employer should take timely measures provided by the Russian Civil Code (Part IV) 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.).

17.6 What are the legal requirements applicable to license and franchise agreements?

Under a general rule of Russian law, a grant of the right to use intellectual property in Russia may 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.

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.

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 of the licensed trademarks) and specify the scope of rights granted to a licensee. From a Russian law perspective, the right to use 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.

17.7 How can infringed IP rights be enforced in Russia and what are the available remedies?

Infringement of IP rights may entails civil, administrative or criminal liability.

17.7.1 What are the procedures and sanctions applicable in case of a public prosecution of IP infringement?

Criminal and administrative actions are initiated by the police, the Federal Antimonopoly Service and local customs, other state bodies authorized to investigate IP infringement (such as Rosпотребнадзор, the Federal Service for Consumer Rights Protection and Human Wellbeing) or by the mark owner filing a complaint with one of the above agencies.

To qualify for criminal proceedings, the infringement should result in gross damage to an IP right/trademark owner or consumers. Damages are considered to be “gross” if they are equal to or exceed 250,000 rubles. Repeated infringement can also be subject to criminal proceedings. The authority in charge will investigate the case and submit the case files to the court for further consideration and a decision. 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, forced or compulsory works or imprisonment.

Administrative sanctions (fines, confiscation of infringing products) are applicable to both 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.

17.7.2 What are the civil remedies for IP infringement available in Russia?

Remedies under civil proceedings include the following:

- Recognition of the IP rights by the court;
- Cessation of the actions that infringe the right or create the threat of such infringement;
- Payment of damages or – alternatively for patent, trademark, appellation of origin, copyright and related rights holders – of monetary compensation in the amount of:
 - from RUB 10,000 to RUB 5 million; or
 - double the value of the counterfeit products - for copyrights, related rights, trademarks, appellation of origin;
 - double the royalties that would be due under similar circumstances - for patents, trademarks, copyrights and related rights;
- Seizure of material carriers containing unauthorized representation of the IPRs; and



- Publication of a court decision on an infringement.
- In addition to the above enforcement options that can be applied to all IPRs, Russian law additionally provides an option to block the websites that infringe exclusive rights to copyrighted works, except photos, through the Moscow City Court (see section “What Mechanisms Can IP Owners Use to Combat Online Piracy in Russia?” below).

17.8 Are there any specialized IP courts in Russia?

Yes, 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 cannot 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.

17.9 What mechanisms can IP owners use to combat online piracy in Russia?

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.

On 1 May 2015, blocking injunctions also became available to owners of other categories of copyrighted content (with the exception of photographs).

17.9.1 What is the procedure for getting an injunction against online copyright infringement?

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 online 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 the notice 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.

In case of repeat violations, the Moscow City Court can permanently block the entire website.

Additionally, according to the amendments, beginning 2017 the right-holder now has the right to approach Roskomnadzor and ask it to block “mirrors” of the websites that were permanently blocked by the Moscow City Court due to repeat copyright infringement. Once Roskomnadzor receives such a request, it can issue the relevant ruling with respect to the new website as a “mirror” of the permanently blocked one and that the “mirror” should be blocked by the telecom providers and removed from the search results of search engines.

17.10 Can Internet Service Providers (ISP) be held liable for infringing content placed by third party users?

The law explicitly states that ISPs cannot be held liable for limiting access to the Internet under this procedure.

There are three types of providers identified by the new law:

- persons transmitting 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).

17.10.1 Are there any “safe harbor” rules allowing ISPs to avoid liability?

An internet access provider cannot be held liable if it (i) does not initiate the transmission, (ii) does not alter materials (except for technical purposes), and (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 cannot 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, and (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 simply says that the above rules apply to this category, without any further specifications.

Notwithstanding the above, the new legislation states that even if an ISP meets the above requirements, 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 individuals, 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. Thus, 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 (claw-backed) during insolvency proceedings. One of the instruments introduced to improve attitudes towards bankruptcy is the liability for controlling persons (i.e., management, shareholders, participants and other persons affiliated somehow with a debtor) responsible for the bankruptcy of a company.

Russian insolvency is applicable to both companies and individuals, including those who are not engaged in any business activities. Separate rules are applied with respect to bankruptcy of core companies, farms, financial organizations (e.g., banks, insurance companies, etc.), strategic enterprises, natural monopoly entities and developers.

18.2 What law applies?

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 of the Supreme Court and other courts, designed to standardize insolvency in practice.

18.3 What are the requirements to initiate the Insolvency?

Insolvency (bankruptcy) proceedings in Russia can be initiated either by a creditor or the debtor.

Initiation by Creditor: Any creditor can initiate bankruptcy proceedings, provided the debt owed by the company to such creditor (i) is confirmed by a court decision or an arbitral award, (ii) exceeds RUB 300,000 (approx. USD 5,000 at the current exchange rate), and (iii) is at least three months overdue.

The same is applicable to bankruptcies of individuals with the exception that the debt must exceed RUB 500,000 (approx. USD 8,400).

Credit institutions may initiate bankruptcy proceedings without the court decision requirement.

Initiation by Debtor: Under the Bankruptcy Law, the debtor must file an application with the court for its bankruptcy if it is unable to fulfil its outstanding obligations and its overall indebtedness exceeds RUB 300,000 (approx. USD 5,000) for companies and RUB 500,000 (approx. USD 8,400) for individuals.

The court judgment requirement was designed to protect debtors from frivolous filings. Its downside is that it causes delays for creditors seeking to quickly initiate the procedure. 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, provided they file a notification with a public state registry 15 days prior to initiating such proceedings. Under current court practice, the



term “credit institution” covers not only banks with a Russian license, but banks with licenses under their law of incorporation as well. Furthermore, tax and customs authorities are also authorized to initiate bankruptcy proceedings without a court judgment 30 days after the relevant authority rendered a decision to collect the amounts due from the debtor.

The law requires debtor companies and individuals to file a petition for insolvency within one month of determining that satisfying one creditor would make it impossible to satisfy their other debts in full, or if the debtor is more than three months late in paying salaries to its current employees and/or severance pay to former employees.

Starting from January 1, 2018 the debtor’s creditor, the debtor, the employee or the former debtor’s employee may file the bankruptcy petition to court and initiate the bankruptcy proceedings only if they published a prior notice on their intention to file the bankruptcy petition to the Unified federal register of the information on legal entities’ activities. Such notice shall be made no later than fifteen (15) calendar days before the bankruptcy petition is filed to court.

18.4 What are the stages of insolvency?

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 vary depending on the circumstances of the insolvency, include financial rehabilitation, external management, liquidation and amicable settlement.

As for individuals, the Bankruptcy Law provides two types of procedures – debt rescheduling and seizure of property.

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 the “Kommersant” newspaper.

It is no longer permissible for tax authorities to strike off from Federal State Register of Russian Legal Entities those non-operating (inactive) entities which are going through bankruptcy proceedings. This principle, which was established by the Act of the Russian Constitutional Court, is aimed primarily at protecting creditors' interests and ensuring their right to receive satisfaction.

18.4.1 Supervision

The main aim of the supervision stage is to have a court-appointed temporary (bankruptcy) administrator secure and value the debtor company'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 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 for: (i) any transactions involving the company's assets with a value of 5% or more of the book value of the debtor's assets as of the date of commencing supervision; and (ii) granting/receiving loans, assignment of rights, transferring debts, granting guarantees/suretyships, putting the debtor's assets into trust, etc. Second, the debtor (its management bodies) is prohibited from buying shares from its shareholders, issuing bonds or paying dividends, taking decisions on reorganization, liquidation, or establishment of branches or representative offices, or participating in joint ventures, associations and holding companies.



After the supervision stage has commenced, no penalties or any other financial sanctions may be imposed on a debtor for failure to perform its obligations. Instead, the amount claimed by creditors accrues interest in accordance with the refinancing rate set by the Central Bank of Russia.

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 this period is often extended.

18.4.2 Financial Rehabilitation

This procedure is rarely used in practice. It may be introduced if a debtor 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 repaying 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 an investor is prepared to invest into and develop the business.

18.4.3 External Management

External management is aimed at restoring the debtor company 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.

18.4.4 Bankruptcy Liquidation

In contrast to other jurisdictions where insolvency proceedings are often used to defend a company from its creditors and help it recover from a difficult financial situation, in Russia most insolvency proceedings end up with the liquidation of the company. Thus, bankruptcy liquidation is 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. 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.

18.4.5 Debt Rescheduling

Debt rescheduling can be applied to individuals to repay their debts in up to three years. The procedure may be initiated by the debtor if he/she contemplates insolvency and is unable to pay his/her debts and/or has insufficient property to pay.

A court's decision that the application for bankruptcy is justified has consequences similar to bankruptcies of companies, namely, the debtor may not perform its obligations towards creditors and may not conduct obligatory payments, including payments required by court decisions in force. The court decision also accelerates the maturity of all obligations for the purposes of bankruptcy proceedings.

The starting point is the draft debt rescheduling plan, which is to be prepared either by the debtor or the creditor. In case no draft is presented within two months after the court's decision to initiate



bankruptcy proceedings, the financial manager should propose seizure of property.

The plan is subject to approval by the first creditor's meeting by a simple majority. If voted in favor of, the plan must be approved by the court. The court can enforce the rescheduling plan even if it is not approved by the creditor's meeting, provided the court finds that the rescheduling will satisfy substantially more claims (at least 50% of registered claims) than immediate seizure of property.

The rescheduling is terminated by virtue of a court decision if all claims have been satisfied. If not all claims be satisfied, the creditors may file a motion with the court to cancel the debt rescheduling plan not later than 14 days before the end of the period provided for repayment.

18.4.6 Seizure of Property

A competent court initiates the seizure of property of individual in the following cases:

- the debtor and the creditors have not proposed a draft debt rescheduling plan;
- the creditors' meeting has not approved the draft debt rescheduling plan and a court has refused to approve the debt restructuring schedule; and
- the debt rescheduling plan has been cancelled.

The procedure to seize property procedure must be conducted within six months, but this term may be extended by a court. Only the financial manager is entitled to exercise any rights over the debtor's property and his/her mission is to appraise the property of the estate and sell it.

A debtor is discharged from his/her obligations once the seizure is completed, unless:

- the debtor has been found criminally or administratively liable for illegal actions in the course of bankruptcy proceedings;
- the debtor knowingly provided incomplete or false information;
- the debtor acted in breach of the law when a creditor's claim arose or during its performance; or
- the debtor has been declared bankrupt within five years after the previous bankruptcy.

An individual may not file for voluntary insolvency within five years after bankruptcy. He/she is also barred from managing legal persons for three years and is obligated for the next five years to notify a creditor under a credit or loan agreement of the fact that he/she has been declared bankrupt.

18.4.7 Amicable Settlement

The creditors and the debtor company or an individual 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.

18.5 What is the role of bankruptcy manager?

The Bankruptcy Law provides that 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 responsible for establishing and monitoring requirements and standards for bankruptcy managers. If the court concludes that the proposed candidate meets the legal requirements, it will approve this candidate as bankruptcy manager. According to



recent amendments, a debtor may no longer propose a nominee for the bankruptcy manager position, even if the debtor initiates bankruptcy proceedings. Instead, a self-regulating organization is to be established in accordance with the guidelines which are to be adopted by the Ministry of Economic Development. The authority of a bankruptcy manager has recently been expanded to include the right to request and obtain information on managers, controlling persons and data of a classified nature.

The bankruptcy manager plays a key role in the bankruptcy procedures and their identity is therefore very important. The bankruptcy manager is empowered to request that a debtor's shareholder(s) be made secondarily liable or to claim for the invalidation of transactions entered into by an insolvent company prior to or after commencing bankruptcy proceedings.

At the same time, the Bankruptcy Law provides the possibility for the court to remove the bankruptcy manager, for example if the bankruptcy manager improperly performs his/her duties, and in several other cases stipulated by law.

18.6 When may transactions be challenged?

Transactions of the debtor may be claw-backed (challenged) under the Insolvency Law on the following insolvency-specific grounds: suspicious and preferential transactions. Changes adopted in 2014 have extended the scope of persons entitled to claw-back transactions beyond only bankruptcy managers. Now a bankruptcy creditor with more than 10% of the total bankruptcy claims in the register of claims also has the right to claw-back transactions.

Two types of transactions are defined as suspicious: 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 was concluded within one year prior to, or after the initiation of, insolvency proceedings against the debtor.

A transaction which is deemed to infringe creditors' rights may be claw-backed 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; and
- the transaction was concluded within three years prior to, or after the initiation of, insolvency proceedings against the debtor.

A transaction gives preference to an existing creditor and may be claw-backed if such transaction was concluded within six months (in some cases within one month) prior to or after the initiation of insolvency proceedings against debtor and if such transaction:

- provides for security for an existing creditor;
- entails any change of priorities in which the existing creditors' claims are satisfied;
- may entail satisfaction of claims that have not yet matured; or
- results in preferential satisfaction of claims of one creditor over other creditors' claims.

Starting from 2016, a transaction cannot be claw-backed on the above grounds if relates to the fulfilment of monetary obligations following from a loan agreement or to the obligation of making mandatory



payments to other bankruptcy creditors (authorized bodies) that matured at the moment of execution. 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.

In accordance with the recent amendments, information regarding claims to invalidate a transaction and corresponding court decisions must be made publicly available through the Uniform Federal Register of Information on Bankruptcy.

18.7 How are creditors paid in insolvency?

Russian law envisages the following ranks of claims (creditors):

Priority Rank: Current expenses, which are monetary obligations that arise after the application for bankruptcy has been filed with the court, such as court expenses and bankruptcy manager expenses, have priority over the claims of all other creditors; Russian law sets out the following order for settling current expenses: (i) court expenses and bankruptcy manager remuneration and expenses associated with engaging other persons, whose participation is mandatory under the Insolvency law; (ii) claims regarding salaries and severance pay; (iii) expenses associated with engaging persons whose participation in the bankruptcy proceedings is not mandatory; (iv) utility and maintenance charges; and (v) other current claims.

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. Among such, claims of employees regarding their salaries and severance payments in the amount of RUB 30,000 per month per person are to be settled first, followed by the remaining claims of employees regarding their salaries and severance payments. Should any property remain after that, royalties to the authors of intellectual property items become subject to payment.

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. If the pledge was to secure the debtor's obligations under a credit agreement, 80% of the proceeds from the sale of the assets shall go to the creditor and the remaining 20% shall be used to cover claims of the creditors of the first and second ranks, as well as the court and bankruptcy manager expenses.



For individuals, 80% of the proceeds is used to discharge the pledger's secured obligations, with 10% directed towards satisfying the claims of creditors of first and second priority and the other 10% used to cover court and other costs.

18.8 How are secured debts handled?

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. Written consent of a secured creditor must be obtained if the pledged assets are on sale together with other assets. Importantly, the court is allowed to prohibit levy of execution over the pledged assets if this will entail an inability to reinstate the debtor's solvency.

In 2015, the capacity of secured creditors to vote at creditors' meetings was expanded. Previously, secured creditors were allowed to vote during the supervision stage and during the financial rehabilitation stage or external management stage, provided such creditors did not levy execution over the pledged property. Now, secured creditors can also vote on matters of electing a bankruptcy manager, or filing for dismissal of the bankruptcy manager, as well as on any matters during debt rescheduling or seizure of property of individuals.

The secured creditor may choose to waive, or not to exercise, the right to levy execution on the pledged assets prior to the debtor being declared bankrupt. In such case the assets will be sold at a public auction in the course of liquidation. 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).

18.9 What are the grounds for secondary liability of controlling persons?

Vicarious Liability

Under the Insolvency 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 (i) the controlling person failed to file the bankruptcy petition to court although the bankruptcy indications of the company were evident, (ii) it is impossible to satisfy creditors' claims in full due to the fault of the controlling person.

Starting from July 30, 2017 the rules of Insolvency Law on secondary liability have been significantly amended and the list of persons subject to secondary liability was expanded.

According to the new rules of Insolvency Law, 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 (an owner of more than 50% of the debtor's shares, other persons who controlled or had significant influence on the bankrupt's actions by kin or position, or could force the bankrupt to enter into unprofitable transactions, and who could do so within the three years prior to the initiation of the bankruptcy proceedings). The status of controlling person may be attributed to a person due to the exercise of corporate control over the company. Moreover, a person who, although not having any formal relations with the company (being neither director nor shareholder), still benefits from the unlawful and bad faith activity of the directors, managers and shareholders of the company, is subject to secondary liability.



Under the Insolvency 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 due to the actions (omission) of the controlling person.

The Insolvency Law provides for two main grounds to hold the controlling persons secondarily liable: (i) failure to file for bankruptcy in due time, (ii) impossibility to satisfy creditors' claims in full due to the fault of the controlling person.

i. Liability for failure to file for bankruptcy

The company's director is obliged to file a bankruptcy petition with a court to declare the company bankrupt within the period of one month from the moment when a reasonable director acting in good faith should have known about the company's insolvency and the insufficiency of funds/assets to meet the company's obligations. In case of failure to submit such a petition, the director will be held secondarily liable.

The responsibility to monitor the financial standing of the debtor and to file for bankruptcy if necessary extends not only to the company's director but also to its shareholders. If the bankruptcy indications are evident and the company's director does not file for bankruptcy, the shareholders are obliged to convene a general meeting to decide to file for bankruptcy. If both director and shareholders fail to do so, they are subject to joint liability.

The filing of a bankruptcy petition shall be deemed necessary in the following cases:

- if the satisfaction of the obligations before a certain creditor or group of creditors leads to the impossibility to satisfy the claims of other creditors,
- if the seizure of the company's assets under certain claims will make further business activity impossible, and
- if the company has indications of insolvency or bankruptcy.

ii. Liability for impossibility to fully satisfy creditors' claims

The Insolvency Law also permits the controlling persons to be held secondarily liable if the satisfaction of creditors' claims is impossible due to the actions (unlawful omission) of said persons.

To build a secondary liability case on these grounds, it should be proven that (i) the controlling persons' actions caused damage to the company, (ii) the controlling persons' actions were unlawful (the fault criterion), (iii) there is a causal link between the unlawful actions of the controlling persons and the damage incurred.

The company's directors and managers are deemed to be at fault in the following cases:

- provision of inaccurate information to state registers (the companies register, the register of facts about legal entities' activities),
- misrepresentation or absence of accounting reports and corporate documents if such actions hinder bankruptcy proceedings (if such circumstances are proved, in addition to the company's CEO and chief accountant, external accountants and organizations retained for keeping records may be held liable).



The fault of the shareholders and other controlling persons not formally involved in company's corporate structure may be proven if:

- the actions of such persons significantly worsened the financial standing of a debtor that was already insolvent,
- it is proven that their actions (or omissions) make it impossible to satisfy creditors' claims, more than half of which comprise claims arising out of administrative, criminal or tax offenses.

The controlling persons may be also held liable for losses if the company files for bankruptcy in circumstances when it was in a position to fully satisfy creditors' claims. The court may also recover damages from controlling persons if they failed to challenge groundless creditor claims either at the initiation of bankruptcy proceedings or in the course of bankruptcy.

Under the new rules of the Insolvency Law, the controlling person must prove the absence of its fault in the company's bankruptcy. In practice, this means that the controlling person must demonstrate to the court that it acted as a reasonable manager and did its best to minimize the risk of the company's bankruptcy. The amendments to the rules on secondary liability reflect the trend to increase the chances of holding the controlling persons liable for the company's debts and to significantly simplify the burden of proof for persons seeking secondary liability.

The court practice on secondary liability is emerging and the number of cases where the controlling persons are held secondary liable is expected to increase.

In practice, there has been one high-profile case where the creditors successfully sought orders for disclosure of assets and a freezing order regarding the controlling person's assets globally in English courts in support of the bankruptcy proceedings in Russia. It should, however,

be noted that English courts must have jurisdiction over the case to be able to support bankruptcy proceedings in Russia.

Information on claims against controlling persons for secondary liability must be made public through the Uniform Federal Register of Information on Bankruptcy, as well as information on subsequent court decisions on such matters.

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:

- fraudulent actions aimed at concealing the assets of the debtor;
- intentional bankruptcy (when the director intentionally takes business actions that ultimately result in the bankruptcy of the debtor); or
- 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.



19. Natural Resources (Oil and Gas/Mining)

19.1 What is the key feature of subsoil regulation in Russia?

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.

Russia has adopted a licensing system. A subsoil license represents a permit issued by the Russian state to its holder to explore for and/or extract natural resources. As a general rule, a subsoil license grants ownership title to extracted natural resources to its holder.

19.2 What is the legal framework for the subsoil use?

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 What type of licenses can be issued in Russia?

There are the following types of subsoil licenses in Russia: geological survey licenses (covering prospecting and appraisal activities), exploration and production/mining licenses (covering advanced exploration and production activities) and “combined” licenses (covering both geological survey and exploration and production/mining activities).

19.4 What is the general term of a subsoil license?

A geological survey license may be granted for a maximum period of five years (seven-year geological survey licenses can be granted in certain Russian regions) or 10 years for offshore fields. The license 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.

19.5 Who is in charge of licensing subsoil use activities?

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” ones. Rights to strategic deposits (which include all offshore fields) may only be granted based on a special decision of the Government of the Russian Federation.



19.6 Are there any restrictions applicable to foreign investors on acquiring subsoil licenses in Russia?

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 more than 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 investors usually hold subsoil rights to Russian deposits indirectly through their Russian subsidiaries which are allowed to hold subsoil rights to onshore strategic deposits.

19.7 How can a subsoil license be obtained?

Geological survey licenses are issued without a tender or auction based on an application of the interested party.

Production/mining licenses and “combined” licenses can be granted:

- (i) through a tender or auction; or
- (ii) to a holder of geological rights that made a commercial discovery under a geological survey license.

A mandatory prerequisite to the issuance of a strategic deposit license is a decision issued by the Russian Government. Such a license may also be issued without a tender or auction.

19.8 Can rights under a subsoil license be transferred?

Subsoil rights in Russia are not freely transferable. This means that they cannot be directly 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; and
- (iv) transfer following a spin-off or split-off of a new company.

Any such transfer of subsoil rights requires a special approval 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.

19.9 How is the transfer of subsoil rights granted under the relevant license effected?

Subsoil licenses are generally non-transferrable and can only be transferred to another entity in a limited number of instances (e.g., transfers to a subsidiary or a sister / parent company and vice-versa, transfers as a result of a spin-off or a split-up or following as part of the bankruptcy sale of the license holder's assets). To implement the transfer of rights granted under the relevant license the transferee in most instances should:

- (i) comply with all relevant requirements applicable to subsoil license holders established by Russian law; and
- (ii) have all relevant equipment and assets (including in-field infrastructure) required for performance of work contemplated



by the relevant license and proper performance of the license obligations (asset transfers to the transferee are a mandatory prerequisite to the transfer of the relevant license).

It could take up to 140 days to have a subsoil license transferred. The terms of the subsoil use and the license obligations cannot be revised or otherwise amended at the time of the transfer (i.e., the relevant license would be re-issued to the transferee on the same terms and conditions as it was granted to transferor).

19.10 What are “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). Such restrictions are discussed in the Section “Promoting Foreign Investment in Russia”.

Strategic deposits include the following:

- (i) subsoil plots containing deposits of uranium, high-purity quartz, the yttrium group of rare earths, nickel, cobalt, tantalum, niobium, beryllium, lithium, hard-rock deposits of diamonds or hard-rock (ore) deposits of the platinum group of metals with reserves (irrespective of their size) registered in the State Register of the Reserves⁹⁸;
- (ii) subsoil plots containing, as evidenced by the State Register of Reserves, deposits with:
 - recoverable oil reserves equal to or exceeding 70 million tons;
 - gas reserves equal to or exceeding 50 billion cubic meters;
 - hard-rock (ore) gold reserves equal to or exceeding 50 tons; or

⁹⁸ As of 1 January 2006.

- copper reserves equal to or exceeding 500,000 tons;
- (iii) subsoil plots located in the inland sea waters, territorial sea waters, or on the continental shelf of the Russian Federation (so-called offshore deposits); or
- (iv) subsoil plots that can only be developed on 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 approx. 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.

19.11 Is extraction of natural resources under production sharing agreements a viable alternative to a subsoil license?

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, PSAs have, in practice, become largely ineffective in terms of attracting foreign investment into Russia.



19.12 Is it possible to export natural gas and LNG from Russia?

Gazprom and its wholly owned subsidiaries hold exclusive rights for the export of natural gas. Since 1 December 2013, rights to export LNG have been granted to the following categories of exporters in addition to Gazprom and its wholly-owned subsidiaries:

- (i) subsoil users holding subsoil licenses for strategic deposits if their subsoil license as of 1 January 2013 envisaged either (a) development of an LNG plant or (b) recovery of natural gas for further liquefaction at an LNG plant;
- (ii) 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 fields; and
 - producers of LNG out of natural gas extracted from the fields mentioned above or under production sharing agreements; and
- (iii) 50%+ subsidiaries of the companies meeting the criteria set out in item (ii) above, if such subsidiaries produce LNG out of natural gas recovered under production sharing agreements.

19.13 What is essential to know about precious metals and gem stones regulation?

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. Artificially created materials, even if they have the same properties as gem stones, are not subject to the Precious Metals Law. Both lists, i.e., of precious metals and gem stones, are exhaustive.

19.14 Who can refine precious metals?

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.

19.15 Are precious metals freely traded?

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. Power

20.1 What is the regulatory framework for the power industry in Russia?

The Russian power industry is heavily regulated. The core aspects are determined by the following federal laws:

- (i) Federal Law On Electric Power dated 23 November 2009, as amended (the “**Power Law**”);
- (ii) Federal Law On Energy Saving and Energy Efficiency dated 23 November 2009, as amended;
- (iii) Federal Law On Specifics of Functioning of Electric Power in the Transitional Period dated 26 March 2003, as amended; and
- (iv) Federal Law On Heat Supply dated 27 July 2010, as amended.

More detailed regulation is set forth primarily in the following decrees passed by the Russian government:

- (i) On Approval of the Rules for the Wholesale Market of Electric Power and Capacity dated 27 December 2010, as amended;
- (ii) On Functioning of Retail Power Markets, Full or Partial Limitation of Power Use Conditions (with Basics for Functioning of Retail Power Markets, Rules for Full or Partial Limitation of Power Use Conditions) dated 4 May 2012, as amended;
- (iii) On Approval of the Rules for Non-Discriminatory Access to [*various industrial*] Services and the Rules for Technological Adherence [*of consumers, power generators, grid infrastructure objects*] to the Electricity Transmission Grid System dated 27 December 2004, as amended; and

- (iv) On Pricing in the Sphere of Regulated Prices (Tariffs) (with the Basics for Determination of Prices and Rules for Governmental Pricing Regulation) dated 29 December 2011, as amended.

The Ministry of Energy, FAS and Ministry of Economic Development also contribute to regulating the industry. Following a major reform of the Russian power industry implemented back in 2005-2011, a Non-Commercial Partnership Market Council (the “**Market Council**”) was given powers and now acts as a self-regulatory institution representing major market players and setting forth rules for the market participants. By way of example, the Agreement on Adherence to the Trading System (the “**Agreement on Adherence**”) adopted by the Market Council (and further regularly updated), represents an adherence agreement, the terms of which are binding for all wholesale market participants. It sets forth a set of very detailed rules for market functions and determines the respective rights and obligations of its participants.

20.2 What are the main market regulators and commercial infrastructure players?

The Russian power market is regulated and supervised by the following:

- (i) The Ministry of Energy of Russia, which is generally responsible for the electric power sector;
- (ii) The Ministry of Economic Development of Russia, a state body overseeing the industry’s macroeconomic markers and energy efficiency;
- (iii) The Federal Antimonopoly Service of Russia, which regulates tariffs for electric power and aims at preserving competitive environment on the market;



- (iv) The Market Council, which supervises market functions and elaborates on forms of standard agreements that are applied to the market and are mandatory for its participants.

A number of state-owned entities (“infrastructure companies”) ensure both technological and commercial stability of the Russian power system. These are as follows:

- (i) The Federal Grid Company, which manages the unified electricity transmission grid system of Russia — electricity transmission lines with voltage of 220 kV and above and related grid infrastructure and equipment, the purpose of which is to ensure the stability of the Russian electricity transmission grid system;
- (ii) The System Operator ensures the dispatch of electricity and the stable functioning of the Russian unified electricity transmission grid system;
- (iii) Interregional distribution grid companies (“**MRSK**” in Russian) own and operate power distribution assets — regional grids comprising medium- and low-voltage electricity grids with voltages of 110 kV and below. MRSKs are controlled by the state-owned holding company, “Rosseti”.

Other infrastructure players are as follows:

- (i) The Administrator of Trading System (“**ATS**”), an entity controlled by the Market Council, which manages the wholesale power and capacity market and facilitates trade on standardized terms by bringing together sellers and purchasers;
- (ii) The Centre for Financial Settlements, a company owned by the Market Council and ATS that acts as an intermediary with respect to payments at the wholesale market.

20.3 How is the Russian power market divided?

The Russian power market has a two-tier structure, featuring separate retail and wholesale sections of the market. Retail market is intended for the sale of electricity by suppliers to industrial and domestic consumers. A power supplier may be present in only one market or in both markets simultaneously, provided it complies with the installed capacity and certain other criteria to qualify as a wholesale market player. The prices on the retail market are subject to tariffs.

Wholesale market is primarily intended for trade in power between generating companies, suppliers and certain large end consumers. Capacity and electricity are traded separately on the wholesale market. Russian wholesale power market is geographically divided into three types of zones:

- (i) Price zones that stretch across the European part of Russia, the Urals and the western part of Siberia;
- (ii) Non-price zones that include Kaliningrad, Arkhangelsk, Komi and the southern part of the Far East regions;
- (iii) An isolated zone that covers large parts of Siberia and the Russian Far East.

While the price zones involve competitive pricing, the non-price zones' power prices are subject to state regulation (i.e., specifically determined tariffs). The isolated zone is a retail market-only area, and the wholesale power market does not exist there. This division is important for a number of reasons — in particular, power can be traded at free prices only between participants within the same pricing zone.

20.4 How can a foreign investor enter the Russian power market?

The legal regulation of the power industry does not provide for any special approvals to be granted by the power market regulators.



However, foreign investors may be subject to general clearances (e.g., antimonopoly clearance and strategic companies clearance) and restrictions. Please refer to the Sections “Promoting Foreign Investment in Russia” and “Property rights” for further details. Also, as a matter of practice, companies carrying out business on the power market quite often have to deal with information classified as a “state secret” in Russia. Accordingly, they need to ensure that management team members with access to relevant information are duly authorized and, in particular, those do not include non-Russian citizens. That said, in our experience, this does not prevent foreign investors from investing and operating businesses in the Russian power sector.

20.5 Is it possible to export power from Russia?

Russian law does not impose any restrictions on participants of the wholesale electricity market that perform export (as well as import) operations. It also follows from the Agreement on Adherence that export of electricity and capacity from the domestic market can be performed by any participant, provided that it:

- (i) complies with certain provisions of the Rules for the Wholesale Market and the Agreement on Adherence; and
- (ii) is registered by the Market Council as a company performing export and import operations.

However, in practice, obtaining the right to sell electricity outside Russia proves to be problematic due to the implicit export monopoly of the state-controlled open joint-stock company “Inter RAO UES”. The procedure for obtaining the status of export company involves a certain degree of discretion of the Market Council.

20.6 Are there any incentives for the renewable energy projects?

Russia’s regulatory framework and the range of incentives for renewable energy players is currently being formed and has not yet been fully realized. Renewable energy generators may receive

governmental support, provided they undergo a so-called “renewable energy source object qualification” procedure performed by the Market Council. The procedure involves documents review and an on-site audit of a renewable energy source (RES) object (which takes approx. 1.5 to 3 months to complete). After that, an eligible RES object is included into a register maintained by the Market Council. Such object is qualified for an unlimited term, but is subject to regular reviews by the Market Council.

Russian law provides for incentives, both for retail and wholesale markets players. Retail market tariffs for renewable energy are fixed on a yearly basis and contemplate a mechanism aimed at ensuring that investments into the construction of a RES object are returned. The renewable energy generators enjoy a priority right to sell energy to grid operators, which are obliged to buy it to compensate their in-process losses. In addition, a renewable energy generator can receive a grant to be compensated for its technological integration expenditures in relation to a qualified RES object with capacity under 25 MW. Such grants are limited to 50% of the generator’s expenditures and in any event cannot exceed RUB 30 million (approx. USD 511.600) per each RES object.

The Rules for the Wholesale Market allow renewable energy generators to bid, through an auction process, in order to enter into long-term capacity supply contracts. The Governmental Decree on Mechanisms for Stimulation of Renewable Energy Sources on the Wholesale market, dated 28 May 2013 (as amended), sets forth a special price determination mechanism for the generators using solar energy, wind energy, small hydropower and biomass. It envisages that such generators can receive monthly capacity payments over a term of 15 years to compensate their expenditures. In essence, these contracts are aimed to allow investors to secure a return on their investment into renewable energy projects through guaranteed capacity payments payable over a term of 15 years. Capacity supply agreements are concluded pursuant to a standard form between an eligible generator and wholesale power market consumers through the Center for



Financial Settlements. Rights under capacity supply agreements can be transferred to a third party only subject to preliminary approval and compliance with requirements of the Market Council.

Apart from the incentives on the federal level, there are also regional incentives for the Russian Far East.

21. Banking

21.1 What is the structure of the banking system in Russia?

The upper level of the banking system in Russia is composed of the Central Bank of the Russian Federation (the “**Bank of Russia**”), which is the key regulatory authority for banking and is also in charge of monetary policy. The Bank of Russia is responsible for regulating banking activities. Through its instructions, regulations and other acts, the Bank of Russia establishes rules, standards and obligatory requirements for banks and non-banking credit organizations throughout the Russian Federation. The lower level of the banking system in Russia consists of credit organizations and representative offices of foreign banks.

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).

As of 1 December 2017, there were 523 banks, 44 non-banking credit organizations and 51 representative office of foreign banks registered in Russia.



21.2 What are the primary sources of legislation covering banking in Russia?

The primary pieces of banking legislation are:

- the Civil Code of the Russian Federation;
- Federal Law No. 395-1 “On Banks and Banking Activities” dated 2 December 1990;
- Federal Law No. 86-FZ “On the Central Bank of the Russian Federation” dated 10 July 2002;
- Federal Law No. 177-FZ “On the Insurance of Deposits of Individuals in the Banks of the Russian Federation” dated 23 December 2003;
- Federal Law No. 353-FZ “On Consumer Credits (Loans)” dated 21 December 2013; and
- Federal Law No. 115-FZ “On Combating Money Laundering and the Financing of Terrorism” dated 7 August 2011.

21.3 Can a foreign bank operate in Russia?

Although foreign banks may not currently open branch offices in the Russian Federation, a local subsidiary or a representative office may be established.

21.4 What are the requirements for establishing of a local subsidiary of a foreign bank in Russia?

A foreign bank may establish a subsidiary in Russia in the form of a Russian legal entity (joint-stock company or limited liability company).

The total share of foreign investment in the charter capital of all credit organizations in the Russian banking system may not exceed 50%. If this limit is reached, the Bank of Russia is entitled to refuse to register

Russian credit organizations with foreign investments and to issue banking licenses to them. In addition, the Bank of Russia may restrict the increase of the charter capital by non-residents and disposal of shares (participatory interests) to non-residents if this limit would be exceeded as a result. The shares (participatory interests) disposed to non-residents in violation of such restriction will be deemed non-voting, and the Bank of Russia will be entitled to petition the court to invalidate the transaction.

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. In addition, 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.

21.5 What are the requirements for establishing of a representative office of a foreign bank in Russia?

A foreign bank may establish a representative office in Russia.

Representative offices of foreign banks and foreign citizens to be employed there should be accredited by the Bank of Russia. A representative office of a foreign bank can be accredited for a term not exceeding three years. Accreditation becomes effective if a representative office of a foreign bank starts operating within six months after the Bank of Russia grants such accreditation.

Accreditation can be renewed an unlimited number of times for a term not exceeding three years. The Bank of Russia may grant permission



to open a representative office to a foreign bank that meets all the following criteria:

- the foreign bank has been operating in its country of incorporation for at least five years; and
- the foreign bank has a stable financial position.

Confirmation of the foreign bank's compliance with the latter criterion should be requested from the relevant supervisory body in the country where the foreign bank is incorporated along with the relevant regulator's consent or confirmation that such consent is not required.

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. 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 supervised by the Bank of Russia, which may close such a representative office if its activities threaten Russia's sovereignty, political independence, territorial integrity and national interests or are otherwise non-compliant with Russian law, if the banking license of the relevant bank is revoked or if the bank or its clients do not observe anti-money laundering regulations.

21.6 What activities do Russian banks generally engage in and how are they regulated?

Under the Banking Law only credit organizations holding the relevant license granted by the Bank of Russia 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;
- 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 the opening of bank accounts.

Banks and non-banking credit organizations are also entitled to perform certain non-banking operations, including:

- 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 the relevant licensing requirements, 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.

Banks can operate under two types of banking license in Russia:

- universal license, which makes it possible to carry out all banking operations and establish subsidiaries and branches (subject to prior approval of the Bank of Russia) and representative offices (subject to prior notification to the Bank of Russia) abroad; and
- basic license, which prohibits carrying out certain banking operations with foreign individuals, foreign legal entities and other foreign organisations, and requires less charter capital from a bank than a universal license.

Banks with a basic banking license cannot conduct the following banking operations and transactions with or with foreign individuals, foreign legal entities and other foreign organisations (as opposed to banks operating under a universal banking license):

- placement of attracted monetary funds for on-demand and term deposits in their own name and at their own the expense;
- holding deposits and placement of precious metals;
- issuing bank guarantees;
- acquisition of claims to such foreign persons;
- participating in financial leasing operations; and

- provision of surety.

Unlike banks operating under a universal license, banks operating with a basic license cannot open bank (correspondent) accounts with foreign banks (with the exception of participation in a foreign payment system) or trade in securities not listed in the first (highest) quotation list or not approved by the Bank of Russia.

On the other hand, banks operating under a basic license are subject to less provisioning requirements and prudential regulations than banks operating under a universal license.

21.7 What are the peculiarities of corporate lending in Russia?

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 to collect documents related to currency operations, 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 Russian source income. In this 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.

21.8 How is consumer lending regulated in Russia?

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 either general or individual. General terms are drawn up by the lender for mass application and must include:

- 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; and
- 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 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; and
- 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 to which the banks will be required to adhere. 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 is calculated and published by the Bank of Russia for different types of credit on a quarterly basis.

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.

21.9 What financial authorities are established in Russia to oversee banking activities in Russia?

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 chairperson of the Bank of Russia, but also approve the resignation of the chairperson. 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”), composed 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.

Although not a regulatory body in its traditional sense, the State Corporation “Deposit Insurance Agency” (the “**Deposit Insurance Agency**”) in certain cases performs regulatory functions provided by law. For example, the Deposit Insurance Agency:

- supervises the deposit insurance system in Russia;
- acts as a temporary administrator of a credit organization if appointed by the Bank of Russia; and
- takes part in certain bankruptcy prevention procedures of Russian banks together with the Bank of Russia and so on.

21.10 What approvals are required to purchase shares in Russian banks?

Prior approval of the Bank of Russia is required if a purchaser obtains control over more than:

- 10%, 25%, 50% or 75% of shares of a Russian bank (if such bank is a joint stock company); or
- 10%, 1/3, 50%, 2/3 participatory interest in a Russian bank (if such bank is a limited liability company).

Prior approval of the Bank of Russia is also required to obtain direct or indirect control over shareholders owning more than 10% of shares (participatory interest) of a Russian bank.

Incoming shareholders who plan to purchase shares (participatory interest) of a Russian bank should comply with certain requirements of the Bank of Russia as to financial standing and business reputation.

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 RUB 31 billion. Where the target bank’s assets do not exceed RUB 31 billion, it is sufficient for the credit organizations concerned to notify FAS of the merger.

The Bank of Russia can deny approval of purchase of shares (participatory interest) of a Russian bank if the FAS refuses to authorize the respective purchase of shares (participatory interest) of a Russian bank and if the incoming shareholder does not meet the requirements of the Bank of Russia as to its financial standing or business reputation or in certain other cases.



21.11 What regulatory powers does the Bank of Russia have?

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:

- 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 obligations before the federal budget, the budgets of constituent entities of the Russian Federation or local budgets; and/or
- 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 and requirements for business reputation, 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.

21.12 How are bank deposits protected in Russia?

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 Deposit Insurance Agency 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 contribute to a special deposit insurance fund administered by the Deposit Insurance Agency. These contributions are calculated as a percentage of the average daily balance of individual deposits maintained with a particular bank, and as a general rule cannot exceed 0.15%. All individual depositors with deposits in member banks are entitled to 100% compensation for aggregate amounts up to RUB 1.4 million for each bank. However, the deposit insurance would not cover e-money deposits.



21.13 What are the anti-money laundering requirements in Russia?

Based on recommendations made by the Financial Action Task Force on Money Laundering (the “**FATF**”), the State Duma adopted Federal Law No. 115-FZ “On Combating Money Laundering and the Financing of Terrorism,” dated 7 August 2001 (the “**Anti-Money Laundering Law**”), which came into force on 1 February 2002.

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 RUB 600,000 or more (or the equivalent in foreign currency), and transactions with real property of RUB 3 million 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; and
- pay increased attention to transfers of monetary funds and other property between foreign public officials and their close relatives.

The Anti-Money Laundering Law prohibits the creation and maintenance of anonymously held accounts.

21.14 What are the capital adequacy requirements in Russia?

Russian banks are required to comply with the capital adequacy requirements set by the Bank of Russia, which is responsible for implementation of Basel III developed by the Basel Committee on Banking Regulations and the Supervision Practices of the Bank for International Settlements in Russia.

Regulation of the Bank of Russia No. 395-P “On Methods for Calculation of the Capital of Credit Organizations,” dated 28 December 2012 (“**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 2016, the minimum capital adequacy ratio required by the Bank of Russia is 8%. If the capital adequacy ratio of a bank drops below 2%, then the Bank of Russia should revoke its banking license.

Starting from 01 June 2017 newly established Russian banks applying for universal banking license should have charter capital amounting of at least RUB 1 billion (approx. USD 17 million). Newly established Russian banks applying for basic banking license should have charter capital of at least RUB 300 million (approx. USD 5 million). Existing banks should either increase their charter capital to above RUB 1 billion (approx. USD 17 million) before 1 January 2019 to maintain universal banking license or apply for basic banking license.



21.15 What are the eligibility requirements for subordinated instruments for inclusion in the regulatory capital of a bank?

Implementation of Basel III in Russia 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;
- if the base capital adequacy ratio decreases below prescribed threshold levels or the banking supervision committee of the Bank of Russia approves a plan on Deposit Insurance Agency participation in the bankruptcy prevention measures of a bank, the obligations of the borrower to repay the subordinated loan and to pay interest and penalties are terminated and (or) the lender's claims are converted or exchanged into shares (participatory interest) in the charter capital of the bank in the amount necessary to restore the base capital adequacy ratio;

- the subordinated loan may not provide for (i) any security directly or indirectly provided by the bank or by third parties if the bank agreed to reimburse them for doing so, (ii) non-monetary form of settlement (save for a loan made in Federal Loan Bonds) or, (iii) a natural person (does not apply to subordinated bonds), subsidiary or affiliated company as a party to the subordinated instrument; and
- subordinated loans must be provided for at least five years and, in certain cases, for at least 50 years or on a perpetual basis.

21.16 What is the status of implementation of the Basel III liquidity coverage ratio rules in Russia?

Regulation No. 421-P “On the Calculation of the Liquidity Coverage Ratio” dated 30 May 2014 (the “**LCR**”) became effective on 1 July 2014. 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. Currently, only domestic systemically important banks should calculate LCR. However, in the course of time the Bank of Russia will subject more Russian banks to the LCR rules.

21.17 What is the status of implementation of remuneration policy under Basel III in Russia?

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.

Starting 1 January 2017, the bank's maximum credit exposure to a single person or a group of persons associated with the bank may not exceed 20% of the bank's capital calculated in accordance with Regulation 395-P.

21.18 What accounting and reporting standards are applicable to Russian banks?

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. Parent credit organizations in the banking groups must also prepare quarterly 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 mandatory ratios 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.



22. Insurance in Russia

22.1 Which law regulates insurance in Russia?

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 November 27, 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 insurers’ compliance with applicable regulations.

There is a tendency towards consolidating the insurance market, mainly as a result of the Bank of Russia’s policy 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

22.2 What are the types of licenses required?

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 to conduct insurance business. Foreign reinsurers not licensed locally may provide reinsurance services. Insurance agents and/or brokers can conduct intermediation in the Russian insurance market. 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 (except for reinsurance policies) with foreign insurance organizations or foreign insurance brokers is not permitted in the territory of the Russian Federation.

22.3 Are there any 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 49% of their charter capital belongs to foreign investors (with the exception discussed below).

Insurers that have partial foreign-ownership cannot provide mandatory insurance (the insurance that is applicable to some categories of governmental employees), and cannot provide insurance:

- in connection with acquiring goods and/or services under contracts for state and/or municipal needs. The wording of the law is not clear as to when insurance is deemed “connected” to such contracts and is therefore subject to restrictions; and
- destined to protect the property interests of state and municipal organizations (e.g., insurance of any civil liability; mandatory state insurance or property insurance).

From 22 August 2017, it has become possible for insurance organizations with a foreign shareholding of more than 51% to perform compulsory third party car.

Clause 10 of Article 6 of the Insurance Law provides for an exemption to these restrictions. This exemption applies to subsidiaries of foreign companies and to companies with foreign capital exceeding the 49% limit that had been established before August 22, 2012 and at that



moment were entitled to provide the currently restricted types of insurance as discussed above.

There is a quota for the maximum foreign capital as compared to the aggregate capital of insurance companies operating in Russia. Under the terms negotiated at Russia's accession to the WTO, this quota was set at 50% of the aggregate capital of insurance companies. Should the amount of foreign capital invested into the sector exceed this quota, the regulator is no longer allowed to issue licenses to insurance companies that are affiliates of foreign insurers or which are more than 49% foreign-owned.

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 December 16, 2011. In particular, foreign insurance companies will be allowed to open branches in Russia starting from 2021. The Bank of Russia would supervise incorporation and operation of such branches, 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 to foreign companies.

22.4 How are the insurance market and products regulated?

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, and other fundamental insurance-related regulations. In

particular, Article 934 of the Civil Code establishes the basis for personal (life and health) insurance and Article 929 establishes the basis for property insurance (property insurance, liability insurance and business risks insurance).

Starting from 2015, insurers are obliged to provide tools for online interaction between the insurers and customers. In particular, a customer may apply for insurance or receive payments through the insurer's official website.

22.5 What are the different 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, as there is no further regulation of these 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.

In 2015, the Civil Code was amended to extend its effect to export credit insurances and investments against business and (or) political risks.



23. The Pharmaceuticals and Healthcare Industry

23.1 What is the general legal framework governing healthcare in Russia?

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.

The formal basis of the Russian healthcare system is laid out in Federal Law No. 323-FZ “On the Fundamentals of Citizens’ Health Protection in the Russian Federation” (the “**Fundamentals**”), which completely replaced its predecessor, “Fundamentals of the Legislation of the Russian Federation on Protection of Citizens’ Health”, No. 5487-1, dated 22 July 1993, from 1 January 2012. The Fundamentals, some provisions of which are still not in force, standardize healthcare and significantly restrict the marketing and promotional activities of pharmaceutical companies. Federal Law No. 178-FZ “On State Social Care,” dated 17 July 1999, as amended (the “**Social Care Law**”) is also an important legislative act regulating the Russian healthcare system. The main legislative act specifically governing the pharmaceutical market in Russia is Federal Law No. 61-FZ “On the Circulation of Medicines,” dated 12 April 2010, as amended (the “**Law on Circulation of Medicines**”). The Law on Circulation of Medicines was significantly amended at the end of 2014 and a bulk of the amendments has been in force since the beginning of 2016.

The amended Law on Circulation of Medicines now (i) has limited data exclusivity protection compared to the prior version, (ii) reinstates the grace period for medicinal preparations that recently had their registration dossier changed, (iii) lays the groundwork for revision of state regulation of prices, (iv) introduces new regulations on biological/biosimilar and orphan medicinal preparations, (v) establishes the interchangeability of medicinal preparations.

To date, only three articles in the Fundamentals specifically regulate medical devices. A draft law on the circulation of medical devices is still being prepared.

Other laws important for the pharmaceuticals and healthcare sector include Federal Law No. 184-FZ “On Technical Regulation”, dated 27 December 2002, as amended, governing technical regulation; namely the declaration of conformity and certification of medicinal preparations and medical devices (the “**Law on Technical Regulation**”); Federal Law No. 38-FZ “On Advertising”, dated 13 March 2006, as amended (the “**Law on Advertising**”), governing advertising of medicines, medical devices and medical services; and Federal Law No. 99-FZ “On Licensing Certain Types of Activities”, dated 4 May 2011, as amended (the “**Law on Licensing**”), governing licensing in the Russian Federation.

The year of 2018 will certainly be rich on new significant developments in regulations affecting the Russian market, namely, new regulations on internet retail sale of medicinal preparations are likely to be adopted, telemedicine and Eurasian Economic Union (“**EAEU**”) common markets of medicinal preparations and medical devices should finally become fully functional.

Internet retail sale of medicinal preparations has been debated for some time and now there is a draft law aimed at amending the Law on Circulation of Medicines so as to allow pharmacies to remotely sell over-the-counter medicinal preparations. Pharmacies will need a separate license to be engaged in this activity, but they will still have to run physical pharmacy business. In other words, internet-only pharmacies will not be allowed in Russia. The actual parameters of this sale are also debated. For example, the current draft regulations require couriers that deliver medicinal preparations to have pharmaceutical or medical education so that they could also provide consultations to the patients. There is also an idea to allow sale of prescription medicinal preparations this way at least to test the concept.



The current expectation is that this regulation will be in place by the end of 2018.

Telemedicine have been permitted since January 1, 2018, by a separate law, which amended, among others, the Law on Circulation of Medicines and the Fundamentals. Telemedicine will allow electronic communications between medical professionals in order to consult in assessment of health of a patient, to clarify a diagnosis, to set prognosis and tactics of medical examination and treatment or to assess desirability to transfer a patient into a specialized department within a medical organization or to rely on medical evacuation. Medicinal professionals will also be able to conduct medical consilium to discuss the same questions.

Telemedicine will also allow electronic communications between a medical professional and a patient for the purposes of prophylaxis, collection and analysis of a patient's health complaints and anamnesis, to assess effectiveness of treatment and diagnostic actions, for medial monitoring of a patient's health. Telemedicine may also be used to decide whether a meeting in person is necessary. As we understand, telemedicine, therefore, may not fully replace in person meetings of patients with medical professionals as it may not cover diagnosis and setting treatment.

Telemedicine will also allow issuance of certain medical documentation, most importantly, prescriptions for medicinal preparations, which in most cases will require use of a reinforced qualified electronic signature (cryptography tool to be obtained from officially approved supplier).

Lastly, it is also worth mentioning that the harmonization of the pharmaceuticals and medical devices legislation in the EAEU is ongoing and seems to be on the latest stages of readiness. The basic documents for the harmonization of the EAEU pharmaceuticals and medical device legislation are: the Treaty on Establishment of EAEU, the Agreement on Common Principles and Rules for the Treatment of Medicinal Preparations within EAEU dated 23 December 2014 and

the Agreement on Common Principles and Rules for the Treatment of Medical Devices (Devices for Medical Purposes and Medical Equipment) within EAEU dated 23 December 2014 (the “**Agreements**”).

These documents and a significant body of subordinate documents, including GxP documents, established common markets of medicinal preparations and medical devices within the EAEU and free flow of medicinal preparations and medical devices. However, due to technical matters, EAEU registration procedures for medicinal preparations and medical devices have not been operational as of the date of this guide so that common EAEU markets for medicinal preparations and medical devices have not been fully operational yet. It is currently expected that the first applications for getting products approved on the level of EAEU as opposed to purely national registrations will be accepted in 2018.

The Agreement on Common Principles and Rules for the Treatment of Medicinal Preparations within the EAEU provides for a transitional period that should start on 1 January 2016 and expire on 31 December 2025. The Agreement on Common Principles and Rules for the Treatment of Medical Devices (Devices for Medical Purposes and Medical Equipment) within the EAEU dated 23 December 2014 provides for a transitional period that should start on 1 January 2016 and expire on 31 December 2021.

Therefore, the unified market of medicinal preparations should finally come into effect in 2026 and the unified market of medical devices should be fully effective from 2022. This harmonization will result in implementation of unified rules on the territory of the member states of the EAEU.

23.2 What are the key regulatory bodies in this area?

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**”).

The Russian GMP inspectorate has been established and is authorized to inspect foreign manufacturing sites for compliance with Russian GMP requirements. MIT conducts inspections of the manufacturing sites located in Russia.

The MOH is responsible for drawing up state policy and regulation in healthcare, circulation of medicines for human use, sanitary and epidemiological welfare and 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 law.

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 and biomedical cell products;
- Issues permits for the conduct of clinical trials of medicinal preparations for human use and biomedical cell products;
- Issues permits for importing 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 in the list of essential and most important medicinal preparations, also known as the essential drug list (EDL or “**ED List**”);

- Attests authorized persons of medicine manufacturers and manufacturers of biomedical cell products;
- Adopts rules on scientific consulting services on clinical trials and registration of medicinal preparations, among other things.

The MIT, among other things:

- Plays an important role in regulating declarations of conformity and certifying medicinal preparations and medical devices;
- Grants licenses for manufacturing medicines;
- Keeps a register of licenses granted;
- Issues reports on the conformity of the medicines' manufacturers to the Good Manufacturing Practice and keeps a register of such reports.

The Federal Service, among other things:

- Exercises control over the circulation of medical devices;
- Exercises control over the circulation of medicines and biomedical cell products;
- Exercises control over the quality of medicines and biomedical cell products;
- Monitors the assortment and prices of EDL medicinal preparations;
- Monitors the safety of medicinal preparations and biomedical cell products;
- Grants licenses for pharmaceutical activities;



- Keeps a register of licenses granted;
- Exercises control over the quality and safety of medical activity.

23.3 How are clinical trials of medicinal preparations and clinical studies of medical devices regulated?

The Law on Circulation of Medicines, similarly to its predecessor, contains a broad definition of clinical trials. It defines a clinical trial 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.

As far as medicinal preparations for medical use are concerned, a clinical trial is a study of the clinical, pharmacological and pharmacodynamic effects of the studied medicinal preparation, 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 medicinal preparations, and data on anticipated side effects and on the effects of interaction with other medicinal preparations.

The new Rules of Good Clinical Practice established by Order of the Russian Ministry of Healthcare No. 200n dated 1 April 2016 are key in this area. It is loosely based on ICH GCP and entered into force on 4 September 2016.

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 the Russian territory for medicinal preparations manufactured outside Russia);
- Selecting optimal dosages of medicinal preparations, treatment courses for patients with a specific ailment, and optimal dosages and vaccination schemes for immunobiological preparations for healthy volunteers;
- Ascertaining the safety and effectiveness of medicinal preparations for patients with a specific ailment, and 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 amended Law on Circulation of Medicines separates the regulation of state registration of medicinal preparations and their clinical trials. These regulatory processes were partially merged in the previous version of the Law on Circulation of Medicines. The separation has increased the availability of certain types of clinical trials for unregistered medicinal preparations, as it is no longer 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 in Russia.

The Law on Circulation of Medicines also lists bioequivalence and therapeutic equivalence studies as types of clinical studies of medicinal preparations.



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 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;
- 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, and 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 for obtaining a permit to conduct clinical studies of medical devices will be described in the next chapter.

23.4 How is registration of medicinal preparations and medical devices organized?

Registration of medicinal preparations is regulated by the Law on Circulation of Medicines (Chapter 6).

Medicinal preparations can only be manufactured, stored, transported, imported, exported, advertised, transferred, used, sold and destroyed on the territory of the Russian Federation 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;
3. New combinations of medicinal preparations registered earlier.

The Law on Circulation of Medicines currently prohibits state registration of medicinal preparations with the same international nonproprietary name, but different trade names, produced by the same manufacturer. This is viewed as an impediment to development of a contract manufacturing in Russia. However, there is a draft law, which aims at abolishing this prohibition thus promoting contract manufacturing in Russia.

The terminology of the amended Law on Circulation of Medicines is substantially different from its prior version. Firstly, the term “original” medicinal preparation has been replaced 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 amended Law on Circulation of Medicines now regulates 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 cannot 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 amended Law on Circulation of Medicines now incorporates 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 submitting an application with the necessary set of documents to the MOH.

The Law on Circulation of Medicines describes 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 registering 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.

Firstly, 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, intracoronary);
- 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 the 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 by either 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 10 working days after the full application file is submitted, the MOH orders the following expert examinations:

- 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 an 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 and 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 the 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 and the possible risks connected with the 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 80 working days.

Expedited expert examinations may be applied to:

- 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:

- 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.

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 may only qualify for one of these preferential regimes.

The amended Law on Circulation of Medicines limits cases in which pre-clinical and clinical trial data will be protected. 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 generic 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 amended Law on Circulation of Medicines re-establishes a grace period for medicinal preparations that recently had their registration dossier changed and allows circulation of medicinal preparations manufactured in accordance with the “old” registration dossier within 180 days after a decision of the registration authority to amend the registration dossier up until the expiration of their shelf life.

Registration of medical devices is performed by the Federal Service and is regulated by the Rules for Registration of Medical Devices. All

medical devices circulating 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 and medical devices intended to be used on the territory of an international medical cluster.

Currently, the 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 website 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 the 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 (or 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.

23.5 How is manufacturing of medicines and medical devices regulated?

According to the Law on Licensing, manufacturing 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.

Generally, 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;
4. The manufacture of medicines in breach of the rules for organization of the manufacture of medicines and quality control.

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 Good Manufacturing Practice (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.

Shortly after introduction of mandatory GMP compliance requirement, the manufacturers were obliged to pass through GMP inspections resulting in obtaining a type of document called “conclusion on GMP compliance”. As we mentioned above, MIT conducts inspections of the manufacturing sites located in Russia,



while the Russian GMP inspectorate conducts inspections of the foreign manufacturing sites. It is noteworthy, that a necessity to have a conclusion on GMP compliance is not a part of licensing regulations, but it was made necessary to perform registration procedures with respect to medicinal preparations (initial registrations, confirmation of registration and variations). There is a draft law, however, which aims to ease this requirement so that a foreign pharmaceutical manufacturer may submit a copy of a decision of MIT appointing inspection of a foreign manufacturer in the absence of a conclusion on its GMP compliance. This will allow speeding up registration procedures, which may currently be delayed due to the absence of a complete conclusion on GMP compliance.

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 manufacturing activity. The licensing of medical equipment manufacturing will be abolished with the entry into force of technical regulations.

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 additional licenses may be 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.

23.6 How is importation of medicines and medical devices regulated?

In accordance with the Law on Circulation of Medicines, importation of medicines may only be performed by the following:

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 is a member of the EAEU, decisions of the EuroAsian Economic Commission are binding on Russia. 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 have been effectively abolished on the territory of the Customs Union. This marks a significant change in the way 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 only released into the Russian market after their conformity to applicable Russian requirements is confirmed, among other things. 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 invoked 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 only released into the Russian market after their conformity is confirmed, among other conditions.

23.7 How is wholesale of medicines and medical devices regulated?

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 performing pharmaceutical activity is valid for an indefinite term.

Wholesale of medicines is currently governed by the Good Practice of Storage and Transportation of Medicinal Preparations for Medical Use, approved by Order No. 646n of the MOH, dated 31 August 2016.

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;
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, among other things, 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 breaching the Good Practice of Storage and Transportation of Medicinal Preparations for Medical Use and for selling falsified, counterfeit or bad quality medicines (a separate offense is established if the sale of falsified, counterfeit or bad quality medicines results in harm to health or creates a 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 this case, wholesale of the medical devices will require a license for activities involving sources of ionizing radiation.

23.8 How is retail sale of medicinal preparations and medical devices regulated?

Retail sale of medicinal preparations 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 new regulation in the amended Law on Circulation of Medicines. However, this replacement has not happened yet.

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 was 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 Government Resolution No. 2323-r dated 23 October 2017.

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 breaching the rules on retail sale of medicines and, as in the case of wholesale of falsified, counterfeit or bad quality medicines, a separate offense is established if the sale of falsified, counterfeit or bad quality medicines results in harm to health or creates a 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.

23.9 How does state regulation of prices of medicinal preparations and medical devices operate?

The basis for the system of state regulation of the prices of medicinal preparations and its most general rules are set forth in the Law on Circulation of Medicines. The amended Law on Circulation of Medicines has more general and brief provisions on this issue compared to its previous version. Detailed regulations in this area have been adopted by the Russian Government, which now has more time for rule-making.

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 the essential and most important medicines are accessible for all citizens. By law, revising the EDL should be an annual process. The currently effective ED List was established by Government Resolution No. 2323-r, dated 23 October 2017.



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 (conducted at the federal level);
- Establishment of maximum wholesale and retail trade margins applied to the prices of medicinal preparations (conducted at the regional level).

On the basis of the application of the manufacturer of medicines included in the ED List submitted before 1 October of each following year, the maximum registered manufacturer prices of medicinal preparations can be re-registered once in a calendar year.

Calculating the maximum manufacturer price of medicinal preparations is performed in accordance with the Calculation Methodology approved by Government Resolution No. 979, dated 15 September 2015.

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 7 March 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) are currently not regulated in Russia.

State regulation of prices of medical devices was introduced by Government Decree No. 1517 dated 30 December 2015. It only extends to implantable medical devices purchased by the state. In order to establish this system, Russian authorities were to send requests to manufacturers of medical devices and holders of registrations of medical devices to provide information on the price of these medical devices and volumes supplied to the Russian market.

Based on this information, a weighted average price was calculated for certain groups of medical devices in accordance with the official nomenclature. This price became the maximum price for each medical device in the group. Then, registration of the price for each specific medical device needed to be sought, which was a rather simple procedure bearing in mind that the maximum price of the product had already been established by that time. A medical device is not able to participate in state procurement until its price is registered.

In addition to the price registration, a constituent entity (region) of the Russian Federation was given authority to establish maximum margins applicable to actual sale prices by 1 September 2017.

The regulation should initially have become fully operational by the beginning of autumn 2016, but the deadline has been shifted by one year to the beginning of autumn 2017. Applications for registration of prices should have been submitted by 15 July 2017.

Ministry of Health in cooperation with Ministry of Economic Development, Ministry of Finance and Federal Antimonopoly Service were to submit proposals on the procedure of re-registration of maximum sale prices of medical devices to the Government of Russian Federation by 1 October 2017 taking into account the analysis of practice on state registration of maximum sale prices of medical devices.

23.10 How is interchangeability of medicinal preparations and medical devices defined?

The amended Law on Circulation of Medicines now provides a 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 defined by Government Resolution No. 1154, dated 28 October 2015 (“Resolution No. 1154”).



The interchangeability of new medicinal preparations is defined during the state registration of medicinal preparations.

The deadline for establishing interchangeability for medicinal preparations registered both before, on and after 1 July 2015 is 31 December 2017. Starting from 1 January 2018, information on interchangeability will be included in the state register of medicinal preparations.

Interchangeability is established on the basis of equivalent qualitative and quantitative criteria of pharmaceutical substances, equivalent dosage form, equivalent or similar auxiliary substances, identical mode of administration, absence of clinically significant differences discovered in the course of the biosimilarities evaluation and compliance of the manufacturer with Good Manufacturing Practice.

The rules on interchangeability and Resolution No. 1154 do not apply to reference, herbal and homeopathic medicinal preparations, as well as to the medicinal preparations that have been permitted for medical use in Russia for over 20 years and cannot be reviewed for bioequivalence.

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.

23.11 How is technical maintenance of medical equipment regulated?

Technical maintenance of medical equipment is a licensable type of activity according to the Law on Licensing. 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 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).

23.12 How do government-run programs for medicinal supply operate?

The most important government-run program 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 at a 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 treating certain diseases (hemophilia, mucoviscidosis, hypophyseal nanism, Gaucher's disease, malignant neoplasms in lymphoid,



haematogenic tissues and other related tissues, disseminated sclerosis, and after transplantations). The MOH purchases expensive medicines through auctions. The current list of such medicines was established by Government Resolution No. 2323-r, dated 23 October 2017.

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.

Since 2008, medicinal preparations originating from abroad have been subject to a mandatory 15% handicap in public procurement. This is commonly referred to as a preference for local products. The current preference of this sort was adopted by Order of the Ministry of Economic Development No. 155 dated 25 March 2014, as amended.

This measure applies as follows in the context of public procurement auctions, which are the main mechanism through which medicinal preparations are purchased within public procurement in Russia. The 15% handicap will only apply if there is a bid offering medicinal preparations originating from abroad and a bid offering local medicinal preparations within the same auction. “Local” in this context means originating from any of the EAEU countries. If the “foreign” bid offers a lower price, the auction is awarded to this bidder; however, the resulting supply agreement is not concluded based on the price as proposed in the winning bid, but rather on this price reduced by 15%.

In practice, this means that a bidder offering medicinal preparations originating from abroad needs to take the subsequent price reduction into account while making its bid to ensure that, once it wins the auction, the price in the supply agreement is set at a level that remains profitable. In other words, this bidder needs to increase its bid price, thus making it less competitive as compared to the bid offering of local products.

This measure applies differently in the context of tenders, which are, along with auctions, the mechanisms through which medical devices are purchased within public procurement in Russia. The 15% handicap will be applied to a price of the bid offering “foreign” medical device when the bids are compared. Thereafter, if this bid still wins, the procurement contract will be entered into at the original price without the 15% reduction.

In December 2015, the Russian Government adopted Government Resolution No. 1289 On Restrictions and Conditions on the Access of Medicinal Preparations Originating from Foreign Countries and Included into the List of Vital and Essential Medicines for the Purposes of Procurement for State and Municipal Needs (the “Resolution No. 1289”). Resolution No. 1289 is a part of the anti-crisis plan, developed by the government earlier that aims to develop local manufacturing of medicines.

Resolution No. 1289 applies only to medicinal preparations included in the ED List. In a tender to conclude a single contract (single lot) to purchase a medicinal preparation included in the ED List, a state or municipal purchaser must reject any bid offering a medicinal preparation of foreign origin (or several medicinal preparations, one of which is of foreign origin), if there are two or more other bids which:

- offer one or more medicinal preparations, the country of origin of which is in the EAEU; and
- do not offer one and the same type of medicinal preparation from one manufacturer or manufacturers from the same group of companies (as defined in accordance with the antimonopoly legislation).

According to Resolution No. 1289, the country of origin of a medicinal preparation is evidenced by a certificate of origin of goods issued in accordance with the form and criteria for determining the country of origin provided for in the Agreement on the Rules of



Determination of the Country of Origin in the Commonwealth of Independent States, dated 20 November 2009 (the “Customs Rules”).

Before that, in February 2015 the Russian Government adopted a similar Government Resolution No. 102 On Restricting the Access of Certain Types of Medical Devices Originating from Foreign Countries for the purposes of Procurement for State and Municipal Needs (the “**Resolution No. 102**”).

Resolution No. 102 contains a list of medical devices to which its provisions apply (the “List”). The List was expanded in 2016. For medical devices included in the List, a state purchaser must reject any bid offering a foreign medical device (other than those devices originating in the EAEU) if there are two or more other bids that:

- offer one or more medical devices included in the List, the country of origin of which is in the EAEU;
- do not offer one and the same type of medical device from one manufacturer.

The country of origin is also evidenced by the Customs Rules.

23.13 How is promotion of medicinal preparations and medical devices regulated?

Advertising is the only type of promotional activity in the pharmaceuticals market that is currently specifically regulated by Russian law. 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 things such 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. In case of advertising of medicinal preparations and medical devices this requirement is further reinforced by a requirement that advertising statements regarding properties and characteristics of medicinal preparations or medical devices, including the methods of their application and use, are permitted only to the extent they are in line with indications contained in instructions for use of the relevant medicinal preparation or medical device.

The Law on Advertising also contains more specific provisions applicable to advertising of medicinal preparations and medical devices.

The Law on Advertising specifically requires that prescription medicinal preparations, 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 use can only be advertised in specialized printed publications intended for medical and pharmaceutical professionals, and at medical or pharmaceutical events.

Furthermore, the Law on Advertising requires that the advertisement of medicinal preparations, medical services, including methods of prophylaxis, diagnostics, treatment and medical rehabilitation, 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. The warning should last for at least three seconds in advertisements on radio programs; at least five seconds on television, film and video advertisements (not less than 7% of the frame area



should be allocated to this warning); and not less than 5 percent of the area/volume in advertisements disseminated by other methods. 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, or 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 device 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 device 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 and travel costs, from pharmaceutical and medical device 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 to 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 web page no 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 offense has been established for failing 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 failing to inform the Federal Service about events they organize and/or finance.

Surprisingly, the long-awaited amendments to the Code of Administrative Offences of the Russian Federation for violating Article 74 of the Fundamentals (governing interactions with medical and pharmaceutical professionals) have not yet been introduced.



24. Telecommunications, Information Technologies & Mass Media

24.1 Telecommunications

24.1.1 What applicable laws apply and who are the competent state bodies?

The general rules applicable to 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, registering frequency assignments, mass media registration, issuing licenses in the area of communications and mass media, and the protecting personal data.

The FCA is responsible for the coordination of international and federal programs in the area of information technology and communications, assigning 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 task of the SCRF is to allocation the frequency spectrum. The SCRF is also responsible for scientific and technical research in the area of use of the frequency spectrum, frequency spectrum demilitarization / conversion, developing technical policy for use of the frequency spectrum, and for certain issues with radio electronic devices’ electromagnetic compatibility.

Any decision of the MTMC, Roskomnadzor or the FCA may be appealed in court.

24.1.2 What does the Unified Communications Network comprise?

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 connected to the PSTN; and
- Special purpose networks and other communications networks for data transfer with the use of electromagnetic systems.

The PSTN provides telecommunication services for a fee to any user of communication services on the territory of the Russian Federation. The PSTN network is connected to the PSTNs of foreign countries.

A dedicated communications network provides telecommunication services for a fee to a closed user circle or groups of such circles. A dedicated communications network isn't connected to the PSTN and to the public 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 supports the operational activity of enterprises and the management of technological processes used in operations. A technological communications network isn't connected 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. Although a part of the technological communications network can be connected to the PSTN in case the network has free capacity, and the part connected to the PSTN may be technologically or programmatically or manually separated from the network, all regulations applicable to the PSTN will apply to the connected part of the network and the part of the technological network will be treated as a part of the PSTN.

A special purpose communications network fulfils various needs related to the state, national defense, state security and law enforcement. Such a network cannot be used for the provision of

communications, interconnection and transmission of traffic services for a fee.

24.1.3 Is a license required, and what are the procedures for obtaining a license?

Communication services can only be provided for a fee 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); and
- 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 the 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;

- The resources of the PSTN on the territory (i.e., numbering capacity resources) are limited and, therefore, the competent state authority decides that 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 the 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 issuing a telecommunications license in the amount of RUB 7,500.

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, 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 commencement date for provision of services.

24.1.4 What are the procedures for use of 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 must be reviewed at least once every four years.

If a communications provider intends to use radio frequencies to provide communication services, it should comply with the requirements for allocation of radio frequency bands prior to obtaining the respective communications license and with the requirements for assigning radio frequencies or radio frequency channels after obtaining the 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 10 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 to eliminate such violation, but not for more than 90 days.

As a general rule, a telecommunications provider that intends to use the radio frequency spectrum must obtain: (i) a resolution of the SCRF on allocation of radio frequency bands; (ii) a report from the radio frequency service agencies on the electronic compatibility of radio equipment to be used by the operator and other equipment; and (iii) a resolution of Roskomnadzor on assignment of radio frequencies and radio frequency channels. However, some radio frequency bands are already allocated by the SCRF for particular purposes in general SCRF resolutions, and as such, the additional SCRF resolution for such radio frequency bands will not be necessary. Further, certain radio frequencies may be freely used in Russia without the need to obtain any authorizations. Finally, MVNOs are not required to obtain authorizations for radio frequencies since they use the networks and radio frequencies of MNOs based on network cooperation schemes agreed upon between the providers.

24.1.5 Are radio frequency emitters subject to registration?

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 (unless the said decisions are not required under Russian law).

A decision on whether or not to issue a certificate should be taken within 10 business 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 10 years.

24.1.6 Do any local storage obligations apply to communications providers?

Communications providers are required to store in Russia information (metadata) on the facts of the receipt, transfer, delivery and/or processing of voice data, written text, images, sounds, video and other electronic messages of their customers within three years after termination of the said activities.

From 1 July 2018, communications providers will be required to store in Russia content of text messages of their customers, voice data, images, sounds, video and other electronic messages of their customers up to six months after termination of the activities on their receipt, transfer, delivery and/or processing. The procedures for, terms and scope of storage of the said information shall be set out by the Russian Government.

24.1.7 Are communications providers required to broadcast 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 the 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 10 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.

24.1.8 What legal interception rules apply?

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, information mentioned in Section 1.1.6 above as well as other information required by the said authorities to perform their duties.

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 prior court order, or with a post-approval by court 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.

24.1.9 What technical regulation requirements apply?

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 is subject to a compulsory confirmation procedure and will be sold or used in the Russian Federation without the respective declaration/certificate (as applicable), because the respective document is 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.

24.1.10 How does Russian law regulate information infrastructure?

On 1 January 2018, the Law On Safety of Critical Information Infrastructure of 26 July 2017 (the “**CII Law**”) came into force.

The CII Law is aimed at regulation of the subjects of critical information infrastructure, which are broadly defined and include state bodies and state enterprises, Russian companies and/or individual entrepreneurs who own/lease/legally possess information systems, information and communications networks, automated management systems operating in the spheres of health protection, science, transport, communications, energy industry, bank sphere and other financial market spheres, spheres of fuel and energy complex, nuclear power, defense, rocket and space, extractive, metallurgical and chemical industries, as well as Russian companies that provide for the interaction of the said systems and networks (the “**CII Subject**”). Thus, so far any company that owns (leases/possesses) an IT network and operates in any of the spheres of industry mentioned above falls under the regulation of the CII Law.

The critical information infrastructure includes objects of critical information infrastructure, e.g., information systems, information and communications networks, automated management systems of the CII Subjects (the “**CII Object**”) as well as telecommunications networks used to arrange for interaction of the said objects.

The CII Subjects must categorize the CII Objects they own/lease/possess. There are three categories of importance of CII Objects depending on their:

- social importance - assessment of potential damage that may be inflicted on the life or health of people, a possibility of ceasing/interrupting operations of life support objects,

transport infrastructure, communications networks, maximum time of a state service unavailability;

- political importance - assessment of potential damage to the interests of the Russian Federation as regards internal and foreign policies;
- economic importance - assessment of potential direct or indirect damage to the CII Subjects and/or budgets of the Russian Federation;
- ecologic importance - assessment of the level of influence on the environment; and
- importance of the CII Object for the purposes of provision of state defense, security and law and order.
- If the CII Object does not meet the criteria of either category, no category will be assigned to such CII Object. The respective criteria will instead be set out by the Russian Government.
- CII Objects that are assigned a category will be included into a special register.

The CII Law obliges all CII Subjects to notify the competent authority for IT infrastructure security and the Russian Central Bank (in case the subject operates in the banking/financial market spheres) of computer incidents with respect to their CII Objects.

The CII Subjects must establish and maintain a system of security for their CII Objects that are assigned a category and included in the register of CII Objects.



24.1.11 Are there any regulations in the IT sphere?

How does Russian law regulate internet communications?

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:

- at the request of Roskomnadzor provide notification about their activities as providers of Internet communications programs (such notification may be done voluntarily);
- store in Russia information on the facts of the receipt, transfer, delivery and/or processing of voice data, written text, images, sounds, video and other electronic messages of Internet users (metadata), as well as information on such users for one year after termination of these actions;
- from 1 July 2018, to store in Russia content of text messages of Internet users, voice data, images, sounds, video and other electronic messages of Internet users up to six months after termination of the activities on their receipt, transfer, delivery and/or processing. The procedures for, terms and scope of storage of the said information shall be set out by the Russian Government;
- provide criminal investigation authorities and national defense authorities with this information;
- ensure compliance of their equipment with statutory requirements so that the authorized state authorities conducting criminal investigations or ensuring national security may perform their functions, and pass measures in order to prevent disclosure of organizational and tactical methods of conducting investigations by the said authorities; and

- provide Federal Security Service of the Russian Federation with the information required for decryption of the received, transferred, delivered and/or processed electronic messages (in case the company uses encryption for the receipt, transfer, delivery and/or processing electronic messages of Internet users and/or provides such users with the possibility to use encryption).

These requirements 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.

How does Russian law regulate private messengers?

From 1 January 2018, requirements applicable to providers of Internet communications programs described in Section 1.2.1 above, as well as operating information systems and/or computer programs that are designated and/or used for exchanging electronic messages solely between the users of such information systems and/or computer programs when: (i) the sender determines the addressee(s); (ii) the Internet users do not publish publicly available information on the Internet; and (iii) it is not possible to send messages to an unlimited group of persons (respectively – “**IM Programs**” and “**IM Operators**”), came into force.

IM Operators have the following obligations in addition to those that are imposed on other providers of Internet communications programs:

- to identify their IM Programs users using a telephone number provided by a mobile provider based on the identification agreement to be concluded between the mobile provider and the IM Operator;



- within a day after receiving the request from the competent state authority, to restrict the possibility of the IM Program's user indicated in such request to transfer messages containing information prohibited for distribution or information distributed in violation of Russian law;
- to provide their IM Programs users with the option to refuse messages from other users;
- to provide for confidentiality of transmitted data;
- to provide for the opportunity to transmit messages at the initiative of state bodies;
- to prohibit the transmission of messages to IM Programs users in cases set out by law.

An IM Operator that is a Russian legal entity may identify its IM Programs users independently by identification of a telephone number of the IM Programs user. An IM Operator that is a Russian legal entity must store in Russia information on identification of the IM Programs user's telephone number. Such information may be transferred to third parties, generally only with the user's consent.

How does Russian law regulate operators of search systems?

A search system means an information system which at the user's request performs an Internet search of particular information and provides the user with information about the webpage to access the requested information published on websites of other entities/persons, except for information systems used to perform state and municipal duties, provide state and municipal services and perform other public duties as set out by federal laws.

Operators of search systems distributing Internet ads targeting Russian consumers at the request of an individual must stop providing data (except information on certain violations) on webpages allowing to access information on the requesting individual that is (i) distributed

in violation of Russian law; or (ii) inaccurate; or (iii) outdated/has become insignificant for the requesting individual due to circumstances or actions of the individual.

How does Russian law regulate distribution of news on the internet?

An owner of the computer program, website, and/or webpage used for processing and distribution of news on the Internet in the state language of the Russian Federation, state languages of republics of the Russian Federation, or other native languages of people of the Russian Federation, and which may distribute ads targeting Russian consumers and accessed by more than 1,000,000 Internet users in the course of any given day (the “**News Aggregator**”) must, inter alia:

- disallow the use of their News Aggregator for the commitment of criminal offences, disclosure of state and other secrets, and distribution of certain prohibited information;
- check accuracy of publicly important data distributed using the News Aggregator prior to launching such data distribution and immediately stop distributing the data based on the request from competent state authorities;
- disallow use of their News Aggregator for the purposes of concealment or falsification of publicly important data, distribution of inaccurate publicly important news under the guise of true information, and disallow the distribution of data in violation of Russian law;
- not to allow distributing news in order to defame a citizen or categories of citizens as regards their sex, age, race, nationality, language, religion, profession, place of residence, job, political views;
- disallow the distribution of news on a citizen’s private life in violation of Russian law;



- comply with prohibitions and restrictions on referendum and elections set out by Russian law;
- comply with Russian law requirements applicable to the distribution of mass information;
- uphold the rights and legal interests of citizens and companies, including the honor and dignity of citizens and business reputation of companies;
- publish on their News Aggregator their e-mail address and name/firm name;
- store news distributed by their News Aggregator, information on sources of such news and time period of distribution within six months, and provide Roskomnadzor with access to such information;
- install a computer program proposed by Roskomnadzor that enables calculating the number of the respective information resource's users.
- Roskomnadzor maintains a register of News Aggregators.

Only a Russian legal entity or a Russian citizen may be an owner of the News Aggregator.

24.1.12 How does Russian law regulate provision of audio and visual content?

An owner of an audio-visual service is an owner of a website and/or webpage and/or information system, and/or computer program that is used to form and/or organize the online distribution of an assembly of audio-visual works, provided that it can be accessed for a fee or requires that advertising targeted at Russian consumers be viewed and has more than 100,000 visitors located in the territory of Russia in the course of any given day.

An owner of audio-visual services must comply with the following obligations:

- not to allow the use of their audio-visual services for the commitment of criminal offences, disclosure of state and other secrets, and distribution of certain prohibited information;
- to mark audio-visual works distributed via the audio-visual service with an age rating sign prior to commencement of their distribution unless the respective work has already been marked with an age rating sign by its manufacturer/distributors (except for audio-visual works uploaded onto the audio-visual service by its users);
- to comply with prohibitions and restrictions on referendum and elections set out by Russian law;
- to comply with Russian law requirements applicable to the distribution of mass information;
- not to allow distribution by their audio-visual service of TV channels and TV programs not registered as mass media according to Russian laws;
- to publish on their audio-visual service their e-mail address and name/firm name;
- to install a computer program proposed by Roskomnadzor that enables calculating the number of audio-visual service's users.

All audio-visual services will be included into a register maintained by Roskomnadzor.



Russian law provides for restrictions on foreign control/shareholding over/in an audio-visual service. The restrictions are as follows:

- first-tier restrictions: Only Russian citizens (without dual citizenship) and Russian legal entities will be permitted to own such audio-visual services;
- second-tier restrictions: Unless otherwise provided for by an international treaty entered into by Russia, a foreign state, an international organization or a company under their control, a non-Russian individual, a Russian citizen with dual citizenship, an apatriote, a foreign legal entity, a Russian legal entity with a foreign shareholding exceeding 20%, as well as their respective affiliates (the “**Persons**”), as a general rule, may not own, manage or control, whether directly or indirectly, more than 20% of shares in (or participation interests in the charter capital of) a legal entity that owns the audio-visual service,

provided that

such Persons own, collectively or individually, an “information resource” (e.g., websites, webpages, information systems and/or computer programs), which is used for the distribution of audio-visual products on the Internet, and less than 50% of all users of such information resource are located in Russia,

unless

such Persons obtain consent from the commission to be established by the Russian Government. According to the law, such consent is granted where it would be beneficial “to the development of the Russian audio-visual services market.”

The second tier restrictions do not apply to companies that are engaged in certain strategic activities.

Once an audio-visual service is included on the register of audio-visual services maintained by Roskomnadzor, the authority will send a notice to the owner of such audio-visual service. Within two months of the receipt of such notice, the owner of the audio-visual service will be obliged to submit to Roskomnadzor certain documents confirming its compliance with the above-described restrictions.

However, the regulation does not apply to the following:

- websites registered as Russian mass media;
- search systems described in Section 1.2.3 above;
- information resources to which audio-visual works are primarily uploaded by Internet users.

There are four criteria established by Russian law confirming that the audio-visual services fall under the last exception mentioned above. The criteria are as follows:

- the information resource provides for a possibility to upload, remove and amend audio-visual works by users;
- the information resource provides for a possibility of a rights holder to request the removal of copyright and neighboring rights objects uploaded without their consent;
- a number of audio-visual works uploaded by persons who are not owners of audio-visual services within one month exceeds the number of audio-visual works uploaded by an owner of audio-visual services and/or third parties based on license agreements;
- uploading and distribution of audio-visual works under agreements with rights holders via the information resource does not constitute a major purpose of the information resource establishment and operation.



An owner of the information resource onto which audio-visual works are primarily uploaded by Internet users must notify Roskomnadzor, either voluntarily or upon Roskomnadzor's request, about information confirming that the resource meets the four criteria mentioned above. Roskomnadzor will consider the information submitted by the owners within 30 business days after receiving it. Based on the results of this consideration, Roskomnadzor will decide whether the resource may be considered an information resource onto which audio-visual works are primarily uploaded by Internet users or not.

How does Russian law regulate VPNs, anonymizers and similar online tools?

Distribution of certain types of information is prohibited in Russia. In case such information is distributed online in violation of Russian laws (e.g., copyright infringing content, drug-related advertising, child pornography, etc.) access to online resources distributing such information may be blocked at the decision of competent Russian authorities or courts. The decision is technically implemented and enforced by Russian ISPs, which must disable access to particular domains, IP addresses and/or URLs.

However, in practice, certain online tools (e.g., anonymizers or web caching services) enable Russian users to access prohibited content and circumvent the restrictions implemented by Russian ISPs, whether deliberately or not. The primary purpose of the new regulation is to exclude such practice and implement enforcement mechanisms against tools' owners for their failure to comply.

The regulation does not fully prohibit all anonymizers, VPNs, or other online tools and services; it only places additional obligations on owners of such tools so that Russian users are not able to access prohibited information using these tools.

The regulation may be generally summarized as follows:

1. owners of communications networks or online resources that are used to access prohibited content (the “**Access Tools**”) must not permit using their networks/resources in Russia to

access the prohibited content. Since the wording is rather broad, such Access Tools can include, among other things, VPNs and cloud filtering services;

2. Roskomnadzor cooperates with the federal state authorities performing criminal investigations or ensuring state security for the purposes of obtaining information on the Access Tool;
3. Roskomnadzor identifies the Access Tool's owner and sends it a notification in the Russian and English languages requiring such owner to connect their Access Tool to the governmental IT system containing the list of communications networks and online resources access to which must be blocked within Russia (the “**System**”);
4. the Access Tool's owner must connect to the System within 30 business days of the receipt of the notification mentioned in item 3 above;
5. within 3 business days after the owner of the Access Tool receives access to the System it must ensure that its Access Tool is no longer used to access the prohibited content;
6. if the owner of the Access Tool fails to fulfil its duties, Roskomnadzor issues a decision to prohibit access to the respective Access Tool in Russia. The details of such Access Tool are then introduced into the list of the prohibited content;
7. access to the respective blocked Access Tool may be subsequently restored after the owner fulfils the relevant duties and notifies Roskomnadzor thereof.

The above-described regulation does not apply to Access Tools if:

- the group of users of such tools is predetermined by their owners; and



- the tools are used for technological purposes of maintaining operations of the legal entity using such tools.

Under what scenarios could a company face an IP block in Russia?

Russian law sets out the rules for banning websites (online resources in certain cases) that violate Russian law. The banning procedures differ slightly, depending on the reason for banning. Please see below the cases when a website (online resource in certain cases) may be blocked:

- case 1 – distribution of the following information/materials:
 - pornographic materials with images of minors and/or materials attracting minors to take part in entertainment events of a pornographic nature;
 - information on the methods of development, production and use of drugs, psychotropic substances and their precursors, new psychoactive substances that are potentially dangerous, places where they can be acquired, information on the ways and places of cultivating drug containing crops;
 - information on suicide methods as well as information promoting suicide;
 - information on a minor who suffered from unlawful acts (omissions), the distribution of which is prohibited by federal laws;
 - information violating Russian laws and regulations on gambling;
 - information containing offers on retail distance sale of alcohol products and/or alcohol-containing nutritive products and/or ethyl alcohol and/or alcohol-

- containing inedible products, the retail sale of which is restricted or prohibited by applicable laws;
 - information distributed over the Internet and considered prohibited for distribution by a court decision in effect;
 - information distributed in violation of copyright or neighboring rights;
 - information promoting mass riots, extremist activities, participating in public events conducted in violation of applicable regulations;
- case 2 - breach of applicable rules by providers of Internet communications programs;
- case 3 - processing information in violation of Russian personal data laws;
- case 4 - breach of applicable rules by owners of audio-visual services;
- case 5 - breach of requirements applicable to owners of the Access Tools.
- Each case mentioned above has a separate mechanism for cooperation among Russian authorities, hosting providers and ISPs in order to ban a particular website/online resource.

24.2 Mass Media Regulation

24.2.1 What applicable laws apply and who are the 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.

24.2.2 Is mass media subject to 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 is subject to registration by Roskomnadzor.

Foreign companies have limited rights to establish mass media.

The following restrictions to foreign investors apply:

- 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 apatriote, or a Russian citizen having citizenship in another state (jointly or severally) may not be founders/participants of mass media, or 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 apatriide, or a Russian citizen having citizenship in 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, 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, or actually determine decisions passed by them, is prohibited.

Transactions that result in a violation of the above-mentioned restrictions are void.

Further, in case a mass media's editorial board, a broadcasting company or a publisher receives funds from: (i) a foreign state; (ii) an international organization; (iii) a foreign organization; (iv) a non-commercial organization acting as a foreign agent; (v) a foreign citizen; (vi) an apatriide; or (vii) a Russian entity whose founders/participants/shareholders are owned by entities named in items (i) – (vi), it must once per quarter (not later than the 10th day of the month following the reporting period) provide information on the funds received from the said entities to Roskomnadzor.

The above-mentioned notification obligation does not apply in case of receiving funds:

- From the mass media founder;



- As a result of advertisement distributions;
- As a result of distributing products of the respective mass media; and
- In the amount of less than RUB 15,000 received as a lump sum.

For registration purposes (including for the purposes of amending the registered data), an applicant must submit the following documents to Roskomnadzor or its territorial agency⁹⁹:

- An application for state registration of the mass media containing information on payment of the registration fee (RUB 8,000 for mass media which products are distributed throughout Russia, outside Russia or throughout the territory of two or more constituent regions of Russia, and RUB 4,000 for mass media which products are distributed throughout one constituent region of Russia/municipal unit);
- Identification documents and documents confirming the registration address of an applicant (if the applicant is an individual);
- Foundation documents of an applicant (if the applicant is a legal entity);
- Extract from the shareholders' register or participants' register;
- Documents confirming the right to use the domain name of the Internet site in case of establishment of a periodical on the Internet;

⁹⁹ An application should be filed with Roskomnadzor if the mass media products are to be distributed throughout and outside Russia. If the distribution of such products is to be limited to the territory of one or several constituent territories/municipal units, the application should be filed with the territorial division.

- The charter of the mass media editorial board or the agreement between the mass media founder and the editorial board (chief editor) (in case of changing the registered data);
- Documents confirming the transfer of the rights and obligations of the mass media founder to a third party, order on appointment of the chief editor or another document confirming their authorities (in case of changing mass media participants); and
- Pension insurance policy (if the applicant is an individual).

The review period is normally 30 business days. Mass media is deemed registered after making an entry on such mass media to the mass media register.

The founder of the mass media should start the manufacture of the mass media products within one year from the date of the mass media registration. If it misses the prescribed term, the mass media registration 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 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 mass media as determined by the Mass Media Law; and
- 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; and
- If the state registration fee was not paid.

24.2.3 What other steps are required to be performed for the purposes of mass media distribution?

A Russian legal entity conducting such business activity would require not only mass media registration but also to establish an editorial commission and recruit 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.

24.2.4 Is broadcasting activity subject to licensing?

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 above.

24.2.5 How to obtain a 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.

If a broadcaster is also the editorial board of a TV or radio channel it is allowed, in accordance with a broadcasting license, to distribute the TV/radio channel throughout the territory of the Russian Federation using any types of broadcasting methods, including terrestrial air broadcasting, satellite broadcasting, cable broadcasting (a universal license).

If a broadcaster is not an editorial board of a TV or radio channel it is allowed, in accordance with a broadcasting license, to distribute the TV/radio channel on the territory of the Russian Federation using specific broadcasting methods and in compliance with the rights granted to the broadcaster by the editorial board.

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; and
- 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:

- Extract from the shareholders' 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), as well as documents confirming compliance with foreign investments restrictions; and
- 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 RUB 7,500.

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 the constituent territories of the Russian Federation;
- licenses for performance of terrestrial analog TV broadcasting;
- licenses for performance of terrestrial digital broadcasting; and
- licenses for performance of satellite broadcasting with the use of orbital and frequency resources.

24.2.6 Is it necessary to assign age ratings to informational products?

Russian legislation obliges the manufactures 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:

- (i) “0+” (for children under 6 years old);
- (ii) “6+” or in the form of the warning “For children older than 6 years old” (for children who are 6 or more years old);
- (iii) “12+” or in the form of the warning “For children older than 12 years old” (for children who are 12 or more years old);
- (iv) “16+” or in the form of the warning “For children older than 16 years old” (for children who are 16 or more years old); and
- (v) “18+” or in the form of the 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 distributed in Russia. The law also sets requirements for the experts who can participate in the classification of products.

The Child Protection Law contains contradictory provisions regarding a necessity to mark information with an age marking. On one side there is a general exception stating that it is not necessary to put an age marking on the information distributed via the Internet (except for information distributed via websites registered as mass media and audio-visual services described in Section 1.2.5 above). However, on the other side Russian law contains the rule which states that TV listings and other catalogues of information products must be marked with age markings, including if published online. It is not clear how the said contradictory provisions should be interpreted in conjunction with each other. Therefore, we recommend marking online catalogues of information products and the products contained therein with age rating signs.

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 website.

25. Climate Change

25.1 General Overview

25.1.1 Is Russia generally involved in international climate laws and policies?

Being the world's fifth largest carbon emitter, Russia signed the United Nations Convention on Climate Change Combatting (“UNFCCC”) in 1992 and ratified it in 1994. In 1999, Russia signed the Kyoto Protocol (“KP”) to the UNFCCC and ratified it in 2004. Russia's implementation of the KP was crucial for its entry into force.

Russia only participated in the first round of the first commitment period of the KP. Whereas many Russian businesses showed significant interest in participating in Joint-Implementation Projects (“JIs”) under the KP, a number of foreign businesses purchased the emission reduction units generated through JI, more than 150 applications for participation in the JI were filed and more than 100 projects were given the green light, and the projects covered various industries, including oil & gas, metallurgy, chemicals, forestry and others, the ultimate financial effect of such projects was disappointing because of unfortunate timing and administrative hurdles.

Russia was among the first countries to sign the Paris Agreement (“PA”) in April 2016. Russia's intended nationally determined contribution provides for 25%–35% reduction of greenhouse gas emissions by 2030 as compared to the 1990 level. It is frequently argued that this does not require any significant efforts. The ratification of the PA is currently being discussed within legislative and executive authorities, with significant involvement of private sector actors. Generally, the public officials confirm that the ratification must take place, However, the timing of the ratification remains unclear:



- In November 2016 the Russian Government adopted an action plan, which suggests that the ratification will take place in 2019;
- In June 2017, Mr. Sergey Donskoy, Russian Ministry of Environment, mentioned that the final decision on the ratification will not be made before January 2019¹⁰⁰. About the same time, Mr. Vladimir Putin, attributed the delay in ratification to “the absence of the rules for allocating resources and other technical items”¹⁰¹; and
- In November 2017, Mr. Sergey Lavrov, Russian Minister of Foreign Affairs, said that the ratification of the PA is of great importance for the whole world, and Russia is not going to delay this process¹⁰².

On COP 23, there has been some seemingly upbeat coverage with reference to major state and private corporations showing their interest in low-carbon projects and the state of the implementation of the PA¹⁰³.

25.1.2 Does Russia have any laws specifically targeting greenhouse gas emissions?

Instead of any specific legislation, Russia has governmental plans to achieve emission reductions. In the Climate Doctrine of the Russian Federation approved by President Dmitry Medvedev in 2009, the importance of climate change was highlighted and a number of goals have been set, such as to increase energy efficiency of buildings and

¹⁰⁰ ‘Russia to ratify the Paris Agreement until 2020’ *Vesti Finance* (2 June 2017) <<http://www.vestifinance.ru/articles/86290>>

¹⁰¹ ‘Putin told when Russia ratified the Paris Climate Agreement’ *Ria Novosti* (2 June 2017) <<https://ria.ru/world/20170602/1495690540.html>>

¹⁰² Interview of Russian Foreign Affairs Minister Sergey Lavrov to the Mexican newspaper *Excelsior* (17 November 2017) <<http://inosmi.ru/politic/20171117/240786105.html>>

¹⁰³ ‘Russia shows climate power’ *Kommersant* (18 November 2017) <<https://www.kommersant.ru/doc/3472477>>

industrial facilities, enhance industrial and vehicle fuel efficiency, and increase the use of alternative energy sources. Further legal enactments have been adopted pursuant to the Climate Doctrine,¹⁰⁴ and other programs that seem to be overlapping with the Climate Doctrine. Subsequent enactments, particularly in the field of energy efficiency, have also been introduced¹⁰⁵.

25.1.3 What is the current state of the Russian voluntary emissions reduction market?

Historical background

Russian law does not prohibit or restrict businesses from exercising Voluntary (or Verified) Emission Reductions (“**VERS**”). The Russian market has already seen some practical examples of transactions with

¹⁰⁴ Pursuant to the Climate Doctrine, in 2013, President Vladimir Putin issued Decree No. 752, which sets the target of limiting greenhouse gas emissions in 2020 within 75% of the 1990 level – i.e., setting the 25% emissions reduction goal.

In 2014, the government adopted a plan for implementation of this presidential Decree. The plan provided for development of the Concept of Monitoring, Reporting and Supervision of the Greenhouse Gas Emissions.

Such a concept was developed in April 2015. Importantly, the concept provided for imposition of reporting obligations in 2017-2018 with respect to business entities with annual emissions exceeding 50,000 tCO₂e (accounting indirect emissions).

In 2015, the government also suggested draft amendments to the Federal Law on Environmental Protection. These amendments aimed to provide the government with a right to set the limits of greenhouse gas emissions, as well as development of economic incentives for the reduction of greenhouse gas emissions. This right has been removed from the final versions of the draft law upon public consultations with major businesses associations.

In November 2016, the government approved the Plan for Implementation of the Body of Actions to Improve the State Regulation of Greenhouse Gases Emissions and Preparation for Ratification of the PA. Among others, this plan provides for development of the report to estimate the social and economic effects by December 2017, the model of regulation of the greenhouse gas emissions to be developed in 2017, the draft federal law on greenhouse gases regulation by June 2019, the draft low-carbon development strategy until 2050 by December 2019, the draft presidential decree on the emission reduction target for 2030 by December 2019, and the draft governmental plan for implementation of such decree by March 2020.

¹⁰⁵ Further details in position paper of the Association of European Business in Russia <http://www.aebrus.ru/upload/iblock/8b3/position-paper-2016_2017.pdf> (p. 70).



Russian VERs. The Arkhangelsk Pulp and Paper Mill entered into such a transaction.

Latest developments

In 2016, an Integrated Program for Climate Initiatives (IPCI) and an IPCI-based Carbon Registry were launched. The goal of the IPCI is to allow businesses to buy and sell the carbon offsets generated through emission reduction projects. IPCI is participating in global blockchain initiatives.

As part of this program, a decentralized registry of carbon units based on blockchain technology was created. In December 2016, the first pilot transaction with this registry took place and involved the French climate finance group Aera¹⁰⁶. On 9 October 2017, the first post-Kyoto GHG reductions at the Khimprom LLC plant were certified in accordance with the international standard ISAE 3410, with their subsequent sale intended through the IPCI's blockchain-based ecosystem¹⁰⁷.

VER market potential

As noted, Russia did not participate in the second period of commitments under the KP. In addition, the market mechanisms set out in the PA are not expected to be implemented until 2020. The adoption of the national emissions trading scheme within Russia also appears to be delayed at least until 2019.

On the other hand, the costs of emission reductions in Russia is arguably lower than in many other countries. Thus, purchasing carbon offsets generated through VER projects in Russia does seem to be commercially advantageous.

¹⁰⁶ 'Platform of the Clean Future' *Climate Russia* (6 December 2016)

<<http://climaterussia.ru/politika-i-finansy/platforma-chistogo-buduschego>>.

¹⁰⁷ 'With Hope for Voluntary Purchasers' *Kommersant* (11 October 2017)

<https://www.kommersant.ru/doc/3435132>.

In addition, Russian businesses active internationally are showing some interest in the VER market.

25.1.4 Are there any private sector initiatives affecting the law-making process in the climate change field?

In 2016, some of Russia's major financial, industrial and consulting businesses formed the Climate Partnership of Russia to promote economic mechanisms of climate change mitigation, particularly carbon tax.

In addition, various business associations regularly hold meetings to discuss carbon pricing issues, as well as other climate policy matters. The Russian Union of Industrialists and Entrepreneurs (RSPP), Business Russia (*Delovaya Rossiya*) and the Association of European Business are particularly active in this regard.

25.2 Energy Efficiency and Energy Saving

25.2.1 What is the general background of the Russian energy efficiency laws?

According to the estimates of the Association of European Businesses, Russia has an energy saving potential equivalent to 252 million tonnes of oil. That approx. corresponds to the total energy consumption of France (about 300 million tonnes of oil equivalent). Russian GDP energy intensity is 2.6 times higher compared to the OECD countries¹⁰⁸. In 2009, Russia was ranked last in the implementation of the 25 recommendations of the International Energy Agency (“IEA”) on energy efficiency¹⁰⁹. The Federal Law on Energy Efficiency and Energy Saving (“EE Law”) was adopted to address this situation.

¹⁰⁸ Position paper of the Association of European Business in Russia
<http://www.aebrus.ru/upload/iblock/8b3/position-paper-2016_2017.pdf> (p. 6).

¹⁰⁹ Comparison of energy efficiency measures in Russia to those implemented by developed countries (including IEA measures)
<http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-ru/dv/dru_20131017_11/dru_20131017_11_en.pdf>.



25.2.2 Do energy efficient requirements apply to the sale of goods?

The EE Law contains energy efficiency rules for circulation of goods. It also provides that the state regulation in terms of energy efficiency may include prohibition or restriction of the production and circulation of energy-inefficient goods where there is an adequate supply of energy-efficient alternatives.

The EE Law obliges producers and importers of certain types of goods to include information about the energy efficiency class of such goods in the technical documentation attached to goods, their marks and labels.

Producers and importers classify the energy efficiency of goods in accordance with the rules approved by state authorities and the principles established in Russian Government Decree No. 1222 dated 31 December 2009, which is generally harmonized with the European Council Directive 92/75/EEC. According to Government Decree No. 1222, producers and importers are obliged to certificate household appliances such as refrigerators, washing machines and TV sets.

Russia and other member states of the Eurasian Economic Union (“EAEU”) prepared a draft of the technical regulation “On information for consumers on the energy efficiency of energy-consuming products”. The draft is currently pending approval by the national authorities of the member states. It is generally harmonized with the respective EU regulations and aims to contribute to the elimination of technical barriers between the EAEU and the EU.

25.2.3 Are there any specific energy efficiency requirements with respect to lighting?

Most of the IEA’s recommendations on energy efficiency in lighting have been adopted in Russian legislation. The EE Law establishes a ban on the sale of 100-Watt incandescent bulbs starting from January 2011. Expectations that the ban on the sale of 75-Watt incandescent bulbs in 2013 and 25-Watt incandescent bulbs in 2014 would come into force, have not been met.

To counter this regulation, some entrepreneurs have started producing and selling 95–99 Watt bulbs. The illegal sale is punishable by an administrative fine. According to certain research studies, Russian consumers are still not motivated to buy energy-saving bulbs given that the price of electricity in Russia is significantly lower than in the EU.

25.2.4 Are there any energy efficiency requirements applicable to the construction industry?

The EE Law establishes a general rule that buildings and other structures should meet applicable energy efficiency requirements during commissioning and subsequent operations. The Federal Law on Technical regulation on safety of buildings and structures also requires that buildings are designed and constructed to ensure efficient use of energy and eliminate wasteful consumption of resources during their operation.

Energy efficiency requirements are approved by the state authorities in accordance with the rules provided by the Russian Government. Energy efficiency requirements should be reviewed by state authorities at least once every five years. Such requirements must include:

- indicators of energy consumption;
- requirements for the architectural, technological, design and engineering solutions influencing energy efficiency;
- requirements for the construction, technologies and materials that eliminate wasteful energy consumption in the process of construction, reconstruction and operation of buildings or other structures.

Developers have an obligation to ensure that buildings meet energy efficiency requirements and equip them with devices that measure energy use. In case of a violation, the building owner can demand



from the developer free elimination of violation within a reasonable time or compensation for having eliminated the violation.

State construction supervisory authorities assign energy efficiency classes to apartment buildings. The energy efficiency class must be marked on the facades of newly commissioned buildings.

In Russia, “green” technologies that hinge on energy savings are not often used in building constructions. Nevertheless, in Moscow, more and more office buildings are certified in compliance with either BREEAM (BRE Environmental Assessment Method) or LEED (Leadership in Energy and Environmental Design) standards. In addition, GOST R 54964-2-12 “Compliance Assessment. Environmental Requirements For Real Estate Sites” and STO NOSTROY 2.35-2011 “Green Building. Residential and Public Buildings. Rating System Assessing the Sustainability of the Environment” are recognized as national standards for green buildings that comply with the ISO standards¹¹⁰.

25.2.5 Are there any energy efficiency criteria in the state procurement field?

The EE Law requires that tenders for state and municipal procurement of goods, works and services comply with a number of energy efficiency requirements. Goods, works and services for state and municipal needs should provide the best possible energy efficiency and cost savings.

25.2.6 Is there a special regulation of the energy service contracts?

Pursuant to the energy service contract (“ESC”), a contractor undertakes to take steps aimed at energy savings by the customer and increasing the efficiency of energy resource consumption.

¹¹⁰ Moscow School of Management SKOLKOVO, Institute for Emerging Markets Studies, Sustainable Business Lab - ‘Sustainable Russia: a Guide for Multinational Corporations’

https://iems.skolkovo.ru/downloads/documents/SKOLKOVO_IEMS/Research_Reports/SKOLKOVO_IEMS_Sustainable_Business_Lab_Research_2016-07-13_en.pdf

The ESCs shall govern the extent of energy savings to be achieved by the contractor and the term of the contract, which may not be shorter than the period necessary to achieve such savings. There might be some other mandatory provisions of the ESCs, for instance, required by the laws governing state and municipal procurement.

According to the Association of Energy Service Companies, 96 energy service companies currently operate in Russia. As of the 1st quarter of 2017, the energy efficiency market was estimated at RUB 5,348,200,000¹¹¹.

25.2.7 Are there any incentives for implementation of the energy-saving technologies?

The EE Law encourages the use of energy-efficient and energy-saving technologies through the investment tax credits and increased depreciation ration.

Investment tax credit

An investment tax credit can be granted in case of:

- R&D or modernization efforts to upgrade production facilities in terms of higher energy efficiency;
- investments in the creation of assets belonging to the highest energy efficiency class (including apartment buildings), renewable energy sources, heat or electric power generating facilities with an efficiency output of more than 57%, or other objects or technologies characterized by high energy efficiency according to the list approved by the Government Resolution No. 600.

Effectively, the investment tax credit allows the tax payment deadline to be extended. The investment tax credit is then repaid by step-by-

¹¹¹ RAESCO Research “Russian Energy Market Review” (1st quarter 2017) <<http://escorussia.ru/publication/592aa17c56c2ff1a7c010000>>.



step payments of the credit amount and accrued interest. The credit may be granted with respect to profit tax, as well as certain regional and local taxes. Meanwhile, the credit period can be anywhere from one to five years.

Obtaining the investment tax credit is a rather complicated procedure. To date, only a few companies have taken advantage of it. For instance, a major oil company subsidiary has obtained the right not to pay 50% of the amount of profit tax for the period covering January 2013 to the end of 2017. The credit rate is 1/2 of the refinancing rate of the Central Bank of Russia (i.e., 8.25%)¹¹².

Increased depreciation ratio

Taxpayers may increase the basic depreciation rate by a special ratio (not exceeding two) in respect of fixed assets relating to objects of high energy efficiency according to the list approved by the Government Resolution No. 600, or objects in the high energy efficiency class.

25.3 Renewable Energy

25.3.1 What is the current state of the renewable energy market in Russia?

A number of research papers highlight that Russia has great potential to develop renewable energy sources (“**RES**”) across the whole territory, even if it lags behind global indicators¹¹³. Some even believe that Russia may become an exporter of renewable energy¹¹⁴. Yet according to public sources, as of 1 January 2017, the total installed

¹¹² ‘TNK-BP borrowed taxes’ *RBC* (15 February 2015)

<https://www.rbc.ru/newspaper/2013/02/15/56c1be319a7947ac7f7abfef>

¹¹³ Russia struggles to unleash clean energy potential (7 May, 2017)

<https://www.ft.com/content/638e1dc6-1bb2-11e7-bcac-6d03d067f81f>

¹¹⁴ Russian startups race to meet renewable energy targets (09 November 2016)

<http://sk.ru/news/b/articles/archive/2016/11/09/russian-startups-race-to-meet-renewable-energy-targets.aspx>.jr

capacity in Russia for all types of generation is 244.1 GW¹¹⁵, less than 1% of which constitutes renewable energy sources, including biomass (0.6%); small hydropower (0.3%); and wind, solar and geothermal power generation 0.1%¹¹⁶.

25.3.2 Who are the key actors of the renewable energy market in Russia?

The Ministry of Energy and the Market Council are the key institutions that determine the future of Russian RES. The Market Council is authorized to manage the qualification process for renewable energy suppliers, which is a pre-condition for state support eligibility. PJSC Rosseti and Regional Energy Commissions (“REC”) play an important role in creating conditions conducive to expanding the capacity of renewable energy power plants. PJSC Rosseti provides technical connection to most renewable energy power plants. Meanwhile, RECs adapt and implement tariff regulation for renewable energy producers.

The state corporations “Rostec” (Russian Technologies), “Rusnano” and “Rosatom” are among the key promoters of RES. The private sector is primarily represented by the group of companies “Renova”.

Recently, EuroSibEnergо — Russia’s largest privately held energy company — launched Siberia’s largest solar power plant in Abakan, Republic of Khakassia.

The Finnish energy company Fortum that is currently working on a 35MW wind plant in the Ulyanovsk region has also set up a joint venture with Rusnano to consolidate efforts in the wind energy field. Several Chinese companies are also exploring the market.

¹¹⁵ Ministry of Energy of the Russian Federation ‘Main Characteristics Of Russian Electric Power Engineering’ < <https://minenergo.gov.ru/node/532> >.

¹¹⁶ Alternative energy: Is the end of the hydrocarbon era close? (6 June 2016) <<http://tass.ru/pmef-2016/article/3342511>>



Enel plans to implement two projects with a total capacity of 291 MW in the field of solar energy, with the support of the Russian government¹¹⁷.

A number of relatively small-scale scientific-production enterprises are also engaged in the production of renewable energy equipment.

25.3.3 What are the targets for renewable energy generation?

The Government adopted a Decree No. 1-R dated 8 January 2009 (as amended) approved the “Main State Policy Directions on Energy Efficiency Improvement Through the Use of Renewable Energy Sources Until 2024”. The documents set a 4.5% target for renewable energy production by 2020. In 2015, the 4.5% target was extended until 2024. According to certain estimates, however, the share of RES may reach 11% by 2030¹¹⁸.

25.3.4 Does Russian law provide for any incentives for renewable energy production?

Several legislative attempts to promote renewable energy have been made. Whereas such attempts were generally not successful, they still indicate the existence of this matter in public agenda.

For instance, in 1999, both houses of the Russian Parliament approved the draft law providing that at least 3% of total state investment into the energy sector should be directed to development of RES.

However, the draft was vetoed by the president. Further legislative attempts to support the RES market took place after.

In 2004–2007, a number of amendments to the Federal Electricity Law aiming to promote the use of RES were under discussion. The first draft of the amendments suggested committing the grid

¹¹⁷ Enel enters Russian renewable sector with 291 MW of wind energy capacity awarded (15 June 2017) < <https://www.evwind.es/2017/06/15/enel-enters-russian-renewable-sector-with-291-mw-of-wind-energy-capacity-awarded/60179> >

¹¹⁸ In Russia will blow out and cough up (6 April 2017) < <https://www.gazeta.ru/business/2017/04/06/10612961.shtml> >

companies to purchase the energy generated through the RES and to establish fixed tariffs for purchase of such energy from the generators - similarly to the German Renewable Energy Sources Act (EEG).

The final version of the amendments was limited to the Electricity Premium Scheme. The scheme provided that the price of electricity produced by qualified renewable energy installation is determined by adding to the equilibrium price of the wholesale market the premium price to be fixed in accordance with the procedure established by the Russian government. This scheme has not been put into practice, largely in view of the potential negative effects on electricity prices for end-consumers¹¹⁹. The Ministry of Energy has subsequently suggested to exclude this scheme from legislation.

The Subsidy for Compensation of the Cost of Grid Connection

The owner of a generating facility with installed capacity of no more than 25 MW can receive as compensation federal subsidies for grid connection costs. Such a generating facility should be recognized as qualified by the Market Council. The conditions for obtaining subsidy are established in Government Decree No. 850 of 20 November 2010 and Order of the Ministry of Energy of 22 July 2013 No 380:

- The generating facility is recognized as operating on the basis of RES in accordance with the procedure established by Government Decree No. 426 on 3 June 2008 “On the qualification of the generating facility operating on renewable energy sources”;
- Installed capacity is no more than 25 MW;
- The generating facility was put into operation from the date the Federal Law “On Amendments to Certain Legislative Acts

¹¹⁹ The International Finance Corporation ‘Renewable Energy Policy in Russia: Waking the Green Giant’ <

<https://www.ifc.org/wps/wcm/connect/bf9fff0049718eba8bcaaf849537832d/PublicationRussiaRREP-CreenGiant-2011-11.pdf?MOD=AJPERES> >



of the Russian Federation in connection with the implementation of measures to reform the Unified Energy System of Russia” entered into force;

- The owner is not being in the procedure of bankruptcy or liquidation.

The capacity-based support scheme

In 2013, the Government adopted Decree No. 449 on the Mechanism for the Promotion of Renewable Energy on the Wholesale Electricity and Capacity Market. The International Finance Corporation assessed the document as being a significant step toward the development of a regulatory framework for promotion of RES in Russia¹²⁰. Decree No. 449 established a specific support scheme for RES based on the selection of renewable energy projects.

25.3.5 How are the renewable energy projects selected?

The Administrator of the Trading System (“ATS”) selects renewable energy projects each year and for each type of renewable energy, i.e., wind, solar PV and small hydropower.

The Government determines the level of installed wind, solar PV and small hydropower capacity that should be commissioned each year. Investors have a choice of location for renewable energy projects; however, the projects should be located in the price zones of the Russian wholesale market.

The selection consists of two stages. On the first stage, ATS selects projects that meet the requirements for participation in the support scheme:

- registration as provisional supplier to the wholesale market;

¹²⁰ International Finance Corporation ‘Russia’s New Capacity-based Renewable Energy Support Scheme An analysis of Decree No. 449’
<<http://www.ifc.org/wps/wcm/connect/f818b00042a762138b17af0dc33b630b/Energy-Suppor-Scheme-Eng.pdf?MOD=AJPERES>>

- compliance with limits to the capital costs of renewable energy investment projects;
- compliance with localization requirements (up to 65-70% for 2016-2020); and
- conclusion of contracts related to access to the wholesale electricity market and registration as provisional supply point.

On the second stage, ATS is to determine which of the selected projects will be invited to sign the Agreement for RES Capacity Supply. This selection is based on the proposed capital costs. ATS may select up to the maximum number, which is determined by the amount of installed capacity necessary to achieve the additional RES capacity target.

25.3.6 What rights and obligations does the Agreement for the Supply of RES Capacity provide for renewable energy developer?

The RES Capacity Supply Agreement imposes obligations to construct and commission renewable energy installations within a certain period of time. Renewable energy installations should be qualified by the Market Council. Under the Agreement, the developer also commits to produce a certain minimum amount of electricity every year.

The Agreement establishes the right to benefit from regulated tariff that makes it possible to recover investment costs and operating expenses. This regulated tariff is determined on the basis of the installed capacity.

Decree No. 449 sets the duration of Agreements for the Supply of Capacity at 15 years and establishes a certain formula for the calculation of regulated tariff.



25.3.7 What is the procedure for qualification of the renewable energy installations?

State support for RES is conditional upon qualification of renewable energy installation by the Market Council. After construction, connection to the network and commissioning, installation must be qualified in accordance with the procedure established in Decree No. 426 on the Qualification of RES Installations. The installation must meet the definition of renewable energy of a certain capacity and type, in order to have metering devices installed and to have an operational facility.

25.3.8 Is there any information as to how the capacity-based support scheme is being implemented in practice?

According to the ATS's website, the statistics on the number of applications submitted to and approved by ATS in 2013–2017 appears as follows:

Type of projects	2013	2014	2015	2016	2017
<i>Submitted applications</i>					
Solar	60	52	20	0	26
Wind	9	1	1	26	78
Hydro	0	3	2	0	2
<i>Approved applications</i>					
Solar	32	33	14	0	26
Wind	7	1	1	26	43
Hydro	0	3	2	0	2

There are some claims to the effect that market access is not being provided in a non-discriminatory manner.

25.3.9 How Purchase of electricity at regulated prices is regulated?

The support mechanism for RES in the retail market has been approved by Government Decree No. 47 of 23 January 2015 (amending certain other regulations relating to RES incentives¹²¹). Under this mechanism, network organizations are obliged to purchase electricity from qualified RES generators of at regulated tariffs for the purpose of compensating investments into the construction of RES facilities.

In order to be eligible for such a tariff, an RES object must receive a certificate of qualification and be included in the scheme for the development of the region's electric power industry. The projects are selected on a competitive basis in accordance with the following criteria:

- amount of CAPEX;
- payback period;
- basic level of profitability (12% since 2017);
- volume of electricity production from RES should not exceed 5% of the total volume of electric energy losses in a constituent entity (region) of the Russian Federation;
- other social and economic criteria established by the constituent entity (region) of the Russian Federation independently.

¹²¹ In particular, this Decree amended the Government Decree No. 1178 of 29 December 2011 "On Pricing in the Field of Regulated Prices (Tariffs) in Electrical Energy Industry".



26. E-Commerce

26.1 What regulations govern business on the internet?

There is a large amount of e-commerce related legislation, including:

- Federal Law No. 152-FZ of 27 July 2006 “On Personal Data” (the “Personal Data Law”) and related by-laws;
- Federal Law No. 149-FZ of 27 July 2006 “On Information, Information Technologies and Protection of Information”;
- Law No. 2300-1 of 7 February 1992 “On the Protection of Consumers’ Rights”;
- Resolution of the Government of the Russian Federation No. 612 of 27 September 2007 “On the Approval of the Rules for Distance Selling of Goods”;
- Federal Law No. 38-FZ of 13 March 2006 “On Advertising”;
- and
- various financial and administrative regulations applicable to internet sales and the provision of financial products and services.

26.2 Which administrative body is responsible for regulating e-commerce, data protection and the internet?

No administrative body has overall responsibility for the regulation of e-commerce, although a number of bodies have interests in ensuring the enforcement of certain laws that apply to e-commerce. For example, the main Russian data protection authority is the Federal Service for Supervision in the Field of Telecommunications, Information Technology and Mass Communications (“Roskommnadzor”), which, among other things, has the authority to block access to particular domain names in Russia.

The Federal Antimonopoly Service (the “FAS”) oversees compliance with advertising regulations and enforcement of the law against unfair competition practices, including those committed on the internet.

Consumer product and product safety issues, including product recalls, and control and supervision over compliance with mandatory requirements, including sales via the internet, are dealt with by the Federal Service for the Protection of Consumers’ Rights (“**Rospotrebnadzor**”).

26.3 What rules are applied by Russian courts to determine the jurisdiction for internet-related transactions or disputes in cases where the defendant is resident or provides goods or services from outside the jurisdiction?

Jurisdiction for internet-related transactions is defined by international private law (conflict of law) principles. As such, parties are free to agree that a non-Russian law shall apply to their transaction, provided that there is a foreign element to it. Such “foreign element” is recognized when a party to a transaction is a non-Russian entity or a contract contains another foreign element, eg, the object of the contract is located abroad. If it is impossible to identify the applicable law based on the above rules, including the choice of law in a contract, then the law of the country most closely connected to the contractual relations shall apply.

At the same time, when Russian consumers are targeted, a number of Russian regulations shall apply, irrespective of the law chosen by the parties as applicable to their transaction. Thus, Russian competition, advertising, data protection rules and some other regulations shall apply. Russian consumer protection laws may also apply if the law governing the contract provides a consumer with less protection than Russian regulations.

As for the choice of dispute resolution venue, please note that judgments of courts outside Russia may be enforced in Russia only if



there is a relevant treaty existing between Russia and the country where the judgment was issued. There have been some examples where foreign judgments have been enforced based on the international principle of reciprocity. However, the application of this principle is sporadic and many foreign judgments have not been enforced, irrespective of this argument having been made. Thus, it should not be relied upon in day-to-day business.

At the same time, the parties are free to submit their disputes to a local or foreign arbitration with the latter being generally enforceable in Russia based on the UN convention “On the Recognition and Enforcement of Foreign Arbitral Awards.”

Please note, however, that consumers may submit their claims with Russian state courts and such courts normally accept and review the claims on the merits, irrespective of a dispute resolution clause in the parties’ agreement.

26.4 Is it possible to form and conclude contracts electronically?

Yes, under Russian law a contract may be formed and concluded electronically by: (A) using an electronic signature, including the so-called “qualified electronic signature” (an electronic key registered with a special certifying center); (B) exchanging electronic documents; or (C) commencing the performance of the contract terms stated in an offer.

When entering into a contract by exchanging electronic documents, the parties are bound by the requirement that such exchange allows them to determine that the relevant documents have been sent by the relevant contracting party.

The authentic determination requirement is considered fulfilled when the parties use an electronic signature. When the parties do not use an electronic signature, eg, send emails or accept the terms published on the website by ticking a box, they need to ensure that they have

sufficient proof that the document exchange was carried out by authorized representatives of the relevant parties. Among the evidence which the parties may use to confirm such authorized exchange, the following sources are accepted by Russian courts, provided they contain all substantial terms of the relevant agreement required under Russian law:

- official correspondence or emails coming from the parties' authorized representatives (sent from their official addresses, domains or emails);
- customer's purchase orders;
- payment documents; and
- individual codes entered via a secured communication channel.

The contract is also considered to be concluded if the customer commences performance of the contract terms in response to an offer.

It is arguable whether the “click to accept” or “click-wrap” method represents commencement of the contract performance, even if the accepted terms explicitly state so. Therefore, it is recommended to specify in the terms and conditions a list of actions required from the customer which, if performed, would show that the customer has accepted the offered terms, eg, profile activation, approval of technical specification, agreement on delivery terms, order placement or payment. If the defendant selling goods or services on the internet can prove that the customer has undertaken all actions required under the offered terms, this would reinforce his/her position in case of a dispute.

In addition, if the customer accepts the defendant's performance, then the customer will have only a very limited opportunity to claim that no agreement was reached.



As a practical matter, please note that companies selling goods and services via the internet might face problems with using electronic documents executed without the use of an electronic signature, eg, they might not be accepted by some banks or tax and customs authorities as proper confirmation of contractual relations. While there are legal arguments to support the position that such documents must be accepted as proper confirmation, we cannot exclude the risk that a particular state officer or bank representative would take a more conservative approach.

26.5 What rules govern advertising on the internet?

Advertising on the internet is governed by the same rules that apply to other advertising channels, though rules specific to internet advertising may be applicable to particular products, e.g., limitation of gambling, tobacco, alcohol and other advertising via the internet. If Russian consumers are targeted, advertisers and/or advertising distributors must follow the following principals when distributing their adverts:

- (i) obtain prior consent from a consumer before showing an advert via electronic communication channels (including the internet); and
- (ii) allow a consumer to opt out from receiving the advertising.

Under Russian advertising law and the enforcement practice of Russian courts, consent to receive advertising must be specific and, ideally, isolated from the main terms and conditions of the game. The right to opt out cannot be waived.

27. Personal Data

27.1 What law applies and who is the competent state body?

Processing of personal data in Russia is generally regulated by Federal Law No. 152-FZ of 27.07.2006 “On Personal Data” (the “**Personal Data Law**”) and related by-laws. Processing of personal data of certain types of data subjects or by certain types of operators may be additionally subject to industry- or activity-specific laws, as this is the case with employee personal data. However, such regulations are based on the same principles as the Personal Data Law.

The main Russian data protection authority is the Federal Service for Supervision in the Sphere of Telecommunications, Information Technology and Mass Communications (“**Roskomnadzor**”).

27.2 What is personal data and data processing?

Under the Personal Data Law, personal data is defined very broadly as any information *relating to a directly or indirectly* identified or identifiable individual.

Until recently, the regulator narrowly interpreted the concept of personal data as (i) data that can unambiguously identify an individual and (ii) all information relating to such identified individual.

However, this interpretation does not expressly follow from law and is slowly being replaced with a broader interpretation. Roskomnadzor’s official letters already suggest that an individual’s full name by itself qualifies as personal data, while in its oral statements Roskomnadzor periodically opines that IP addresses and similar information should also be treated as personal data.

Personal data processing is defined very broadly, as any action (operation) or combination of actions (operations) with personal data, performed with or without computer equipment, including collection, recording, systematization, accumulation, storage, verification



(updating and amending), retrieval, use, transfer (dissemination, disclosure, access), depersonalization, blocking, deletion and destruction of personal data.

Russian data protection legislation regulates both manual and automated data processing of personal data.

27.3 What are the basic requirements to data processing?

According to the Personal Data Law, data processing must be based on legitimate grounds.

From a practical perspective, in most cases, this means that the personal data operator must collect all the necessary consents in an appropriate form from data subjects. As a general rule, consent from data subjects may be obtained in any verifiable form, including in writing, electronically or by means of implied conduct. However, in certain cases, an operator is required to obtain a written consent in a special form.

An operator may also rely on such a legal ground for data processing as executing or performing an agreement to which a data subject is a party or beneficiary. However, in this case, the data processing must be either directly prescribed or at least reasonably justified by the aims and subject-matter of such agreement. In most cases, any excessive operations involving the data or processing the data after termination of the agreement will be considered as violating the law.

The Personal Data Law also provides for such a legal ground for processing of data as compliance with legal duties imposed on the data operator. However, this legal ground is applicable in a few cases where Russian laws directly provide that certain data can be collected and processed in a particular way (for example Russian anti-money laundering legislation).

There are other grounds for data processing provided by the law, but in practice they are mostly irrelevant for businesses.

The Personal Data Law requires the processing of personal data to be consistent with the purposes of the data processing declared in the data subject's consent, or to follow from the agreement with a data subject or the law. Namely, it is forbidden to collect and store excessive categories of personal data or perform excessive operations. The Personal Data Law requires operators to cease processing the data upon achieving the declared purposes of such processing.

27.4 What requirements should be met to transfer personal data to third parties?

Data transfers by the primary operator to third parties (including affiliated companies) must be:

- directly envisaged by the data subject's consent (or have other lawful grounds, such as performing a contract with the data subject);
- performed on the basis of a separate DTA or contractual clause that must (i) reasonably limit the data processing by the recipient, (ii) impose a duty of confidentiality, and (iii) provide for the organizational and technical data protection measures to be taken by the data recipient; and
- consistent with the purposes of personal data processing as such purposes were declared in the course of the initial collection of the data.

Organizations may transfer personal data outside of Russia to jurisdictions that are deemed to ensure adequate protection of personal data subject rights, provided: (i) the affected data subjects have been informed or have provided consent; and (ii) reasonable steps have been taken to safeguard the personal data to be transferred. Furthermore, international data transfers will be considered lawful, provided that appropriate data transfer agreements (i.e., model contractual clauses) or other prescribed measures are put in place.



If a jurisdiction is not deemed to ensure adequate protection of personal data subject rights, transfer of personal data will only be possible subject to a written consent of the data subject or for the purpose of performing a contract to which the data subject is a party (but not executing the same).

27.5 Where to store the personal data?

Data controllers collecting personal data shall ensure the recording, systematizing, accumulating, storing, verifying (including updating and modifying) and retrieving of personal data of citizens of the Russian Federation using databases located on the territory of the Russian Federation. This requirement is very general and applies both to local and foreign data controllers collecting data of Russian citizens.

This requirement is subject to several narrowly defined exceptions. For example, an exception applies if processing personal data is necessary to perform an international treaty of the Russian Federation in accordance with Russian legislation. On these grounds, booking of airline tickets by airlines was previously considered to be exempt from localization.

Importantly, data controllers are not required to localize all IT systems in Russia nor is a Russian database required to be of the same type/based on the same technologies and technical facilities as foreign databases used by other companies of the operator's group. Therefore, according to the currently prevailing approach, there is no need to establish a separate localized Russian database for each of the foreign databases used by the companies of the operator's group. It is sufficient to create a sole primary database in Russia (or, which is more likely in practice, several primary Russian databases for each category of data subjects – employees, customers, etc.) for the purposes of initially collecting Russian citizens' personal data. Once the personal data is collected into a primary Russian database it may then be transferred to various databases, systems and applications outside Russia if cross-border data requirements are met.

27.6 Are there any state authorities to be notified if company begins to process personal data?

Before a data controller commences processing personal data, it must file with Roskomnadzor a notification of its intention to process personal data. The notice may be submitted online (in which case it must be signed with a qualified advanced electronic signature). The notice may also be sent by regular mail. The notification must contain the details of the data controller, categories of data and data subjects, time period of data processing, legal grounds relied upon, purpose and methods of the data processing, and security measures applied. A person responsible for data processing must be appointed by the data controller and notified to the competent authority. Information about data controllers and data processed by them is publicly available.

There are certain exceptions from the notification obligation. For instance, no notification is necessary when data processing is for the purpose of executing a contract with the data subject.

27.7 How do companies protect personal data in Russia?

The Personal Data Law requires a personal data operator to undertake the necessary *organizational and technical measures* to protect personal data from unlawful actions.

All such measures may be divided into two categories:

- Organizational measures, which are imperatively prescribed by the law with respect to any operator irrespective of its IT systems' features (e.g., appointing an employee responsible for personal data processing by the company; issuing data processing policies; familiarizing staff against signature with internal documents and policies setting procedures for processing employee data, etc.)



- Organizational and technical measures, which must be determined by an operator independently on a case-by-case basis based on results of the mandatory internal audit of IT systems. Namely, in order to know the set of requirements applied to a particular IT system, an operator must consider:
 - the type of personal data, i.e., special (data on race, nationality, political views, religious beliefs, etc.), biometric (physiological and biological data), publicly available, etc.;
 - the total number of personal data subjects; and
 - the type of actual threats to the IT system.

27.8 What is liability for personal data legislation infringement?

If an operator fails to comply with the Russian personal data legislation, it may face administrative or civil liability, including in the form of blocking its websites where personal data is processed in violation of Russian law.

Civil liability may take the form of compensation for “moral harm” (a Russian legal concept similar to damages for pain and suffering in the US) and/or a court order to cease violations.

Administrative liability for initial non-compliance with the personal data legislation may take the form of an administrative fine, the maximum amount of which is RUB 75,000 per violation. The maximum sanction is prescribed for processing of personal data without necessary consent of a data subject.

Failure to notify Roskomnadzor on the fact of personal data processing entails special administrative liability in a form of an administrative fine, the maximum amount of which is RUB 5,000.

Based on an effective decision in an administrative or civil case, or any other court act after it becomes effective (including, without limitation, preliminary or interim injunctions, etc.), Roskomnadzor may initiate the blocking of access to a website, provided that a court act confirms a violation of *any* requirements of the personal data legislation on such website (as mentioned above).

Roskomnadzor is required to send a notice to the hosting provider, which in turn must notify the website owner within one day. The website owner has one day to rectify a violation of personal data laws, otherwise the hosting provider is required to disable access to such website within three days following receipt of the initial notification from Roskomnadzor. If both the website owner and the hosting provider fail to comply, Roskomnadzor will blacklist the website (by URL, domain name and/or IP address) and require all Russian Internet service providers to block access to the website.

Importantly, even if the operator rectifies a violation quickly, this will not immediately result in Roskomnadzor unblocking its website.

In addition to website blocking, there may be other sanctions for continuous failure to comply with a Roskomnadzor order or a court decision. Failure to comply with a Roskomnadzor order requiring rectification of a violation may trigger administrative liability in the form of an administrative fine of up to RUB 20,000 and potential disqualification for the responsible officers, while failure to perform a court decision may result in administrative or even criminal liability.



28. Consumer protection

28.1 What regulations govern sales to Russian consumers and which administrative bodies control their enforcement?

Sales to Russian consumers are governed by the Civil Code of the Russian Federation, the Law on the Protection of Consumers' Rights (Law No. 2300-1 of 7 February 1992 "On Protection of Consumers' Rights") and resolutions of the Russian Government adopted in line with said laws. Among such regulations, the most prominent resolutions cover the rules of door-to-door sales, so-called "distance sales", including sales via the internet, and rules relating to sales of particular types of products.

According to Russian conflict of laws regulations, even if a Russian consumer has entered into an agreement governed by non-Russian law it does not deprive him/her of the protection offered by the mandatory rules of Russian law providing a higher level of protection compared to the law governing such agreement.

Russian consumers are entitled to submit their claims against a foreign seller/manufacturer to Russian courts of general jurisdiction, which shall likely accept such claims for review and trial based on the Russian procedural rules ignoring any foreign jurisdiction clause. Still, in practice Russian consumers rarely sue foreign manufacturers because enforcement of a Russian court's decision in a country where the manufacturer is registered takes time and might be too costly for the consumer.

The principal body conducting state control in the area of consumer protection is the Federal Service for Surveillance over Consumer Rights Protection and Human Wellbeing ("**Rospotrebnadzor**"). In practice, Rospotrebnadzor may involve other state bodies to ensure enforcement of consumer protection and related regulations, e.g., the police.

28.2 What represents a consumer sale?

The sale is made to a consumer and related regulations apply if a buyer is an individual ordering, acquiring or using products or services exclusively for personal, family, household or other needs not relating to business activities. If a sale is made to a company or an individual for his/her business activity, then the general rules of the Civil Code of the Russian Federation shall apply.

28.3 What remedies are generally available to Russian consumers (warranty undertakings of the manufacturer and the seller)?

Under Russian law, a consumer, at his/her sole discretion, may claim one of the following remedies from the seller of a defective product:

- replacement of the defective product with a new product of the same type, brand and/or index;
- replacement of the defective product with a new product of another type, brand and/or index and settlement of the price difference between the replaced product and the new one;
- proportionate decrease of the purchase price;
- immediate gratuitous repair of the defective product or compensation of the consumer's costs incurred repairing the product's defects;
- termination of the purchase agreement and refund of the purchase price. At the seller's request and expense the consumer has to return the defective product to the seller.

In addition to the above remedies a consumer is entitled to claim compensation of his/her losses incurred due to the purchase of a defective product. Importantly, under Russian law a consumer may file the claims indicated in points "a" and "d" above directly against the manufacturer of the defective product. Instead of addressing these



claims to the manufacturer, a consumer may return the defective product to the manufacturer and claim a refund of the purchase price paid for such product from the manufacturer.

A consumer may address the above claims to the manufacturer and the seller of the defective product (as applicable) within the warranty period established by the manufacturer and the seller (as applicable). If the warranty period is not established then the consumer may file relevant claims within two years after the defective product is delivered to the consumer. If the warranty period is less than two years, a consumer may still file the above claims within two years after the defective product is delivered to the consumer provided that the consumer proves that relevant defects occurred prior to the delivery of the product to the consumer or due to reasons that occurred prior to such delivery.

Moreover, the consumer may claim free removal of defects from the manufacturer within the service life of the product or, if the service life is not stated, within ten years after delivery of the product to the consumer. If such a claim is not met within 20 days from the moment of its receipt, the consumer is entitled to file the claims provided by points “a” and “d” above or return the defective product to the manufacturer and claim a refund of the purchase price paid for such product.

28.4 Can the manufacturer’s and/or seller’s liability be limited under the contract with the consumer?

Under Russian law it is not possible to limit the manufacturer’s and/or seller’s liability towards a consumer under the contract. At the same time, there is a market practice of limiting the manufacturer’s/seller’s liability for products by definition of the product’s qualities, terms of use and applicable limitations in using the products. Please note that limitations excluding liability for the intended purpose of the product might be considered invalid by Russian courts unless the seller makes it explicitly clear in the contract that the relevant intended purpose is not applicable and the product serves other purposes. Due to the

requirement of Russian law for the seller to explicitly state any limitations of the intended purpose and specific terms of use prior to entering into a contract with a consumer, we recommend using this tool with discretion since it may effect the reputation of both the manufacturer and the seller as well as their brands.

28.5 Product disclosure obligations

Under the general requirements of the Law on the Protection of Consumers' Rights a Russian consumer has to be provided with the following information prior to entering into the contract:

- name of the technical regulation or other indication confirming the quality conformity established by Russian law;
- information about the main qualities of the product;
- price in rubles;
- warranty period if it is established by the manufacturer or seller;
- rules for effective and safe use;
- service life and information about the terms of use, including the actions required from the consumer after the expiry of the shelf life;
- registered address and full name of the manufacturer, importer, seller and their authorized organization(s) (if any);
- reference to quality standards and requirements applicable to the products;
- information about the applicable rules of sale (e.g., rules for distance sales);



- information (full name, registered address and contact details) regarding the particular entity rendering the service (if applicable);
- information about defects (if any);
- return policy (in case of distance sales).

Additional disclosure requirements for particular products may be provided in relevant technical regulations and national standards.

28.6 Rights of consumers to claim a return/refund when purchasing products through “distance sales methods”

Apart from the return/refund opportunities discussed above, Russian law provides consumers’ purchasing products through distance sales with a right to:

- (a) cancel the order prior to the delivery or within seven days after the delivery, and
- (b) require a refund of any money paid for the cancelled order (excluding the costs of the product’s return).

If the seller does not inform the consumer of his/her right to cancel the order, then the consumer can cancel it within three months after delivery.

The return of an undamaged product is possible provided that the product’s appearance and qualities are preserved.

The only exception from the return requirements relates to personalized products, which can be used only by the particular individual, e.g., a product customized for a particular individual.

28.7 Application of Russian “distance selling” rules

Russian “distance selling” rules apply to sales over the internet, through catalogs, TV shops, telecommunication channels and other vehicles used by the seller to provide the buyer with a general description of the goods and excluding the opportunity of direct familiarization with the product. While distance sales rules generally repeat the main provisions of the Law on the Protection of Consumers’ Rights, they provide more extensive obligations of the seller in terms of disclosure and accepting returns of undamaged products.

Under Russian law all disclosures to Russian consumers have to be made in Russian. Although we are aware that sometimes companies directly targeting Russian consumers avoid using Russian in interaction with Russian consumers, we note that this violation may lead to various negative consequences, e.g., (a) it is highly likely that damage to the product inflicted by the consumer may be justified to a Russian court by the absence of information about the product in Russian; (b) an administrative fine of up to RUB 10,000 (approximately USD 180) for each violation of the disclosure obligations may be imposed on the seller (in practice, one penalty per executed administrative protocol); and (c) reputational damage connected with the negative publicity concerning a seller violating the requirements of Russian law, etc.



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