MAXIMA LEGAL

5TH EDITION

DOING BUSINESS IN RUSSIA

Law with a personal touch

Doing Business in Russia

Brief Legal Guide

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Edited by Maxima Legal LLC, Russia

2018

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DOING BUSINESS IN RUSSIA | BRIEF LEGAL GUIDE

ST. PETERSBURG | 2018

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This is the 5th edition of the Maxima Legal guide to the principal legal aspects of conducting business in Russia. The handbook offers a brief overview of key elements of the Russian legal regulation covering corporations, contracts, tax, M&A, customs, real estate & construction, public regulation, PPP, WTO, immigration, employment, intellectual property, protection of competition, insolvency and dispute resolution. The book is recommended to foreign businesspeople working or planning to develop their business in Russia, lawyers, and anybody who would like to know more about the Russian legal system and relevant requirements for doing business in Russia.

All information presented in the handbook has been thoroughly revised and updated to reflect the last amendments to the Russian legislation, as well as the most current draft amendments, acts and trends in certain areas of Russian law. Please note that the content of this guide is of a general nature and that the law is subject to regular changes, the guide is not intended to constitute legal advice on which you should rely.

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General Information

Background information:

- Russia (the Russian Federation) is the largest country in the world;
- Russia is located in Eastern Europe and Northern Asia;
- the population of Russia is around 144 million people;
- Russia borders 18 countries (more than any other country); it has land borders with the following countries: Norway, Finland, Estonia, Latvia, Lithuania, Poland, Belarus, Ukraine, Abkhazia, Georgia, South Ossetia, Azerbaijan, Kazakhstan, China, Mongolia and North Korea; it has sea frontiers (only) with Japan and the USA;
- after the collapse of the USSR in late 1991, the Russian Federation was recognised by the international community as the successor state to the Union of Soviet Socialist Republics;
- Russia's principal foreign trade partners are Germany, China, the Netherlands, Italy, Ukraine, Belarus, Cyprus, Poland, the USA, the United Kingdom, Kazakhstan, France, Switzerland and Finland;
- Russia has the world's largest mineral and energy reserves; the country is extremely rich in such mineral resources as oil, natural gas, coal, iron, gold. Russia is the world leader in forest area (45% of the country's territory); it possesses approximately 1/5 of the world's timber resources. Russia has the world's largest number of lakes, which contain around one quarter of the world's resources of unfrozen fresh water. Land and other natural resources are used and protected in the Russian Federation as fundamentals of the life and activities of peoples living in the respective territory;
- the capital of Russia is Moscow. There are 14 Russian cities with a population of over one million people: Moscow, St. Petersburg, Novosibirsk, Yekaterinburg, Nizhny Novgorod, Kazan, Samara, Omsk, Chelyabinsk, Rostov-on-Don, Volgograd, Perm, Krasnoyarsk and Ufa;
- the official currency of Russia is the rouble.

Fundamentals of the Constitutional System

The principal law of the Russian state is the **Constitution of the Russian Federation**. The Constitution has supreme force in law, directly affecting and applying to the entire territory of Russia. The Constitution secures the fundamentals of the constitutional system of the Russian Federation, human and civil rights and liberties, a federal form of government, and the organisation of the supreme bodies of state authority.

The official language of Russia is Russian. Peoples of the Russian Federation are guaranteed the right to preserve their native tongue. Russia is a multinational country. In this respect, the organisation of national policy (a system of measures focused on the renewal and further evolution of the national life of all peoples of Russia within the framework of a federal state, and establishment of equitable relations between the country's peoples, the formation of democratic mechanisms for resolving national and interethnic problems) is of paramount importance.

The Russian Federation is a secular state. No religion may be proclaimed official or mandatory. The most popular religion is Orthodox Christianity; residents of multinational Russia also profess Islam, Catholicism, Judaism and Buddhism.

Russia is a democratic federal law-based state with a republican (presidential) form of government.

The constitutional system in Russia, including state and political systems, is established by the Constitution, adopted by a referendum on 12 December 1993.

In defining the fundamentals of the constitutional system in Russia, Article 2 of the Constitution states the basic provision that an individual, his/her rights and liberties are of paramount value, and that the recognition, observation and protection of these rights and liberties is the obligation of the state. Human rights and liberties may be restricted in exceptional circumstances stipulated in federal law.

For the first time, the country's constitutional legislation expressly states that it is directly oriented on internationally recognised principles of the regulation of human rights and liberties and acknowledgment of the natural and innate character of basic human rights and liberties, including the right to life, freedom and personal security, the right to privacy, the right to respect for private and family life, the right to protection of honour, dignity and good reputation, the right to private property, the right freedom of thought and

the right to a favourable environment. Human rights in the Russian Federation are absolute – no constituent territory of the Russian Federation may decline the obligation to observe and guarantee human rights on its territory. No law or other legislative act may contradict the human rights secured by the Constitution.

The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1996) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) are effective in Russia.

In order to emphases the role and importance of human and civil rights and liberties, Article 18 of the Constitution states that they have direct effect, thereby determining the meaning, content and application of laws, the activities of the legislative and executive authorities and local government. The direct application of these Constitutional rights and liberties means that they must be granted with direct reference to the Constitution, irrespective of the presence or absence of other legislation, and in the event of a breach any person may defend them in court, referring to the principle of direct application of the Constitution.

According to Part 4 of Article 15 of the Constitution, the generally recognized principles and regulations of international law and international agreements to which the Russian Federation is a party are a constituent part of its legal system. If an international agreement to which the Russian Federation is a party establishes rules that differ from those specified by law, the rules of the international agreement apply.

The Russian Federation is a social country whose policy is aimed at the creation of the conditions for a decent life and free development for each individual. In the Russian Federation individual's employment and health is protected, a minimum salary is guaranteed, state protection is provided for families, maternity, paternity and childhood, handicapped people and senior citizens, a system of social services is developed, and state pensions, allowances and other social security guarantees are established.

Unity of the economic area, free transfer of commodities, services and funds, support of competition and freedom of economic activity are guaranteed in Russia.

Private, state, municipal and other forms of property are equally recognized and protected in the Russian Federation.

Ideological and political diversity and pluralism are recognized in the Russian Federation.

State Structure

State authority in the Russian Federation is divided into legislative authority, executive authority and judicial authority. Legislative, executive and judicial bodies are independent, but there is a system of checks and balances.

State authority in the Russian federation is exercised by the President of the Russian Federation, the Federal Assembly (the Federal Council and the State Duma), and the Government of the Russian Federation and the courts of the Russian Federation. State authority in the federal subjects that make up the Russian Federation is exercised by organs of state power formed by them. Demarcation of competency and powers between the state authorities of the Russian Federation and the state authorities of federal subjects of the Russian Federation is established by the Constitution and Federal (or other) agreements.

Local government is recognised and guaranteed in the Russian Federation. Local governments are independent within the scope of their authority. Local government authorities are not part of the system of state authorities.

The Head of State is the **President of Russia**, elected for a six-year term (four years prior to 2008) by means of a nationwide election. In accordance with the current Constitution, he exercises a number of important powers: he is in charge of foreign policy, is the Supreme Commander-in-Chief of the Armed Forces, appoints the Prime Minister with the consent of the State Duma and accepts resolutions for the resignation of the Government. On the proposal of the Prime Minister, the President of Russia appoints and dismisses Deputy Prime Ministers and federal ministers. The President of Russia is Head of the Security Council, and appoints and dismisses the command of the Armed Forces. He has the right to propose nominees for the Chairman of the Central Bank (not included in the Government structure). In the event of aggression or an immediate threat of aggression, the President is entitled to declare martial law in the entire country or in individual territories, but is obliged to notify the Federal Assembly of his decision immediately. The President is entitled to issue decrees that are binding for the whole of Russia (these decrees may not contradict federal laws).

The President may be dismissed by the Federal Council if he has been accused by the State Duma of treason or other serious offences and in the event of him being found guilty by the Supreme and Constitutional Courts.

Legislative authority is exercised by the Federal Assembly, a parliament consisting of two houses: the Federal Council (the Upper House) and the State

Duma (the Lower House). Two representatives of each constituent territory of the Russian Federation are members of the Federal Council: one representative from the representative body of state authority and one representative from the executive body of state authority. The State Duma consists of 450 deputies elected in the course of a nationwide election according to party lists for a term of five years.

Executive authority is exercised by the Government of the Russian Federation. The Government of the Russian Federation consists of the Prime Minister of the Russian Federation, Deputy Prime Ministers of the Russian Federation and federal ministers. The system of federal bodies of the executive authority includes federal ministries, federal services and federal agencies.

Judicial authority is exercised by the courts: the Constitutional Court, courts of general jurisdiction and arbitration (commercial) courts headed by the Supreme Court. Constitutional courts are established in some federal subjects of the Russian Federation, where the judicial system also includes magistracy. The setting up of emergency courts is not permitted. In accordance with the Constitution, justice may be dispensed only by a court.

Federal Form of Government

Russia is a state with a federal form of government. The Russian Federation consists of republics, territories, regions, cities with federal status, autonomous regions and autonomous districts, which are federal subjects of the Russian Federation with equal rights.

The federal form of government of the Russian Federation is based on its national entirety, the uniformity of the system of state authority, the demarcation of competence and powers between the state authorities and authorities of federal subjects, equal rights and self-determination of the peoples of the Russian Federation.

The system of state authority in federal subjects of the Russian Federation is governed by the general principles established by the Federation. Each region has a legislative body (parliament, legislative assembly) and an executive body (government). Many also have a post of Chief Executive Officer called a President or Governor. These officers are vested with powers of the legislative authority of the federal subject on the recommendation of the President of the Russian Federation and may hold their positions for an unlimited number of terms.

Russia is also divided into eight federal districts, each of which has a representative of the President of the Russian Federation.

Federal subjects of the Federation also have administrative territorial divisions. The main units within a subject are municipal and urban districts.

Foreign Policy

Russia is the successor of the USSR in respect of membership of the UN (including the status of a permanent member of the Security Council) and other international organisations, and in participation in international agreements of the USSR. Russia undertook the servicing of the foreign debt of the former USSR. Soviet assets abroad were also transferred to Russia.

Russia is one the key members of the international community. As one of the five permanent members of the UN Security Council, it remains one of the great powers and bears special responsibility for the maintenance of international peace and security. Russia is a member of the G8 group of economically developed countries, and of a significant number of international organisations, including the Council of Europe and the Organisation for Security and Cooperation in Europe. A specific role is played by organisations established on the territory of the former USSR (mainly led by Russia): the Commonwealth of Independent States (CIS), the Eurasian Economic Union, the Collective Security Treaty Organisation (CSTO) and the Shanghai Cooperation Organisation (SCO).

Since 1997 Russia and Belarus have formed an Allied State, proposing a political project for an alliance between the Russian Federation and the Republic of Belarus with a common political, economical, military, customs, currency, legal, humanitarian and cultural area organised in stages.

Russian foreign policy is determined by the President and implemented by the Ministry of Foreign Affairs. Russia maintains diplomatic relations with 191 countries and has diplomatic missions in 144 countries.

Investment Policy

Russia supports investment through legal, economic and administrative mechanisms. Federal Law number 160-FZ 'On Foreign Investments in the Russian Federation' dated 9 July 1999 determines state functions that relate to the development of the bases and implementation of state policy relating to direct foreign investment, attracting direct foreign investment and Russia's observance of obligations resulting from international treaties.

Foreign capital attracted into the national economy and used effectively, on the one hand, has a positive influence on economic growth and assists Rus-

sia's integration into the world economy. The absence of substantial competition on the part of Russian business entities, cheap labor, an extensive market of inexpensive raw materials and an active consumer market make the Russian economy attractive to foreign businesses.

In 1999, in order to simulate investment demand and the more effective use of state investment resources, the Russian Bank for Development (the Russian state investment bank, now called Russian Bank for Small and Medium Enterprises Support) and investment guarantee and insurance agencies were established.

Current investment policy in the Russian Federation is implemented by a number of governmental institutions and organisations:

- The Ministry for Economic Development and Trade, whose main function is to participate in the formation of state investment policy.
- The Russian Investment and Tender Corporation, which organises investment tenders and legal protection of investments. The corporation has a database of Russian and foreign investment bids.
- The State Investment Corporation, created to implement state policy in the investment sphere and to provide foreign investors with political risk guarantees.
- The Russian Financial Corporation, founded with the aim of maintaining effective investment in the country. It is the official agent of the Russian Government for centralised credit management.
- The Central Bank, which devises and implements money and credit policy; forms the investment climate in the country; is the agent of the Russian Government for the placement of state loans; establishes a secondary securities market (acts as a broker).

Setting up a New Business

In this section we outline the basic legal aspects of structuring a business in Russia, establishing branches and representative offices of foreign companies and setting up new companies.

You will find general information about acquiring an existing company or organisation in Russia in the Acquisition of a Business and Joint Ventures sections.

We also recommend you to refer to the following sections which are particularly relevant to setting up a new business:

- Real Estate and Construction – issues relating to the acquisition of real estate;
- Employment – issues relating to the employment and dismissal of personnel and the regulation of labour activity in a company;
- Taxation – issues relating to taxation of a company's activity;
- Intellectual Property – issues relating to a company's brand (such as company names, trademarks and commercial symbols).

Legal Forms

Under the legislation of the Russian Federation there are two main options for a person who wishes to engage in business: either to conduct business without forming a legal entity after registration as an **individual entrepreneur**, or to incorporate **a company** (for example, as a partnership or company, production or consumer cooperative, institution or fund).

A new business in Russia can be set up in accordance with the applicable legislation, the federal laws on the legal forms of entities that carry out entrepreneurial activity, federal laws on non-profit organisations and other regulations relating to some aspects of the incorporation and operation of organisations.

Individual Enterprises

In setting up a new company it is necessary to first choose its legal form as set out in the Civil Code.

Typically in Russia the simplest way of organising a business is to become an **individual entrepreneur**. Under Article 23 of the Civil Code, an individual may carry out entrepreneurial activity without establishing a legal entity; such an entrepreneur has this right from the moment of his/her registration as an individual entrepreneur. Entrepreneurial activity carried out without forming a legal entity is governed by rules set out in the Civil Code for legal entities acting as business organisations, unless otherwise stated by other legislation.

The advantages of individual enterprises are:

- a simple registration (and liquidation) procedure;
- a simplified procedure for income and expense accounting with no obligation to maintain accounts; and
- favorable tax rates.

The main disadvantage of an individual entrepreneur is, above all, the level of responsibility: an individual entrepreneur who does not form a legal entity is liable for his/her obligations to the full extent of all his/her assets. In addition, an individual entrepreneur may not obtain licences to undertake certain licensable types of activity (for example, for the retail of some pharmaceuticals or alcoholic products). Individual enterprises are also not suitable for conducting joint business.

Nevertheless, at the initial stage of setting up a business as an individual entrepreneur is often the most suitable form of business, at least as a stepping stone towards finding the necessary experience and capital required to form a legal entity.

A foreign national or organisation may enter the Russian market in various forms, including various types of franchising, dealer, distribution and agency agreements. However, for a company to conduct large-scale business under its own name, while also maintaining maximum control over the business, this can only be achieved through the setting up a subsidiary company or the branch/representative office of a foreign company in Russia.

Branches and Representative Offices of Foreign Organisations

Another possible form of business in Russia is through the establishment by a foreign company of an economically autonomous subdivision, i.e. a branch or representative office.

The provisions of the Civil Code regulating business also apply to foreign nationals and legal entities, therefore foreign companies acting in Russia in the form of a branch or representative office can benefit from the same regime as Russian companies, i.e. they have the same rights and obligations, except in cases expressly stipulated by law.

In order to establish a branch or a representative office of a foreign organisation in Russia it is necessary to go through an accreditation procedure and obtain a special permit. This procedure is governed by the Decree of the Council of Ministers of the USSR 'On Approval of Regulation on the Procedure of Establishing and Operation of Foreign Representative Offices, Banks and Organisations in the USSR' number 1074 dated 30 November 1989.

In respect of opening a representative office in Russia for a foreign lending institution, the regulations on the procedure for accreditation for the representative office, accreditation of foreign citizens who will be working in a representative office and the supervision of the activities of a representative office of a foreign credit institution is undertaken by the Bank of Russia.

Since 2015, in most cases the accreditation of branches and representatives offices of foreign companies in Russia is carried out by the Federal Tax Service.

A branch or representative office of a foreign organisation is deemed established as of the date when permission to establish such branch or representative office has been issued. Following which the branch or representative office may be registered with the tax authorities, open a bank account and start its operations.

Accreditation for employees of a branch or a representative office of a foreign organisation is carried out by the accreditation body that issued the permission to establish the representative office. The number of employees is usually capped.

A significant advantage for a foreign organisation carrying out business through a branch is the availability of various benefits, including benefits when renting premises and various customs benefits for certain types of goods that may cross the Russian border. A permit for opening a branch or

representative office is also issued without any period of validity.
One more advantage to be mentioned is that unlike for a legal entity, a branch or representative office benefits from simplified accounting requirements.

Against these advantages, branches and representative offices do not enjoy the same rights of a legal entity and the foreign legal entity remains responsible for the branch's or representative office's activity. In many cases, these factors lead businesses to favour establishing a company in Russia.

Forms of Legal Entities

When choosing a form for a legal entity it is important to be guided by the line and scope of the proposed business, the number of proposed shareholders or owners and the specific character of the proposed market activity of the future enterprise. Legal entities can only be created in one of the legal forms provided for by the Civil Code.

In accordance with the Civil Code, all legal entities are divided into two types: profit-making organisations and non-profit organisations.

Profit-making organisations are legal entities whose main purpose is the generation of profits and their distribution among its shareholders or owners. Such organisations may be established in the following legal forms: business partnerships, business entities, economic partnerships, farm holdings, production co-operatives as well as state and municipal unitary enterprises.

Non-profit organisations may be established only in the forms specified in the Civil Code (in forms of consumer cooperatives, social organisations or movements, associations (unions) including non-profit partnerships, self-regulating organisations, chambers for commerce and industry, real estate owners associations, Cossack societies, native minorities communities of the Russian Federation, funds institutions, autonomous non-profit organisations, religious organisations, chambers of advocates, an organisation providing legal services, state corporations, chambers of notaries and public companies).

The second classification of legal entities set out in the Civil Code divides into **corporate legal entities** (corporations), whose owners have the 'right of participation' (i.e. membership or shareholding), and **unitary entities**, whose owners have no such right and do not become its members. For corporate and unitary entities the Civil Code provides for different special rules for their management as well as the rights of the owners or shareholders.

Business partnerships and entities are recognised as corporate commercial organisations provided they have an initial capital divided into shares. Capital

covers the part of a company's assets intended to guarantee the rights of creditors. The size of the capital is specified in the company's articles of association or partnership agreement. Any capital and property subsequently acquired in the course of trading is owned by the business partnership or business entity.

A business partnership may be established in the form of a general partnership or a limited partnership. The activity of partnerships is regulated by Part I of the Civil Code.

Business partnerships as a form of legal entities are distinguished from simple partnerships, including investment partnerships that conduct their activity on the basis of a simple partnership agreement without forming an autonomous company.

A business entity may be established in the form of a joint stock company or a company with limited liability.

The activity of these entities is governed by Part I of the Civil Code, Federal Law number 208-FZ 'On Joint Stock Companies' dated 26 December 1995 and Federal Law number 14-FZ 'On Limited Liability Companies' dated 8 February 1998.

Business Partnerships

A partnership is considered to be **general** if its partners conduct business activity on behalf of the partnership in accordance with an agreement between them and bear joint personal liability for the obligations of the partnership.

This form of carrying out business is quite rare. A general partnership is established and acts on the basis of a partnership agreement signed by all its partners. Its activity is managed by the mutual agreement of all the partners. Each partner may act on behalf of the partnership, unless otherwise specified in the agreement. The agreement contains provisions relating to the size and composition of buisness capital, the amount of the capital belonging to each partner, the size, composition, term and procedure for contribution by the partners and liability in case of a breach of an obligation to make a contribution.

In a **limited partnership**, along with the partners conducting business on behalf of the partnership and bearing full personal liability for the obligations of the partnership, there will be one or more limited liability partners who bear the risk for losses associated with the activity of the partnership within the limits of their contributions and do not take part in day-to-day running

of the partnership.

Only individual entrepreneurs and profit-making organisations may be partners of general partnerships and general partners in limited partnerships.

The partnership agreement signed by any and all general partners is the founding document of a limited partnership.

A partner withdrawing from the partnership is liable for the obligations of the partnership that arose prior to his/her withdrawal on an equal basis with the remaining partners for two years. The two year period is calculated from the date of approval of the annual report on the activity of the partnership for the year in which he/she withdrew from the partnership. The nature of a partnership can result in one partner incurring liability for the acts and mistakes of another. As general partners bear unlimited liability for the obligations of the partnership, such partnerships are attractive for creditors and understandably less appealing to potential partners. Furthermore, the specific form of management of the partnership stipulated by law may slow down the decision-making process. These factors constitute the main disadvantages of carrying out business in the form of a partnership.

Business Entities

The most common form for the organisation of small and medium-sized businesses in Russia is a **limited liability company** (LLC). A limited liability company is a business entity incorporated by one or more persons whose authorised share capital is divided into parts or shares, the size of the which is specified in the incorporation documents. The company's shareholders (their number may not exceed 50) are not liable for the obligations of the company and bear risk for losses associated with the company's activity up to the value of their contributions. An LLC is the most suitable form for small and medium businesses and the minimum size of its share capital is not significant (at present only 10,000 roubles). Information relating to the members of an LLC is recorded in the Unified State Register of Legal Entities. A change in shareholders requires registration in the register. Unlike other legal entities, an LLC may consist of one person; accordingly if an entrepreneur becomes the sole shareholder and the general director, he/she may totally control the business.

The founding document of an LLC is its charter or articles of association.

The control of an LLC is exercised by a general meeting of its shareholders. Day-to-day management is conducted by the executive body or board of directors. The articles of association of a LLC as well as its other incorpora-

tion documents may provide for several persons to act jointly to perform the powers of the executive body, or may contain provisions for several executive bodies acting independently. A board of directors and a collegial management body (acting along with general director and appointed by a general meeting of shareholders executive board whose role is to resolve difficult issues relating to the management of the company) may also be established if required. A company's articles of association may provide for the establishment of an internal audit commission (appoint an internal auditor) of a company. It is mandatory to appoint an internal auditor for companies with more than fifteen shareholders. An independent auditor may act as an internal auditor.

The size of a shareholder's interest and voting power is proportionate to the number of shares held. The actual value of the share of each shareholder of the LLC corresponds to a portion of the company's net assets that is proportional to the size of the shareholding.

The company itself may not acquire interests in its share capital, except in cases expressly stipulated by law. A shareholder of a company is entitled to sell or transfer part or all of his/her interest in the share capital of an LLC to another shareholder of the company. The consent of the other shareholders of the company or the company itself is not required, unless otherwise specified in the company's articles of association. The sale or other transfer of shares to other parties is permitted, unless prohibited by the company's articles of association; however, existing shareholders of the company have pre-emption rights to the purchase of the shares before they can be offered to new potential shareholders. A transaction to transfer shares required notarisation; a failure to comply with this procedural requirement will render the transaction invalid.

A LLC shareholder may withdraw his shareholding from the company if it is provided for by the articles of association or by way of requesting that the LLC purchase his/her shares in circumstances provided for by law. In such an event, from the moment of the submission by a shareholder of an application to withdraw, his/her shares are transferred to the company, which is obliged to pay the actual value of the shares to the shareholder.

A company may distribute profits between its shareholders on a quarterly, half-yearly or annual basis.

One of the disadvantages of LLCs is that they are unattractive for creditors, as LLC shareholders have only limited liability for the obligations of the LLC.

As a general rule, a shareholder of a business entity is not liable for the en-

tity's obligations and bears the risks of losses incurred as a result of the entity's activity up to the value of his/her shareholding. However, the law does provide for situations when the liability of a shareholder can be extended. For example, the provisions of the Federal Law 'On Insolvency (Bankruptcy)' number 127-FZ dated 26 October 2002 (see Insolvency Law section below) set out situations when shareholders and a director of a business entity can bear subsidiary liability for the obligations of such business entity, namely in the event of:

1) insolvency of the business entity through the fault of its shareholders or other persons entitled to give instructions that are binding upon the business entity or such persons that otherwise may govern its actions; or

2) transformation of a partnership into a company – within two years of the obligations being transferred to the company from the partnership.

The provisions of the insolvency law stipulate other events when subsidiary liability for the obligations of the company is imposed on the persons who breached the law.

A **joint-stock company** (JSC) is a profit-making organisation whose share capital is divided into a specific number of shares. Shareholders are not liable for the obligations of the company and bear risk associated with the company's activity up to the value of their shares.

Joint-stock companies are divided into **public** and **non-public**. Securities of a public joint-stock company are publicly placed (by means of public offering) or publicly listed subject to the terms and conditions set out by the securities laws. Other joint-stock companies are classified as non-public.

The Civil Code provides a number of special rules in relation to public joint stock companies.

A public joint-stock company is required to submit information about its name and an indication that the company is public for inclusion in the Unified State Register of Legal Entities. From the moment of inclusion of this information in the register, a joint-stock company acquires the right to sell shares publicly. In a public joint-stock company a collective management body is formed with not less than five members. An independent organisation with the appropriate license is responsible for maintaining the register of shareholders and performance of the functions of the Counting Commission (whose functions include conducting and counting the votes of the shareholders) in a public joint-stock company. The num-

ber of shares held by one shareholder, their total nominal value and the maximum number of votes granted to one shareholder cannot be limited in a public joint-stock company. The company's articles of association also cannot restrict a shareholder's right to transfer his/her shares. As a general rule, no one can hold a right of preferential purchase of shares of a public joint-stock company.

Joint-stock companies may be subject to special legal regulation and additional requirements ensuring a greater degree of transparency and publicity of the company's management and reporting compared to non-public joint-stock companies.

A public joint-stock company is an appealing form for a major business. It makes it possible for shareholders to transfer their shares freely. Within the framework of the activity of this legal form additional capital may be raised by means of issuing new shares.

Economic Partnership

Since 1 July 2012 it has been possible to form an economic partnership in Russia. An economic partnership a new type of profit-making organisation (See Federal Law 'On Economic Partnerships' number 380-FZ dated 3 December 2011).

An economic partnership may be established by two or more partners; however, the number of partners may not exceed fifty. Both individuals and legal entities may become partners of the partnership.

In the event that an economic partnership is left with only one partner, it will be mandatorily liquidated or restructured.

Generally the partners are prohibited from withdrawing from a partnership unless otherwise provided for in the partnership agreement. New partners may be accepted into the partnership only subject to the consent of all other partners. The pre-emptive right to purchase an interest is also provided for. It is also generally prohibited to pledge an interest in the partnership, if this prohibition is lifted in the partnership agreement the pledge is permitted only with the consent of all other partners.

The law sets out the general legal capacity for economic partnerships. However, it imposes certain restrictions in respect of the operations of a partnership (for example, an economic partnership may not issue bonds and other equity securities, advertise its activity, establish legal entities or participate in them except for unions and associations).

The founding document of an economic partnership is its charter. The charter specifies not only the partnership's objective, but also the specific activities that partnership may engage in.

The list of provisions of the charter of an economic partnership can be considered exhaustive. There are therefore a number of provisions which, although usually included in a charter, may not be added to the charter of an economic entity, for example, a provision prohibiting a director to enter into interested-party transactions.

In addition to the charter, the partnership agreement plays a significant role in regulating the operations of an economic partnership. Specifically, it sets out both the scope and nature of the authority of the executive body and other management bodies of the partnership relating to the conducting and/or approval of specific actions or transactions. For instance, the agreement may restrict the scope of the power of the executive bodies. However, the partnership agreement is an internal document and, as a general rule, third parties are not aware of its content. Therefore, the partners to the partnership may not refer to its provisions in their dealings with third parties. An exception is the situation when a third party knew or should have known about the content of the agreement when a transaction was conducted.

The minimum size of the charter capital of an economic partnership is not determined, as such its charter capital may be equal to one rouble.

Lawmarkers have introduced specific measures for the protection of partnership property that are not established for other legal forms. Rights to the results of intellectual activity owned by the partnership are specially protected.

When it is necessary to transfer intellectual property rights (for more details please see the Intellectual Property section) in order to fulfill the partnership's obligations, for example, to settle a debt, a partner or partners of the partnership may independently settle the partnership's obligations and contractors are obliged to accept such a settlement. This emphasises that initially an economic partnership is supposed to create additional opportunities for venture investments in IP and IT, although the law on economic partnerships does not restrict the area of application of this legal form.

A rule is also established by law when it may be possible to recover a debt using a partner's interest in the partnership which can only be made pursuant to a court decision, if the other property of the partner is insufficient to settle the debt. The partner's creditors may not claim for the interest in kind; only payment of the interest's value by the partnership or its partners

is permitted.

The principal characteristic of an economic partnership's management is that only the General Director may act as its executive body. It is not permitted to form management boards, boards of directors or other executive bodies. Only an individual who is a member of the partnership may be elected as its General Director. The authority of the General Director is similar to that of a director of a business entity.

There are certain restrictions on a partnership's activity. For example, a partnership is prohibited from advertising its activity or issuing securities. The partnership is also not permitted to act as the founder of or a shareholder or partner in other legal entities, except for associations.

Therefore, using this legal form it is only suitable to carry out activity which does not require the promotion to be successful or raising funds in form of contribution by other persons to its charter capital.

When selecting this legal form it is important to take into account that it may subsequently be restructured as a joint-stock company only.

LLC, JSC and Economic Partnerships

Please find below a comparative analysis of the legal forms of LLC, JSC and Economic Partnerships in accordance with corporate law as of 1 January 2018.

	LLC	JSC	Economic Partnerships
Maximum number of shareholders/ partners	50	Not restricted	50. A partnership agreement may also restrict the total number of partners.
Incorporation documents	Articles of Association	Articles of Association, where it is required to register the issuing of shares upon incorporation of a company	Charter
Minimum size of initial capital	10,000 roubles	100,000 roubles	No minimum capital required

	LLC	JSC	Economic Partnerships
Property contributed to the capital	Money, items, shares of other business entities and partnerships, state and municipal bonds. The exclusive rights and other intellectual rights and right under license agreements subject to monetary valuation can also be a contribution. The company articles of association or the law may impose restrictions. At the moment of paying the capital a contribution not less than the minimal amount of capital must be made in money. The monetary evaluation of in-kind contributions to the capital can be made by an independent appraiser. The company shareholders are not allowed to make decisions on monetary value of in-kind contributions for a value that exceeds that made by an independent appraiser.		Money, items or other property interests or other rights with a monetary value. Securities may not be contributed to the capital, with the exception of the business entities' bonds verified by the authorised executive authority in the area of the financial markets. The partnership agreement may set out other restrictions. Unless otherwise provided by the partnership agreement, the monetary value of property and other objects of the rights contributed into the share capital can be approved by the unanimous decision of all the partners. In the event of failure to reach a decision on the monetary value or on the assessment of the appraiser, the contribution can be made in monetary form.
Increasing capital	Amendments to the incorporation documents must be registered	Amendments to the incorporation documents must be registered; issuing of new shares must be registered; issuing of a report must also be registered.	Amendments to the incorporation documents must be registered

	LLC	JSC	Economic Partnerships
Confidentiality of shareholders/ partners	Medium. Information on the shareholders is contained in the register of shareholders (maintained by the company) and in the Unified State Register of Legal Entities (EGRUL)	Comparatively high. Information on the shareholders is contained only in the shareholders register (maintained by the company or by a special registrar, who provides information only upon the request of state bodies). Information on the initial shareholders is contained in the Unified State Register of Legal Entities (EGRUL)	Medium. Information on the shareholders is contained in the Unified State Register of Legal Entities (EGRUL) and the register of partners (to be maintained by the partnership)
Change of shareholders/ partners	Subject to registration of changes in EGRUL without amendment of the articles of association	Contained only in the shareholders register	Information on the partners is subject to registration in EGRUL without amendment of the partnership agreement

	LLC	JSC	Economic Partnerships
Right to purchase interests and shares and consent	Shareholders have pre-emptive rights to the purchase of shares in the event of their proposed transfer to non-shareholders. The articles of association may provide pre-emptive rights to the purchase of shares by the company if the other shareholders of the company do not exercise their rights. The shareholder of a company does not require the prior consent of other shareholders or the company itself to transfer his/her shares, unless otherwise stipulated in the company's articles of association.	Shareholders may freely alienate their shares in favor of third persons without prior offer to other shareholders as well as without their prior consent	Unless otherwise provided by the partnership management agreement, a partner shall be entitled to alienate his/her share in share capital in favor of another partner, the partnership or a third party. The partners and the partnership shall enjoy the preemptive right to purchase a share in the share capital over the rights of third parties, unless otherwise stipulated in the partnership management agreement. The partnership management agreement may provide for various procedures regulating obtaining consent of the partners to the transfer of a share in the share capital to third parties depending on such transfer or other circumstances.

	LLC	JSC	Economic Partnerships
Withdrawing from a company or partnership	A shareholder may withdraw from a company at any time if it is provided for in the company's articles of association. The actual price for his/her interest must be paid to the shareholder or the shareholder can be given property whose value corresponds to such price. The shareholder is entitled to withdraw from the company regardless of whether or not the other shareholders of the company or the company itself give their/its consent.	Withdrawal is possible only by means of the sale of shares without right to the company's assets. The company may buyout shares only in a limited number of cases.	Generally partners are prohibited from withdrawing from a partnership, unless otherwise stipulated in the partnership agreement.
Management structure	As a rule it consists of two levels: a general meeting of the shareholders and an executive body (either collegial or management board)	As a rule it consists of three levels: a general meeting of shareholders, a board of directors and an executive body. It is possible to transfer the authority of the board of directors to another commercial organisation or individual entrepreneur (upon a decision passed at a general meeting of the shareholders).	The system, structure and scope of authority of the management bodies of the company, the procedure for conducting activity and termination is set out in the partnership agreement. However, the partnership may not operate without a properly elected executive body.

	LLC	JSC	Economic Partnerships
Interest/share pledge	A decision on a pledge of interest of a shareholder in favour of another shareholder or, unless prohibited by the articles of association, to a third party, can be made by a general meeting of the shareholders.	A shareholder does not require the consent of the company for a share pledge	A partner is not entitled to pledge his/her share of the partnership.
Decisions of general meetings	Decisions by a general meeting of shareholders are reached based on the proportion of the total number of votes determined by law or in the articles of association (each shareholder has a number of votes proportionate to his/her contribution to the share capital). There is no minimum quorum.	Decisions by a general meeting of shareholders are made by the proportion of the total number of votes determined by law or in the articles of association (one vote equals one share). The concept of quorum applies. In a public JSC the maximum number of votes granted to one shareholder cannot be restricted.	The procedure for decision making is determined in the partnership agreement. On issues related to the amendment of the partnership agreement each partner has one vote, regardless of the size of his/her interest in the partnership.
Requirement for unanimous decisions	Resolutions on matters relating to restructuring or liquidation and certain other issues can only be adopted unanimously at the general meeting of shareholders.	No matters requiring unanimous decisions fall within the authority of the general meeting of shareholders, with the exception of the company's transformation into a non-profit partnership or making changes to the company's articles of association.	Acceptance of new partners, exclusion of some partners, approval of the monetary value of objects contributed to the capital of the partnership, election of the executive body, restructuring the partnership, amongst other matters.

	LLC	JSC	Economic Partnerships
Authority of management bodies	The articles of association may grant to the board of directors greater powers than those provided for by law.		The powers of the management bodies of the partnership are set out in the partnership agreement. The obligations of the executive body are determined by law.
Restrictions on transactions	There are statutory limits for major transactions and related-party transactions that can be made by a director. It is also possible to impose additional restrictions by the general meeting of shareholders and the board of directors (if any) to those and other transactions by directors.		Regulated by the partnership agreement
Possibility of excluding a shareholder or partner	By a court decision in certain circumstances (for example, if actions (or inaction) of a shareholder have caused substantial damage to the company)		A partner can be excluded by a court decision if a partner fails to observe his/her obligation to make a contribution to the capital of the business, subject to the unanimous decision of all the other partners.
Payment of debts using interests or shares in a business	By a court decision, only in the event that no other property is available.	Mainly by a court decision or after the exhausting of liquid assets.	Permitted only by a court decision and if the partner's property is insufficient to repay the debts.

Corporate agreement

All or some of the partners or shareholders of a business entity may enter into an agreement on the exercising of their corporate rights also called the rights of membership. Under such an agreement the partners or shareholders can undertake to exercise their rights and/or refrain from exercising their rights in a certain circumstances, including voting in a certain way at the general meeting of the shareholders, agreeing a form of voting with other shareholders, selling an interest or part, acquiring or transferring shares at a price set by such an agreement and/or under certain circumstances refraining from transferring an interest or shares until certain events occur.

Such an agreement must be in writing and signed by the parties.

Branches and Representative Offices

Under legislation a legal entity may open branches and representative offices. As above, a **representative office** is an economically autonomous subdivision of a legal entity situated outside the place of the legal entity's location, which represents and protects the interests of the legal entity. A **branch** is also an economically autonomous subdivision, but it is established in order to perform the functions of the legal entity in whole or in part, including the functions of a representative office. It should be noted that neither representative offices nor branches are legal entities. They hold property on behalf of the legal entities that establish them and operate on the basis of a power of attorney.

Representative offices and branches must be indicated in the incorporation documents of their legal entity.

Registration

Registration is a necessary stage in the incorporation of legal entities and individual entrepreneurs. It requires an application by a person to the registration authority, after which the information is entered into the Unified State Register and simultaneous tax registration is to be done.

Registration of the incorporation of a legal entity is carried out at the location of the legal entity with the territorial tax authorities, departments carrying out registration and keeping records on taxpayers or in some exceptions by tax inspectorates.

Russian legislation governing state registration includes the Civil Code of the Russian Federation, the Federal Law 'On the State Registration of Legal Enti-

ties and Individual Entrepreneurs' and other legislation. These laws set out the registration procedure and the list of grounds for refusal of registration.

For the registration of a legal entity the following documents are required:

• an application confirming that the incorporation documents submitted comply with the legislative requirements, that the information contained and in other documents is true and that the procedure established for the incorporation of a legal entity has been followed;
• a resolution on establishing a legal entity;
• the incorporation documents of a legal entity in two copies;
• an extract from the register of legal entities from the country where the foreign entity that is establishing the company is incorporated or other legal equivalent proof of the legal status of a foreign entity; and
• a document confirming payment of the fee for registration.

The registration of an organisation or individual entrepreneur with the tax authority at the location or place of residence is carried out on the basis of information contained in the relevant record entered in the Unified State Register of Legal Entities or the Unified State Register of Individual Entrepreneurs.

Tax registration of an organisation or individual entrepreneur at a new location or new place of residence is carried out based on information received from the tax authority at the previous location or previous place of residence. The date of entry of the records in the state registers is deemed to be the date of the tax registration of an entity or an individual entrepreneur at a location or place of residence.

In the event of state registration being refused, the decision must contain the grounds of refusal and reference to the specific breaches. A refusal decision must be delivered to the person specified in the registration application. The decision can be challenged in court but only after it has been reviewed initially by the higher registering body. The law on registration contains an exhaustive list of grounds for the refusal of registration. These grounds are as follows:

- breach of the procedure for the incorporation of a legal entity prescribed by law;
- non-compliance of the incorporation documents of a legal entity with the law;
- failure to provide documents required for registration; and
- filing documents with the improper registration authority.

Breach of the procedure for the incorporation of a company can include, for example, a failure to observe the requirements of the procedure for the incorporation of the company or of the procedure for making the decision on incorporation.

Statistical codes, which are used to identify a company and can be required in certain situations such as opening a company bank account, are assigned by the Federal State Statistics Service.
The Social Insurance Fund, the Mandatory Medical Insurance Fund and the Pension Fund are non-budgetary funds that require mandatory registration of each newly formed legal entity or individual entrepreneur. Upon receiving evidence of the registration of a legal entity or individual entrepreneur, the funds within five working days register the organisation and send to it an insurance certificate or notification of an insured person. The fund is further obliged to submit the registration number to the relevant tax authority.

Banking regulations stipulate that one of the conditions for opening a bank account for a newly established company is the availability of its own stamp. The bank first opens a savings account, to which at least half the minimum amount of the initial required capital must be credited. As soon as the stamp is available, the bank closes the savings account and opens a current account into which contributions for the capital is transferred. Within a few days (required for the verification of documents) the bank can enter into a bank account agreement with the legal entity represented by its director.

As above, a legal entity is deemed established from the moment of the entry of the relevant record in the Unified State Register of Legal Entities.

Notification of certain types of entrepreneurial activity

According to Article 8 of Federal Law number 294-FZ 'On the Protection of the Rights of Legal Entities and Individual Entrepreneurs in the Course of Exercising State Control (Supervision) and Municipal Control' dated 26 December 2008, individual entrepreneurs and legal entities, when organising certain types of business activity, must notify the local branch of the relevant federal department, such as the Federal Service for Consumer Rights and Human Welfare Protection, or the Federal Transport Supervision Service, or the Federal Bio-medical Agency or other authorities specified by law, depending on the types of activity and services.

If necessary, a legal entity or individual entrepreneur is to notify the relevant federal department immediately after registration and tax registration and prior to the actual commencement of work or services.

A legal entity or an individual entrepreneur must also notify the corresponding body in the event of changing the location and/or place of activity for a legal entity, or the place of residence for an individual entrepreneur and in the event of restructuring.

These activity types include hotel services, including short-term accommodation and lodging, retail and wholesale, certain types of transportation services, printing and publishing services, services relating to the use of computers and information technology and the production of certain types of food and non-food products, among others.

Special Economic Zones

Special Economic Zones (SEZs) may be created across the Russian Federation in order to support the development of the manufacturing sector, advance technology industries, tourism, health resorts, port and transport infrastructure, the development of new technologies and their commercial application and the production of new products.

Depending on the purpose, SEZ types are as follows:

1) industrial/developmental zones;
2) technical/innovational zones;
3) tourist zones; and
4) logistics zones.

As of 1 January 2018 there are 21 special economic zones of four types in the Russian Federation, including 9 industrial zones, 6 technical zones, 5 tourist zones and 1 logistics zone.

According to Federal Law number 116-FZ 'On Special Economic Zones in the Russian Federation dated 22 July 2005 (the SEZ Law), a SEZ is a geographical region within the Russian Federation, defined by the Government, where special conditions for entrepreneurial activity are provided and the customs procedure applicable to free trade zones may be applied.

The customs procedure applicable to free trade zones may not be used for tourist and recreational SEZs.

In addition to special conditions for entrepreneurial activity, SEZs are characterised by specific procedures for their creation and management, as well as for overseeing the business activity of their residents.

Special conditions of entrepreneurial activity inside a SEZ include a more favourable environment for entrepreneurial activity, which allows for lower business expenses, estimated to be around 30% lower.

SEZ residents are entitled to:

- tax incentives, such as land tax exemption and transport tax exemption;
- preferences, such as incentive rates for the lease of premises and favourable utility connection terms;
- lower administrative burden (the “one-stop” principle);
- infrastructure for developing their own business; and
- reduced insurance rates.

For example, the following privileges and preferences are granted to investors of a technical/innovational SEZ in St Petersburg:

- capital gains tax exemption;
- land tax exemption
- VAT exemption;
- lower insurance rates of 14%;
- incentive rates for the lease of premises;
- favorable terms for connection to the power grid;
- legal safeguards that guarantee privileges and are set out in the agreement on conducting business activity in a technical/ innovational SEZ in St Petersburg.

SEZs are created by the decision of the Government and for a period of 49 years.

The SEZ Law sets out a list of activity types that are not permitted within a SEZ. However, the Government may, from time to time, add other activity types. The rules regulating entrepreneurial activity, as well as activity types within a SEZ vary for different SEZ types.

Infrastructure within a SEZ, including the creation of engineering, transport, social and innovative infrastructure facilities, is funded from the federal budget and regional and local budgets.

Either an individual entrepreneur or a profit-making organisation (except for unitary enterprises) may be a resident of a technical/innovational zone or a tourist and recreational zone. Only a profit-making organisation (except for unitary enterprises) may be a resident of an industrial/developmental zone or logistics zone.

Such entities must be registered in the municipal territory within which the SZE is created and must sign an agreement on conducting activities within a SEZ with the federal department and a management company. Under this agreement, the management company undertakes, for instance, to create infrastructure facilities within the zone.

A resident taking part in the SEZ also assumes various obligations. A resident of an industrial/developmental zone must make capital investments of a total of no less than 120 million roubles (except for intangible assets), of which no less than 40 million roubles (except for intangible assets) must be invested within three years from the date of the signing of the agreement on conducting business activity.

The resident must also assist the authorities responsible for managing the SEZ in respect of ensuring compliance with the terms of the agreement on conducting business activity.

The agreement must be in writing signed by the parties and be valid for a period not exceeding the remaining term of the SEZ. Any amendments to the agreement must be in writing and as an addendum to the initial agreement.

An individual entrepreneur or a profit-making organisation are considered to be residents of a SEZ from the date when a corresponding entry is made in the register of SEZ residents, of which the federal department must notify the tax and customs authorities, as well as the authorities responsible for managing insurance payments.

A resident of a SEZ ceases to be one only in cases stipulated by law and subject to court proceedings.

A resident of a SEZ may neither establish branches or representative offices outside the SEZ, nor assign its rights and obligations to any third parties.

The agreement on conducting business activity may be terminated by mutual agreement of the parties or at a party's request in the event of a significant breach by the other party of the agreement, changes in circumstances or on other grounds provided for by the Federal Law. In the event of the agreement being terminated, the entity or individual ceases to be a resident of the SEZ.

For further information, please visit the Special Economic Zones' website: www.russez.ru.

Joint Ventures

The Russian term ‘joint venture’ traditionally encompasses a specific form of business cooperation between a Russian organisation or individual with a foreign entity or individual and involves the formation of joint assets between the partners to be used for the purposes of operating the business. As a rule, a joint venture implies joint corporate participation (joint shareholding) of partners in a separate, third organisation and joint management.

The term ’joint venture’ is not defined in Russian legislation. In the Federal Law ‘On Foreign Investment in the Russian Federation’ number 160-FZ dated 9 July 1999 the term ‘commercial organisation with foreign investment’ is used instead. A Russian commercial organisation acquires the status of a commercial organisation with foreign investment from the date when a foreign investor joins the organisation. As of this date the commercial organisation with foreign investment and the foreign investor enjoy legal protection, guarantees and advantages provided for by the federal law.

Joint ventures are incorporated in Russia in accordance with the same procedure for Russian organisations. Their tax obligations have some specific characteristics, but in general they correspond to the obligations of Russian legal entities. As a general rule, the legal regime regulating the activity of foreign investors and the allocation of profit from investments may not be less favourable than the legal regime regulating the activity of Russian investors, with the exceptions provided for by federal laws. It can therefore be said that the regime regulating the activity of foreign investors and joint ventures organised by them in Russia is largely the same as the regime regulating the activity of national investors.

Both joint ventures and foreign investors themselves enjoy special guarantees and concessions in Russia, including customs concessions, guarantees of legal protection, provision of proper dispute resolution, availability of various forms of investment, transfer of the rights and obligations of a foreign investor to another person, guarantee of compensation in the event of nationalisation and seizure of property, guarantees against any unfavourable (for a foreign investor and a commercial organisation with foreign investment)

amendment to relevant Russian legislation, guarantees associated with the allocation in the Russian Federation and transfer from the Russian Federation of profits and other legally earned funds (see Articles 5 and 16 of the aforementioned law).

Among the most common forms of commercial joint ventures in Russia are business entities with joint participation (limited liability companies or joint-stock companies) or ordinary partnerships (a form of joint activity without the incorporation of a legal entity).

The issue of the organisation of a joint venture arises when a foreign investor becomes interested in a substantial presence in the market for goods or services where investment is required, as well as comprehensive and effective control over the activities of the object of investment in Russia. In such a situation, simpler mechanisms for concluding distribution and dealer agreements between Russian and foreign partners may not fully regulate the investment relations of the parties or provide them with sufficiently wide-ranging guarantees and controlling authority.

It may therefore become necessary to organise a joint venture, and a proposed investor faces a dilemma of choosing the most suitable form for conducting business jointly. The partners have to choose between contract and corporate cooperation models. The former, the contract cooperation model, involves the parties entering into a so-called 'partnership agreement' (**'joint activity agreement'**). Issues relating to the execution, performance and termination of a partnership agreement are touched upon in Article 55 of the Civil Code. Under Article 1041 of the Civil Code, under a partnership agreement two or more persons who undertake to combine their contributions and act jointly, without forming a legal entity, for the purposes of gaining profit or achieving any other aim permitted by law.

Funds, other assets, knowledge, experience, skills, business reputation and business contacts can be contributed towards the assets of the partnership.

Assets contributed by the partners of which they had right of ownership, products manufactured as a result of their joint activity, other results of such activity and revenues are regarded as their joint shared ownership, unless otherwise established by law or under the partnership agreement, or result from the nature of the obligation. Contributed assets that were owned by the partners on grounds other than property rights can be used for the benefit of all the partners and constitute the joint property of the partners together with property owned by them jointly.

In the course of conducting joint affairs, each partner may act on behalf of all the partners, unless the partnership agreement specifies that affairs are

to be conducted by certain parties or by all parties jointly. In dealings with third parties, the authority of a partner to perform transactions on behalf of all the partners is confirmed by a power of attorney or by the partnership agreement in writing.

Such partnerships are distinct from other business entities, where the rights and obligations of the partners are determined not only and not merely by agreements between the partners but by a charter, the amendment procedure for which is understandably complicated and formal, requiring not only a discretionary decision of the shareholders but also the registration of such amendments. A partnership agreement is fairly flexible, though its amendment requires the unanimous agreement between the parties. Unlike the shareholders in a joint-stock company, the parties to a partnership agreement are entitled to separate the right to manage and the receipt of profits from the size of their contribution. It is determined that decisions relating to the common affairs of the partners are made by mutual agreement of the partners, unless otherwise specified in the partnership agreement. Profits gained by the partners as a result of their joint activity are distributed in proportion to the value of their contribution to the joint business, again unless otherwise specified in the partnership agreement or otherwise agreed by the partners. Any decision prohibiting any of the partners from participating in the distribution of profits is considered null and void.

A specific feature of partnerships organised in order to conduct business activity jointly is the fact that the partners are jointly liable for all their joint obligations, regardless of how they arise. Each partner is liable for all his/her assets, which naturally does not contribute to the popularity of this form of joint activity.

A partnership agreement can be brought to an end on the basis of Article 1050 of the Civil Code, in particular when a partner makes such a request. If a partnership agreement does not have a term for its validity, a notice to withdraw from a partnership must be made no later than three months before the intended date of withdrawal. A partnership agreement provides for the possibility of filing a claim for the termination of such an agreement to court. A claim can only be on the basis of a valid reason and on condition of the recovery of any actual damage caused by the termination.

It may be therefore advisable to choose the partnership model in instances when the partners do not wish to bind themselves by additional formalities related to the registration and maintenance of a Russian legal entity and when there is no need to be represented in the market as a single company and to incur the expenses associated with it. In addition, a partnership does

not have strict requirements relating to the form of contribution and its evaluation, the procedure of management and the distribution of profits among the partners. Nevertheless, if the activity of the partners involves significant financial risks, a partnership is less favorable than an LLC or JSC, whose shareholders are liable for the company's obligations only to the extent of the value of their contribution or the shares held by them.

The **corporate cooperation model** requires the establishment of a business partnership or company, the most appropriate and effective legal forms of which are a joint-stock company and a limited liability company. In this case, a foreign investor has another choice to make – whether to invest funds in an existing company and become its shareholder, or to form a new joint venture (by means of incorporation or restructuring, including by means of consolidation or acquisition).

For details of each of the above options please see the respective chapters of this brochure:

• *Setting up a new business* – regarding the specific characteristics of various legal forms of start-ups;

• *Business restructuring* – regarding the specific characteristics of the reorganisation of a business by means of consolidation or acquirement with foreign capital involved; and

• *Acquisition of a business* – regarding the acquisition of shares and interest in an existing business.

Investment Partnership

On 1 January 2012 Federal Law 'On Investment Partnership' number 335-FZ dated 28 November 2011 (referred to as the **'Investment Partnership Law**') took effect in the Russian Federation.
This law aims to create a legal environment for attracting investment into the Russian economy and implementing investment projects based on investment partnership agreements. The lawmakers specified that they "wanted to provide an organisational framework in Russian law that would be analogous to European collective investment schemes".

The Principal Advantages and Disadvantages of an Investment Partnership

The investment partnership structure is intended to combine the advantages of business partnerships with those of ordinary partnerships, while eliminating their respective principal disadvantages.
The fundamental principle of the law for investment partnership agreements

is to provide opportunities for the members of the partnership to establish rules suitable for them.

Other advantages of the contract model include the division of responsibilities between its partners and additional guarantees relating to the consistency of its structure and the composition of its managing partners. Contributions of partners are additionally protected. Another benefit is the fairly long period that the partnership can operate for (up to 15 years).

It should be noted that this form of conducting business is available for investment activity only.

As for restrictions, such partnerships are not permitted to decline participation or transfer rights, except by the managing partner. There are also restrictions on contributions in kind and promoting the partnership activity. The practice of attracting new partners by means of public offer is also restricted.

Particular Features of an Investment Partnership

An investment partnership is a kind of ordinary partnership. General provisions on partnerships are set out in Article 55 of the Civil Code.

As in an ordinary partnership, an investment partnership constitutes an association of two or more persons for achieving a specific aim, namely for generating profits. Persons enter into an investment partnership under an investment partnership agreement. In such a situation no legal entity is formed.

The main feature common to both ordinary partnerships and investment partnerships is the availability of common property and common participatory share ownership of partners and the need to separate the common property of the partners.

What distinguishes an investment partnership from an ordinary partnership?

An investment partnership differs from an ordinary partnership principally by the parties to the investment partnership agreement and the activities the partners of an investment partnership may carry out.

The Investment Partnership Law stipulates that only profit-making organisations and non-profit organisations, if an investment activity facilitates the achievement of the statutory objectives of the non-profit organisations, may become parties to an investment partnership agreement. It is therefore not possible for individuals, including those who are individual entrepreneurs, and some non-profit organisations to become partners of an investment partnership.

It is stipulated that the number of partners in an investment partnership cannot be more than fifty.

The partners may create an investment partnership only to conduct investment activity for generating profits. Non-investment transactions are not permitted. The transactions can be conducted by a managing partner on his/her behalf and at his/her expense. The managing partner is entitled to demand that the partners reimburse the expenses incurred by him/her in connection with entering into such a transaction.

The Investment Partnership Law specifies some requirements for an investment partnership agreement that do not apply to an ordinary partnership agreement. An important requirement relates to the mandatory notarization of any and all amendments, supplementary agreements and schedules. One copy of the agreement as amended and all supplementary agreements and schedules are to be kept by the notary public who certifies the agreement. It is also required that an investment partnership agreement have a title (individual designation) containing the words 'investment partnership'.

The Investment Partnership Law provides for a list of conditions of an investment partnership agreement which is much wider than that for of an ordinary partnership agreement as stipulated by the Civil Code.

It is prohibited to include a provision on creating a silent investment partnership. Such a provision is declared legally void; an investment partnership may be public only.

The Investment Partnership Law introduces mandatory differentiation of partners from managing partners entailing differences in rights and duties, possible contributions of partners and the procedure for conducting the common business of the investment partnership.

Under the aegis of an investment partnership (a) managing partner(s) are appointed. Among managing partners there can be one authorised partner appointed.

Those partners who are not managing partners have only one obligation: to contribute to the common business. They are not obliged to carry out any activity. An ordinary partnership agreement sets out an obligation for every partner to make a contribution and to participate in conducting the business.

A managing partner of an Investment Partnership is obliged to make a contribution and manage common business. The law imposes additional obli-

gations on an authorised partner and they are related to the recording of profits and expenditures, the opening of bank accounts and tax accounting.

The list of rights of partners and those of managing partners is similar, the only difference being that a managing partner is entitled to remuneration for managing the business.

Some specifics are connected to the types of property, proprietary and other rights which can be contributed as a contribution to common business. Money, property, proprietary rights, other rights that have a monetary equivalent, knowledge, skills and goodwill may be contributed to the common business. However, the possibility of making a particular contribution depends on the type of partner. A non-managing partner may contribute money only. A managing partner may contribute any of the aforementioned; however, if the contribution is made in non-monetary form it is mandatory to have it valued. In an ordinary partnership there is no such obligation.

The Investment Partnership Law establishes a legitimate interest and a legitimate penalty interest as a sanction for the improper performance of an obligation to contribute. There is no legitimate penalty interest for the failure to perform an obligation on to contribute established for an ordinary partnership.

As far as it relates to an investment partnership, it is not permitted to split common property and allot a share in kind from such property within the validity period of the investment partnership agreement.

Special rules regulating the common business of partners exist in an investment partnership. Only managing partners may manage the common business of partners. Any agreement that delegate the authority to manage to non-managing partners is voidable. However, along with this rule is a possibility for partners to make decisions on common business together with all other partners. This rule may be exercised in the form of a joint decision or by means of forming an investment committee. This right of partners may be excluded by the investment partnership agreement.

As mentioned above, it is not permitted to advertise a partnership that carries out investment activity and to attract new partners by means of a public offer.

The Civil Code sets out that a partnership may be either fixed-term or indefinite. An investment partnership can only be fixed-term. Article 13 of the Investment Partnership Law stipulates that the validity period of an investment partnership agreement may not exceed 15 years. Even if the termination date of an investment partnership is linked to the achievement of a specific objective, it may not exceed 15 years.

This provision relates to a special rule regulating the refusal to participate. A managing partner may refuse to participate in an investment partnership agreement if all the other partners provide their consent and unless other conditions and procedure for granting this consent, or other number of partners for the provision of this consent, are specified by the agreement.

The refusal of partners to participate in an investment partnership agreement as a general rule is not permitted, although it can be established by the agreement of the investment partnership. In this case, the investment partnership contract must contain conditions on the procedure and consequences of this refusal.

It is established that the agreement may be terminated or modified through court proceedings. This requirement relates to a material breach of the agreement only, while it is permitted to claim termination of a partnership agreement for any valid reason.

The law provides for the special protection of the shares of partners from claims of their creditors. Any claims can only be made on a share after all the other assets and with the consent of all the other partners the share can be allotted in kind.

The possibility of transferring rights and obligations under an investment partnership depends upon the type of partner. A partner-investor can transfer rights and obligations under the investment partnership agreement to third parties. A transfer of rights and obligations by a managing partner is generally not permitted, in order to contribute to the consistency ownership of the investment partnership business. Although an investment partnership agreement can provide for such a transfer.

Specific characteristics of investment partnerships relate to the liability of partners under the common obligations of the investment partnership. As a general rule, under the terms of partnership agreements, each partner is liable in proportion to his share of the property held by the partnership and cannot be held personally liable. In the event that there is not sufficient funds from the property of the partnership to settle the claims of creditors, the managing partner can incur subsidiary liability to the full extent of all his property.

The Investment Partnership Law also stipulates that, unlike a ordinary partnership, if a partner, unless otherwise stipulated by the partnership agreement, wishes to withdraw from the partnership, is declared insolvent or a legal entity participating in the partnership is liquidated or restructured,

and the partner's share is passed to a creditor, the investment partnership can continue. Accordingly an investment partnership can provide greater stability than that offered by a general partnership.

Acquiring a Business

Most transactions relating to the acquisition of a business in Russia are either for the acquisition of an interest or shares in an existing company or the purchase of assets owned by an entity. These mechanisms are the most popular due to the fact that they are more clearly regulated under Russian law. Among the lesser common ways of business acquisition is the sale of an enterprise as a property portfolio and the merger with another legal entity (an independent form of restructuring).

Acquisition of an interest/shares in a Russian Entity. Merger with a Russian Entity

The acquisition of an interest or shares in a Russian entity can be achieved by various means, including:

- entering into an interest purchase agreement or a share purchase agreement;
- payment for shares by a foreign investor with interests/shares in the acquiring business (termed a crossholding); and
- an 'exchange' of an interest/shares in a Russian entity for certain assets.

Contracts for the transfer of interests in the capital of partnerships are much less frequent due to partnerships being far less prevalent organisational and legal form.

In business acquisition mechanism, as in the case of a merger with a target company, it entails direct or indirect 'succession' whereby an investor becomes the recipient of both the assets and the liabilities of the acquired entity. In the event of an acquisition of an interest or shares, the investor becomes liable for debts only for the amount equal to the value of his interests/shares, whereas in the event of a merger, the successor company becomes liable for debts of the acquired legal entity to full extent of its property. In order to identify the potential risks involved in a merger or acquisition, it is advisable to conduct due diligence of the target company – this process often requires a substantial amount of time and cost.

When wishing to purchase an interest or shares in a business, it is important to consider the issues surrounding the existing owners' or shareholders' pre-emption rights. A private company's articles of association may provide existing shareholders, or indeed the company itself, with pre-emption rights. The law surrounding pre-emption rights is particularly rigid – existing shareholders can issue court proceedings to ensure that their rights are observed. Any shares that may be acquired without regard to the pre-emption rights can be transferred from the buyer to existing shareholders. In addition, the articles of association of a limited liability company may impose a restriction on the transfer of an interest in the company's issued capital to a third party, or require that consent of other shareholders of the company or from the company itself prior to the transfer of any interests.

The articles of association of a private limited company may require the shareholders' consent prior to the transfer of shares to third parties. Such a clause in articles of association can be effective for a limited period and for not longer than five years from the date of registration of the company or from the date of registration of the relevant amendments to the articles of association.

A partnership agreement can provide for various ways to obtain partners' consent to a transfer of an interest in the partnership to a third party, depending on the grounds for such a transfer and other circumstances.

It should be noted that a transaction for the transfer of an interest in the share capital of a limited liability company must be notarised. A failure to comply with the notary requirements will lead to a transaction being declared invalid.

At the same time, in the event that an acquisition is of an interest or shares in a business entity that is a going concern, it will not be necessary to obtain any new governmental approval or licences (indeed the process of obtaining licences can be more time-consuming than acquiring a company).

Russian law does not permit a Russian entity to merge with a foreign one. Accordingly to make use of legislation for restructuring an entity it is necessary to have a business that is either a limited liability company or an joint-stock-holding company in Russia. In most cases, this leads to mergers being used most commonly for instances involving one holding company or companies that make up a group.

Employment matters

In accordance with Article 75 of the Russian Federation Labour Code, in the event of a change of ownership of a company's property, the new owner is entitled to terminate the employment contracts with the managing direc-

tor of the company, his/her deputy and the chief accountant within three months from the date he acquires the company. A change of ownership of a company is not regarded as grounds for terminating the employment of any other employees in the company.

Article 181 of the Labour Code states that if the employment contracts are terminated owing to the change of ownership, the new owner is obliged to pay to them compensation equal to no less than three months' worth of average salary payments. Higher compensation may be provided for in the employment contract, so in the course of preparation for the transaction relating to the acquisition of a company it is advisable to analyse the employment contracts to establish whether they include provisions for increased compensation (so-called 'golden parachute' payments).

Acquisition of Assets of a Company

If an investor has the time and the desire to start a business in Russia from scratch, or if his/her top priority is not to acquire a business that is a going concern but to establish control over an asset or a group of assets (such as real estate properties or intellectual property) then an investor may consider purchasing real estate or a business as a property portfolio.

In the case of real estate, and even more so in the case of intellectual property, it should be noted that registration of the right to transfer under such transactions may require more time than the entering of the relevant changes on the Unified State Register of Legal Entities (as required after acquiring an interest in the issued capital of a limited liability company) or amending the shareholders register (in the event of the acquisition of shares in a JSC). In addition, the purchaser of such assets will have to pay the seller the market value for them, which may not be reduced in the event that the assets include outstanding debts. Nevertheless, the use of such mechanisms does not give rise to the risks usually associated with the liabilities of purchased companies (including hidden liabilities). In this case, no large-scale and expensive checks are required: it is necessary only to conduct due diligence of the title-establishing and title-confirming documents relating to the property – this substantially reduces the time and expense of the transaction.

In the event of the transfer of assets of a Russian entity from its shareholders, no pre-emption rights exist. However, it should be noted that if an asset transfer constitutes a major transaction or a transaction with an interested party, it must be approved by the board of directors (if there is a board and in accordance with the provisions of the articles of associations) or by a general meeting of the shareholders.

If an interested party transaction is entered into by a joint-stockholding company, then the company is obliged to inform the members of the company's board of directors and members of the supervisory body of the company. In the event that all members of the board of directors of the company have an interest in the transaction, or if its formation is not provided for by law or by the articles of association of the company, then the shareholders must be notified (although the articles of association may provide for the obligation to notify shareholders in any case). In a limited liability company, it is necessary to inform shareholders and members of the board of directors who do not have an interest in the transaction. Such a transaction does not require prior approval of the supervisory body of the company, but such approval can be obtained at the request of the executive body, supervisory body, a member of the board of directors of the company or a shareholder who holds at least one percent of the voting shares of the issued capital of the company.

A major transaction is defined as one or several interconnected transactions which is entered into by a limited liability companies or a joint-stockholding company which has a value greater than 25% of the company's total assets, unless the articles of association stipulate a greater value for a large transaction and is related to the acquisition, disposal or potential transfer of a company's assets directly or indirectly (including loan, credit or security) or to lease out property and/or use, or provide to a third party the right to use the result of intellectual activity on the terms of the licence.

The total value of the company's assets is calculated on the basis of financial statements for the last reporting period preceding the date of the decision on such a transaction(s).

Transactions made in the ordinary course of business are not recognised as major transactions. These include any transactions concluded when carrying out activities by the company or other organisations that carry out similar activities, regardless of whether the transactions were performed by the company earlier, provided such transactions do not result in the end of the activity of the company or in a change to its type or a significant change to its scale.

Russian corporate legislation defines a related party transaction (including loan, credit or security) as one in which there is an interest of:

- a board member (or a member of the supervisory board);
- a person performing the functions of the sole executive body;
- an executive body member of the company;
- the controlling party of the company; or
- any person with authority to give binding instructions to the company.

A controlling party is an entity or person which has the right to directly or indirectly (or through controlled entities) to dispose by virtue of participation in the controlled entity or on the basis of fiduciary management, partnership, commission, shareholders' agreement or any other agreement. The subject of such an agreement is the exercise of more than 50% of the votes in the supreme governing body of the controlled entity or the right to control the sole executive body and/or more than 50% of the managerial body of the controlled entity. A controlled entity is a legal entity that is under the direct or indirect control of a controlling person. At the same time, the Russian Federation, its regions and municipalities are not recognised as controlling parties.

In addition to the above-mentioned persons, interested persons in 'strategic joint-stock companies' (the list is approved by the decree of the President of the Russian Federation), as well as joint-stock companies in which 50% or more of the shares are owned by the Russian Federation or with respect to which a special right to participate in the management of this company is used by the Russian Federation (termed a 'golden share') have the right, directly or indirectly (through the persons under his control), to dispose of more than 20% of the votes in the supreme body of the controlled organisation or the right to appoint a sole executive body and/or more than 20% of the composition of the supervisory management body of the controlled entity.

A major transaction entered into without complying with the procedure for obtaining consent may be declared invalid following an application to court by the company, a member of the board of directors (or supervisory board) or a shareholder (provided the shareholder holds not less than 1% of the total voting shares).

An interested-party transaction may be declared invalid following a claim by persons referred to above and if a transaction entered into is counter to the interests of the company and it is proven that the other party to the transaction knew, or should have known that the transaction is an interested-party transaction and/or that approval for the transaction had not been provided. The absence of approval for entering into a transaction does not in itself constitute a basis for the transaction to be declared as void.

There are various exceptions when the procedure set out in legislation does not apply to certain large transactions:

- to an organisation in which all voting shares or interests are held by one individual, who is also the only person acting as the executive power of the organisation;
- for relations arising from the transfer of the rights to property in the process of the restructuring of an organisation, including in mergers;

- for transactions that are required by law or through a settlement with government as well as for transactions entered under some public contracts;
- transactions related to the acquisition of shares (other equity securities convertible into shares) of a public company, entered into on terms stipulated by the mandatory offer to purchase shares (or other equity securities convertible into shares) of a public company; and
- for transactions entered into on initial terms included in a preliminary agreement for which consent to enter into the contract was previously obtained.

Along with the above, the procedure does not apply to the public offering of shares and equity securities convertible into shares in a company with the exceptions. As well as in dealings arising when a share or a part of a share in a company's authorised capital is transferred to a limited liability company.

The procedure for approving related-party transactions also does not apply to:

- transactions that occur in the usual course of business, under that the condition that the organisation repeatedly over a long period of time completes similar transactions which do not have a related party, including transaction with financial institutions;
- organisations in which 100% of the voting shares or interests are held by one individual who also holds the sole executive power of the organisation;
- relations arising from the transfer of the rights to property in the process of the restructuring of an organisation, including in mergers;
- transactions that are required by law or through a settlement with government as well as for transactions entered under some public contracts;
- transactions entered into on initial terms included into preliminary agreement and for which consent to enter into the contract was obtained;
- transactions in which all owners and/or shareholders of the organisation have an interest and without an interest of any other parties, except in situations when the articles of association of the organisation give the right to shareholders/owners to require approval before such a transaction is entered into;
- transactions involving the issuing of public shares or bonds, or when acquiring the company's own shares or bonds;
- transactions entered into after an open tender if the terms of the tender and the bidders had been initially approved by the board of directors of the company or by a general meeting of its shareholders; and
- transactions for the acquisition of property, the price or book value of which is less than 0.1% of the face value of the assets of the company (which is determined on the basis of an accountant's valuation on the last accounting date) subject to the condition that the size of the transaction is not higher than the limits set by the Russian Central Bank.

Choosing the directors of an acquired company

When establishing a new business in Russia, one of the first issues arising in the course of the incorporation of a company or the acquisition of an existing business is the appointing of directors. It is necessary to choose between:

- appointing an individual director or a managing company; and
- appointing a local or expat director.

Appointing a managing company can provide the owner of the business with a certain degree of flexibility, as a contract for managing the business can often be terminated at the owner's discretion. Whereas when an individual director has been appointed, it is important to follow the requirements set out in employment law and social security law, in particular the requirements connected with the conditions under which a director's role can be terminated.

Despite the issues that can be faced when working with individuals directors, their appointment may be preferred as when working with a managing company it may be difficult to achieve the necessary level of tailored management and personal responsibility with a managing company.

Indemnities can be inserted into contracts to address issues of liability in case directors are held responsibility for losses incurred by the company as a result of mismanagement.

It is necessary to add that the articles of association of the company can provide for the executive power of the company to be performed by an individual or as a board with number of individuals. When a board is appointed, the general or managing director can act together or independently of one another.

If the company wishes to hire a non-Russian citizen or a person who does not hold permanent residence in Russia, it is necessary to first obtain permission for the company to hire foreign workers. Once the company has acquired such permission, the individual can apply for a work permit which can be issued for a period valid for that of his employment contract (for details see the *Employment* section below). Furthermore appointing foreign directors produces additional obligations for the company to obtain insurance to protect the company for losses that may arise from the mismanagement of the director; such insurance is not common in Russia and is typically offered only by insurance market leaders.

Business Restructuring

Business restructuring refers to the dissolution of a legal entity and the transfer of its rights and obligations to other entities or individuals. Business restructuring may arise for various reasons, and in most cases it involves the liquidation of the original entity and the incorporation of a new one.

Under the provisions of the Civil Code, five types of restructuring are established (which can be used in conjunction with one another):

1) consolidation – where two and more legal entities are made into one;
2) merger – where one or more legal entities merge with another legal entity;
3) demerger – where a legal entity is divided into two or more legal entities;
4) spin-out – where one or two legal entities are detached from a legal entity and the legal entity from which the new legal entities have been detached continues to operate; and
5) transformation – where a legal entity changes one form of incorporation to another, e.g. from a partnership to an LLC or from an LLC to an JSC.

The above listed types of restructuring are usually divided into two groups.

The first group includes **demergers** and **spin-outs**. In both these cases the restructuring of a legal entity is carried out either at the discretion of its owners or shareholders or its managing body authorised to carry out such an action by the entity's articles of association or governing documents. Restructuring can also take place potentially irrespective of the wishes of the legal entity, when it is to be restructured following a decision of an authorised state body; such a decision will also contain a timescale for the restructuring to take place.

If the owners/shareholders or the body authorised by them or the managing body of the legal entity fail to carry out the restructuring within the agreed timescale, a court, upon the request of an authorised state body, can appoint an administrator of the legal entity who will be tasked with carrying out the restructuring. The court-appointed administrator is granted the power to run and deal with the business. In accordance with the task assigned, he/she

prepares a transfer act and the necessary incorporation documents for the newly established legal entity or entities. The transfer act and incorporation documents must be approved by a court and this approval also provides the necessary grounds for the state registration of the newly established legal entity or entities.

The second group includes **consolidations**, **mergers** and **transformations**. In the event of these forms of restructuring, according to the Civil Code, Russian laws may set out instances where company restructuring may be deemed possible only with the consent of an authorised state body.

A document called a transfer act forms the basis for the legal succession of the newly established legal entity/entities. The transfer act determines to which party particular rights and obligations are to be transferred. It is necessary to include all the obligations of the restructured legal entity/entities in the transfer act, including those which remain outstanding and also any obligations which the restructured company disputes. The transfer act is then approved by the persons who passed the resolution on the restructuring.

A legal entity is deemed to be restructured (with the exception of cases of restructuring in the form of a merger) from the moment of the state registration of the newly-created legal entities. In the event of the restructuring of a legal entity in the form of a merger, it is considered as restructured from the moment a record on the termination of activity of the merged legal entity is entered in the Unified State Register of Legal Entities.

Business Restructuring and Protection of Competition

Federal Law number 135 'On Protection of Competition' dated 26 July 2006 provides for instances where restructuring in the form of consolidations and mergers may be carried out only with the prior consent of an antimonopoly body.

The same law provides for the mandatory division of business entities if their incorporation has led or may lead to less competition, including as a result of the creation or strengthening of a dominant position. A commercial organisation incorporated without the prior consent of the antimonopoly body, including as a result of the consolidation or merger of commercial organisations in cases set out in legislation, can be liquidated or restructured in the form of a demerger or spin-out following an application to court by an antimonopoly body.

A court decision on the mandatory breakup of a commercial organisation or the spin-out of one or several commercial organisations may be made in

order to develop competition. Such a decision can be made provided that it is possible to separate the structural subdivisions of a commercial organisation, or there is no technological correlation between the structural subdivisions of a commercial organisation (in particular, where 30% or less of the volume of production or services of the structural subdivision are consumed by other structural subdivisions of the same commercial organisation), or if there is a possibility for independent activity on the market for the legal entities incorporated in the course of the restructuring.

Mandatory breakups or spin-outs are carried out by the owner or a body authorised by the owner, taking into account the requirements and timescales provided for by the court decision, which may not be less than six months.

Guarantees for the Rights of Creditors

The civil law provides for the special regulation of issues relating to guarantees for the rights of creditors of a restructured legal entity.

Within three working days from the date of a resolution on restructuring, a legal entity is obliged to notify in writing the governmental body dealing with the registration of legal entities about the commencement of the restructuring procedure and specify the type of restructuring. Based on this notification, the state body enters the appropriate record in the Unified State Register of Legal Entities, following which the legal entity twice publishes a notice on its restructuring in the media – the second being published a month after the first. The notices must contain information on the procedure and conditions for creditors to present their claims. A creditor of a legal entity, with any claim that pre-dates the first publication of the notice on restructuring, is entitled to early discharge of the respective obligation by the debtor in court, and if such early discharge is not possible, to claim termination of the obligation and reimbursement of any losses incurred.

The claim of a creditor does not suspend the restructuring procedure, but such a claim should be resolved before the restructuring is completed. If the creditor's claim is not resolved, then the reorganised legal entity or entities incorporated as a result of restructuring, persons who have the authority to determine the actions of the reorganised legal entity/entities, members of managing bodies and any person authorised to act on behalf of the reorganised legal entity/entities can incur liability to the creditor if through their actions (or inaction) the creditor has suffered a loss.

The abovementioned guarantees for the rights of creditors do not apply in cases of the restructuring of a business in the form of a transformation.

Insolvency

General Description

The main piece of legislation regulating insolvency (often termed bankruptcy) in Russia is the Federal Law 'On Insolvency (Bankruptcy)' number 127-FZ dated 26 October 2002.

According to Russian law, insolvency is the inability of a debtor, as determined by a commercial court, to satisfy in full the claims of its creditors for monetary obligations and/or to perform his/her obligation to make mandatory payments, payments of salaries and/or benefits to current or previous employees. Insolvency cases are considered by commercial courts in the locality of the debtor.

Legal entities of the following types cannot be declared insolvent: state enterprises, institutions, political parties and religious organisations. State corporations and companies may be declared insolvent if permitted by laws governing their incorporation. Laws on creating a fund may prohibit declaring it insolvent.

Russian insolvency is subject to regular amendments and changes, typically strengthening the position of creditors and tightening the conditions on debtors.

Parties to Insolvency Proceedings

Insolvency proceedings can involve the following parties: a debtor, an administrator, creditors, authorised bodies, government authorities and local authorities in special cases and any person granting security for financial recovery. In addition, representatives of employees of the debtor, the shareholders or the owner of the debtor's property, the creditors' meeting or the creditors' committee and other persons can participate in the insolvency proceedings.

Creditors are those to whom the debtor has monetary obligations (with the exception of authorised bodies, individuals to whom the debtor is liable for

damage to life or health, or is liable to pay remuneration as to the owners of intellectual property and shareholders of the debtor based on liabilities incurred as a result of this shareholding). The authorised bodies are the federal executive body representing claims for the payment of mandatory payments (including taxes) and claims of the Russian Federation in respect of monetary obligations, the executive bodies of regions and local government authorities that have filed claims. The authorised federal body is the Federal Tax Service.

The key party in insolvency proceedings is the administrator or bankruptcy manager. The administrator's authority varies depending on the insolvency procedure: ranging from an analysis of the debtor's activities and the preparation of a report on the possibility of restoring its solvency to the total management of the debtor's activities. Any individual with a university degree and executive experience who has passed a special exam and is a member of one of the self-regulating organisations of administrators may act as an administrator.

A creditor (who holds a debt of not less than 300,000 roubles and, if the creditor is not a credit institution such as a bank, is approved by a decision of the court), an authorised body or the debtor may initiate insolvency proceedings. In some cases, the debtor is obliged to file an insolvency petition to the court itself, with a failure to do so leading to personal liability for the debtor's executive officer or the owners of the business.

Basic information on insolvency of an individual or entity is published in official media (business newspaper, Kommersant) as well as included in the Federal Register of Information on Bankruptcy (see website www.bankrot.fedresurs.ru).

Insolvency Proceedings

In the case of insolvency of a legal entity, procedures as supervision, financial recovery, external management, receivership proceedings, settlement agreements and other procedures, as set out in law, apply.

The purpose of the **supervision** procedure is to protect property, analyse the financial condition of the debtor and to compile a register of any claims of creditors. After the introduction of supervision, the temporary administrator publishes a notice and within one month from the date of the publication of this notice, the creditors are entitled to file their claims and conduct a first meeting of creditors. The creditors may file their claims later, but such claims can be considered only after a move to a subsequent procedure. Based on the court's ruling, the claims are entered on a register of claims. The temporary administrator draws up a report of its activities, including an indication of the possibility of restoring the debtor's solvency and the necessity for further proceedings.

After the introduction of supervision, enforcement against the debtor's property is suspended. New monetary claims against the debtor may be filed only within the framework of the insolvency proceedings (with the exception of current payments, i.e. obligations, which arose after the date when the petition declaring the debtor insolvent was accepted). A number of limitations relating to the debtor's activity are also introduced.

The purpose of the **financial recovery** procedure is the restoration of the debtor's solvency and the clearance of his debts in accordance with an approved repayment schedule. Control over the course of implementation of the financial recovery plan and the schedule for the clearance of debts is undertaken by the administrator.

In the event of the debtor clearing his debts in accordance with the schedule or ahead of it, the insolvency proceedings are ended. If the repayment schedule is not adhered to, the commercial court can appoint an external administrator or commence receivership proceedings.

The purpose of **external administration** is also to seek to restore the solvency of the debtor. An external administrator is in charge of all affairs of the debtor. A moratorium on the meeting of creditors' claims is introduced. The external administrator is to devise for the approval at the creditors' meeting an external administration plan, which may involve reorientation of production, liquidation of unprofitable businesses, recovery of receivable debts, sale of part of the debtor's assets, assignment of claims of the debtor, performance of the debtor's obligations by a third party, increase of the share capital of the debtor by way of contributions from shareholders and third parties, issuing shares in the debtor, sale of the debtor's business, replacement of the debtor's assets and other measures to restore the debtor to solvency.

External administration can be ended following:

- the conclusion of insolvency proceedings (if all creditors' claims have been met);
- the entering into of a settlement with creditors (if the debtor's solvency has been restored);
- initiation of receivership proceedings; or
- entering into a settlement agreement.

The procedures for financial recovery and external administration are used for approximately one in fifty debtors. In the vast majority of cases, insolvency leads to receivership proceedings and ultimately to the liquidation of the entities.

Receivership proceedings can be initiated if the debtor is declared insolvent for the purposes of adequate satisfaction of the creditors' claims. A receiver will then manage the activities of a debtor who has been declared insolvent. The receiver can sell the debtor's property at auction.

Funds owned by the debtor and received as a result of the sale of its property are used for settling creditors' claims in order of priority. Any claims for current payments are to be paid first. Highest priority is given to claims relating to compensation for harm caused to life or health. Secondly, demands relating to the payments to current or former employees, including severance packages, and any payments due to the holders of intellectual property rights. After which, payments to other creditors can be made. The claims of creditors in each tier are to be met after all the claims made by any creditors of the preceding tier have been met in full. Claims of creditors relating to obligations secured by a charge on the debtor's property are met out of turn using the value of the property subject to a charge.

If a third party, such as a shareholder, discharges all the debtor's liabilities, the court can end the proceedings and the debtor is no longer considered insolvent. In other cases, after the completion of settlements with the creditors, the court passes a ruling on the end of the receivership proceedings and a record on the liquidation of the debtor is entered in the Unified State Register of Legal Entities.

At any stage of the insolvency proceedings, the debtor, its bankruptcy creditors and authorised bodies are entitled to enter into a **settlement agreement**, subject to the approval of the court. The settlement agreement specifies the procedure and term for fulfilling the debtor's obligations.

Special Characteristics of the Insolvency/Bankruptcy of Certain Parties

Russian law provides for a specific insolvency procedure for credit institutions, insurance agencies, companies in the securities market and other financial organisations. Government bodies and local authorities are vested with wider powers within the framework of the insolvency of town-forming organisations, other organisations in which more than 5,000 people are employed, strategic enterprises and organisations and natural monopolies. In the case of the insolvency of agricultural organisations, the seasonal nature of their activities and the target purpose of their property is taken into account. In the case of a property developer's insolvency, parties involved in a construction project with claims for accommodation against the developer are given special rights. A simplified procedure is applied in the insolvency of liquidated debtors, absent debtors, specialised societies and mortgage agents and no supervision, financial recovery or external administration applies to them.

In terms of the bankruptcy of individuals, the following procedures apply: debts restructuring (restructuring plan for no longer than three years and other restructuring conditions are confirmed by court considering a case), assets selling (in the case of failure to provide the court with a debt restructuring plan or its cancellation as well as if the court refuses to confirm the plan an individual can be declared bankrupt) and settlement agreement. Case on bankruptcy of individuals can be initiated if claimed amount is not less than 500,000 roubles.

Upon completion of settlements with creditors, an individual who has been declared bankrupt is released from being required to further satisfy creditors' claims. At the same time, some negative legal consequences for the individual will result including from the date of recognition of an individual as bankrupt he/she may not hold positions in management bodies of a legal entity (including participate in the management of a legal entity in any form) for three years as well as being unable to borrow money without the first disclosing that he/she was previously declared bankrupt for five years.

For individual entrepreneurs, the consequences of being declared bankrupt are even more strict. A bankrupt businessperson loses his/her registration as an individual entrepreneur and cannot for five years carry out business activities and hold positions in the management of companies.

Regulation of Business Activity

The following forms of the state regulation of entrepreneurial activity are of particular importance in setting up and conducting a business in Russia:

- state registration of legal entities and individual entrepreneurs (see the *Setting up a new business* section);
- licensing;
- participation in self-regulating organisations;
- accreditation;
- notification-based and authorisation-based procedure for conducting specific activities;
- certification;
- customs regulation (see the *Customs regulation* section);
- tax regulation (see the *Taxation* section);
- foreign trade regulation;
- currency control;
- export control; and
- trade regulation.

Licensing

In the Russian Federation it is necessary to obtain a licence to carry out certain types of commercial activity in accordance with the Federal Law 'On the Licensing of Certain Types of Activity' number 99-FZ dated 8 May 2011.

A licence is a special permit to carry out a specific type of activity subject to mandatory compliance with the licensing requirements and conditions issued by a licensing body in favor of a legal entity or individual entrepreneur. The main principles of licensing include: ensuring a common economic space in the Russian Federation, establishing a single list of licensable types of activity, a common procedure, requirements and conditions, and compliance with the law. In connection with the these it may be concluded that the introduction of licensing does not contradict the constitutional principle of free economic activity.

Licensable types of activity are activities which may cause harm to the rights, lawful interests and health of citizens, the defence and security of the state

or the cultural heritage of peoples of the Russian Federation, and which may not be regulated in any other way but by licensing. This includes the use of inflammable, explosive and chemically hazardous materials in production facilities, drug manufacture, carriage of passengers, activity related to the organisation and carrying out of gambling in betting offices and pari-mutuel, private detective and security activity, providing communication services, pharmaceutical activities and others. As of 22 March 2017, there are 49 licensable activities all in all.

A licensable type of activity may be carried out only by a legal entity or individual entrepreneur who has obtained a licence. The right based on the licence forms part of the legal capacity of the licence holder and unlike a legal right it may not be transferred to other persons.

The validity period of a licence may not be less than five years. In order to obtain a license, a licence applicant should submit an application and requisite documents to the relevant licensing body. The licensing body makes a decision on whether to issue or refuse the application within a period not exceeding 45 working days from the date of receipt of the application and supporting documents.

If a licence holder breaches the requirements and conditions of a licence, he/she may be held administratively liable in accordance with the procedure stipulated by the Administrative Violations Code, and the licence may be suspended. If a licence holder fails to remedy the breach of requirements and conditions that resulted in the administrative suspension of activity, the licensing body is obliged to seek cancellation of the licence in court. A licence can be cancelled by a court decision.

As far as civil law consequences are concerned, all transactions entered into by an entity (including an entrepreneur) in the absence of a licence may be held invalid. The entity may be liquidated following a court order for engaging in business without a license.

Specific laws provide for licensing of nuclear energy use, production and circulation of ethyl alcohol, alcoholic beverages and alcohol containing products, state secrets protection activities, activities connected to the aerospace industry and various financial activities (the same for credit institutions, bidding process organisers, professional securities market participants, investment and pension funds, depositories as well as clearing and insurance activities).

Self-Regulating Organisations

Membership-based non-profit organisations that comprise of entities carrying out entrepreneurial activity due to their common field of production of goods or market of produced goods or combining entities that carry out professional activity of a certain type are deemed to be self-regulating organisations.

In Russia the procedure for the establishing and running of a self-regulating organisation, its main goals and tasks are regulated by Federal Law number 315-FZ 'On Self-Regulating Organisations' dated 1 December 2007 and by federal laws governing the relevant type of activity. The main objective for establishing a self-regulating organisation is to shift functions involving control and supervision over the activity of the entities in a specific sphere from the state to the market.

In a wide number of cases, federal laws provide mandatory participation of entities that carry out specific entrepreneurial and professional activity in self-regulating organisations. Some types of activity not requiring the issuance of a licence may be conducted only if the entity is a member of a self-regulating organisation in a certain field (for example, design, construction, audit, appraisal or activity of insolvency administrators).

There are some activities where self-regulation is provided by law; however, membership in a self-regulating organisation is not a must for conducting such an activity (for example, advertising).

Accreditation

Laws governing specific activities may set out a procedure for mandatory or voluntary accreditation. In particular, accreditation is provided for:

- representative offices and branches of foreign legal entities;
- legal entities, individual entrepreneurs performing conformity assessment activities;
- legal entities, individual entrepreneurs engaged by bodies authorised to exercise state control (supervision), bodies of municipal control for carrying out control measures;
- experts, expert organisations engaged by federal executive authorities for the exercise of separate powers;
- in the field of atomic energy;
- legal entities carrying out non-state expert examination of project documentation and/or non-state expert examination of results of engineering investigations;

- healthcare organisations for the clinical trial of drugs intended for medical use;
- organisations dealing with the administration of rights on a collective basis;
- sport federations;
- educational establishments;
- entities engaged in the field of ensuring the uniformity of measurements;
- operators of vehicle inspection;
- specialised organisations in the sphere of transport security;
- rating agencies; and
- certification centres.

At present Federal Law number 412-FZ 'On accreditation in the national accreditation system' dated 28 December 2013 is in force in the Russian Federation.

Notification-Based and Authorisation-Based Procedures for Conducting Specific Activities

When individual entrepreneurs and legal entities carry out specific activities (for example, hospitality services, wholesale and retail, certain kinds of transportation, production of specific products) in Russia, they should notify the territorial subdivisions of the authorised federal executive body. For further details please see the *Setting up a new business* and *Joint ventures* sections.

There are some activities which, although not licensable, are subject to various requirements, namely: epidemiological, sanitary, ecological, fire safety, traffic code and safety. In order to carry out such activities it is necessary to obtain a relevant permit (construction, reconstruction, capital repair, hazardous substance emission, employment of foreign nationals, import (export) of commodities to (or from) a special economic zone). Such permits are issued by the executive authorities and officials. These permits serve as the grounds for conducting the relevant activity. The absence of a permit can result in administrative and criminal liability.

Certification

In accordance with Federal Law 'On Technical Regulation' (number 184-FZ dated 27 December 2002) (referred to here as 'Law 184-FZ'), certification is the form of confirmation by a certification body of the compliance of items with the requirements of technical regulations, standardisation documents or terms of agreements.

In the context of a free market economy, certification is the principal means of guaranteeing the compliance of products with the requirements of legal documentation.

The principles and rules of technical regulations are also specified in international agreements, concluded within the European Economic Area.

Technical Regulation means a document adopted according to obligations under an international treaty, ratified in compliance with the procedure set out by the legislation, or by an intergovernmental agreement, entered into in compliance with legislation or an order of the President or a decree of the Government and establishing the binding requirements to technical regulation (items, including buildings, constructions and structures or design (including survey), production, construction, assembling, setting up, operation processes related to the items' requirements).

The institution of technical requirements is designed to replace the institution of state standards which also contained mandatory requirements on manufactured products.

Technical regulations establish the minimum necessary requirements relating to emission, biological, explosive, mechanical, fire, production, thermal, chemical, electrical, nuclear and radiation safety, electromagnetic compatibility to the extent related to ensuring the safe operation of tools and equipment and uniformity of measurements, as well as other types of safety, for the purposes achieving the adoption of specific technical regulation.

A technical regulation should contain a list and/or a description of items subject to it, requirements for them and the rules for their identification for the purposes of application of the technical regulation. It should also contain any rules and forms for the conformity assessment specified subject to the degree of risk, deadlines for conformity assessment in respect of each item and/or requirements to terminology, packaging, marking or labeling or rules for their manufacture (Article 7 of Law 184-FZ).

Certification can be either mandatory or voluntary. In compliance with the decree of the Government number 982 dated 1 December 2009, the following products are subject to mandatory certification include: weapons, radiation systems, electric energy in public electric grids, railroad rails, railroad equipment and rolling stock, pipes for gas pipelines. Some products which are not mandatorily subject to certification require a declaration of conformity; liquefied gas, metallic housewares and mineral fertilisers.

A document issued in accordance with the system of certification rules for the purposes of confirmation of compliance of the certified products with the established requirements of the technical regulations, documents for standardisation or terms of a contract is a **certificate of conformity**. Possession of this certificate assists consumers in choosing products and acts as a guarantee of their quality. Certificates of conformity are issued by certification bodies (legal entities or individual entrepreneurs properly accredited to carry out certification work). Mandatory certification is carried out on the basis of an agreement with the applicant. Certification schemes applicable to the certification of certain types of products are established by technical regulations.

Voluntary confirmation of conformity is initiated by an applicant on the basis of an agreement between the applicant and the certification body. Voluntary confirmation of conformity can be made with respect to: products, processes of production, operation, storage, transportation, sale and disposal of an activity or service as well as other things subject to specific requirements established by standardisation documents, voluntary certification systems and agreements. Voluntary confirmation of conformity may be carried out in order to establish conformity with national standards, standards of organisations, sets of rules, voluntary certification systems, terms and conditions of agreements. Items certified under the voluntary certification system may be marked with a mark of conformity with the voluntary certification system.

Foreign Trade Regulation

State regulation of foreign trade is carried out in compliance with the international treaties of the Russian Federation and Federal Law 'On the Fundamentals of Foreign Trade Regulation' number 164-FZ dated 8 December 2003 (referred to as 'Law 164-FZ') and other regulations of the Russian Federation.

According to Article 2 of Law 164-FZ, foreign trade means activity focused on trade transactions involving products, services, information and intellectual property. In other words, foreign trade is the import and export of goods (including intellectual property) and services from the territory of the Russian Federation to the territory of a foreign country or vice versa.

State foreign trade regulation may be carried out using only the following methods:

- customs and tariffs regulation;
- non-tariff regulation;
- bans and restrictions of foreign trade in services and IPs; and
- economic and administrative measures facilitating foreign trade development.

Customs and tariffs regulation is undertaken in order to protect the domestic market and stimulate the economy in compliance with the international agreements of the Eurasian Custom Union member states and the laws of the Russian Federation to export and import custom duties. For more details please see the *Customs Regulation* section below.

Non-tariff regulation in the area of foreign trade of goods may be carried out only in cases expressly set out in Law 164-FZ. Non-tariff regulation involves imposing bans or quantitative restrictions on the export of essential commodities (for example, milk, wheat, flour and sunflower oil) and on the import of agricultural products and aquatic biological resources in exceptional circumstances. These restrictions apply regardless of the country of origin of the goods and can be introduced by the Government of the Russian Federation for a period not exceeding six months.

As a general rule foreign trade is conducted **without a license**, but an authorisation-based procedure may be introduced in some cases. For example, when temporary quantitative restrictions are imposed on the export or import of specific goods or commodities, the exclusive right to export and/or import certain types of goods is granted or in connection with the performance of international obligations by the Russian Federation.

Goods originating from a foreign country and services provided by foreign service providers enjoy treatment no less favourable than that applied to Russian goods and services. It is not permitted to set differentiated tax and duty rates (other than customs import duties) depending on the country of origin. Foreign commodities and services are subject to the same requirements (such as technical and sanitary). As such, foreign goods and services are subject to same legal regime and treatment as national goods and services.

One of the measures for the regulation of foreign trade is the introduction of special **safeguarding, anti-dumping and countervailing measures** relating to the import of goods in order to protect the economic interests of Russian manufacturers. Administrative measures of regulation may be introduced under the international treaties of the Russian Federation and federal laws based on the national interest for purposes specified in law. For instance, according to a decision made by the Government a special anti-dumping duty may be imposed on goods if their export price (i.e. the price at which the goods are imported to the customs territory of the Russian Federation) is lower than the comparable price for similar goods established in the ordinary course of trade in analogous goods in the market of the foreign country from which the goods are exported (see Federal Law 'On Special Safeguard, Anti-Dumping and Countervailing Measures Related to the Import of Goods' number 165-FZ dated 8 December 2003).

Another way of regulating foreign trade is the imposition of **bans and restrictions on the foreign trade in goods, services and intellectual property** in order to implement measures required for the Russian Federation to adhere to international sanctions in compliance with the UN Charter. The restrictions may also be introduced in order to maintain the balance-of-payment equilibrium of the Russian Federation or in connection with customs control measures (for example, in the event of a decrease in currency reserves or for the prevention of a material decrease in currency reserves of the Russian Federation).

Temporary restrictions on foreign trade in goods, services, intellectual properties may be introduced in the form of countermeasures (retorsion) if a foreign country undertakes unlawful actions or fails to perform its international obligations. For example, if a foreign country fails to observe its obligations to the Russian Federation under international treaties or fails to provide adequate and efficient protection of rights and lawful interests of Russian persons in that country.

Ensuring compliance with foreign trade regulations is performed by the authorised state authorities. For the breaches of the regulations, civil, administrative or criminal proceedings may be initiated under the legislation of the Russian Federation.

The possibility of introducing interim measures as a quick reaction to a wrongful or unfriendly act of foreign state or its authority and officials that threaten security and interests of the Russian Federation or injure the rights and freedoms of its citizens is specified by Federal Law 'On Special Economic Measures' (number 281-FZ dated 30 December 2006). The special economic measures can include a ban on certain activities in connection with foreign states and/or international organisations or foreign citizens, or citizens without citizenship residing in the territory of an foreign country. An example of the special economic measures is food sanctions introduced by Russia in the summer of 2014 following Russia's annexation of Crimea.

Currency Control

Currency control is also a kind of state foreign trade control exercised in order to protect the public interests of Russia.

In the Russian Federation currency control is exercised by the Government, the Central Bank of the Russian Federation and banks reporting to it, professional securities market players (currency control agents) and state authorities in accordance with Federal Law 'On Currency Regulation and Currency Control' number 173-FZ dated 10 December 2003 (referred to here as 'Law

173-FZ'). Currency legislation has been recently significantly relaxed, nevertheless, currency control has not been totally abolished.

Currency control focuses on verifying currency regulation compliance by residents and non-residents, checking reliability of record-keeping and accounts under currency operations. In order to accomplish these tasks currency control authorities may request the necessary information on conducting currency operations, opening and maintaining of bank accounts, issue instructions to rectify breaches of law and hold offenders liable for violations in this area.

Under Russian law the following parties are considered non-residents (Article 1 of Law 173-FZ):

- organisations incorporated under foreign law and located outside the Russian Federation;
- unincorporated organisations formed under foreign law and located outside the Russian Federation;
- branches, permanent representative offices and other autonomous or independent structural subdivisions of non-residents located in the Russian Federation;
- foreign nationals or stateless persons, except for those living permanently in the Russian Federation on the basis of a residence permit; and
- citizens of the Russian Federation recognised as permanently living in a foreign country under the laws of that country.

Currency operations between residents and non-residents and those between non-residents are not restricted, with one exception: foreign currency and checks (including traveler's checks) with a nominal value denominated in foreign currency may be sold and purchased in the Russian Federation only through authorised banks (Article 11 of Law 173-FZ). There are no restrictions imposed on the transfer of currency from Russian bank accounts to foreign bank accounts (Article 10 of Law 173-FZ).

The Government of the Russian Federation is entitled to require residents to receive revenue from foreign trade contracts in roubles (the Government can define a share of such revenue and state a list of goods and services for which calculations in roubles are carried out, as well as a list of foreign states with residents of which specified contracts have been entered into).

Law 173-FZ distinguishes residents from non-residents only for the purposes of the regulation of currency relations and not in order to worsen the position of foreign organisations. Under law, the interests of residents and non-residents are equally protected by the state.

For the purposes of currency control, both residents and non-residents conducting currency operations in the Russian Federation are to provide the authorised bodies and currency control agents with a number of documents, specifically, documents and information related to currency operations, the opening or maintenance of bank accounts, documents (or drafts) serving as basis for the currency operations, including agreements and contracts and any amendments, powers of attorney, extracts from the minutes of the general meeting or other management body of a legal entity, customs declarations, documents confirming the import/export to/from the Russian Federation of goods, currency of the Russian Federation, foreign currency as well as certificated domestic and foreign securities amongst other documents.

The currency control mechanisms were established by the Central Bank by a regulation titled 'On the Procedure for Providing Documents and Information Connected with Currency Operations with Authorised Banks by Residents and Non-Residents, Procedure for the Issuance of Passports of Transaction, Recording of Currency Operations and Control over their Performance by the Authorised Banks' number 138-I dated 4 June 2012 (referred to here as the 'Regulations').

The Regulations provides a special mechanism of control over crediting foreign currencies received as a result of foreign trade activities in the bank accounts of residents and sets out the requirements for preparing documents required for export and import operations.

Criminal and administrative liability can be incurred for a breach of the currency legislation. Criminal liability (imprisonment for a period of up to five years) can be incurred for a violation of claims for crediting funds to a bank account for goods delivered to non-residents or services provided to them, information and results of intellectual activity transferred to them, including exclusive rights to them, as well as for a violation of claims for the return to a resident's account of funds paid to non-residents for goods not imported to the territory of the Russian Federation (not received on the territory of the Russian Federation), services not provided, information and results of intellectual activity not transferred, if the amount of these funds exceeds 9 million roubles.

If the amount of such funds does not exceed 9 million roubles, the organisation being the resident and its officials may be administratively liable in the form of a penalty equal to one-one hundred fiftieth of the base rate of the Central Bank for the amount credited to the accounts in authorised banks from the date the transfer should have taken place and for each day overdue and/or to the sum from between three-quarters of the amount not credited to the accounts in authorised banks to the whole amount.

Opening bank accounts in banks located outside the Russian Federation by residents

The currency legislation provides for special rules governing the opening of bank accounts abroad by residents of the Russian Federation (including organisations incorporated in the Russian Federation with the participation of foreign persons).

Residents are entitled to open accounts in foreign currency without any restrictions in those banks which are located outside the Russian Federation. However, residents should notify the tax authorities in which the region they are registered that they have opened (or closed) an account or made changes to an existing account not later than one month from the date after such an action.

Residents are entitled to transfer funds from their accounts in Russian banks or their accounts in foreign banks to their accounts opened in banks located outside the Russian Federation. However, residents may transfer funds to their accounts opened in banks outside the Russian Federation from their accounts in Russian banks only once they have presented to the authorised bank (at the point of the first transfer) a notice issued by the tax authority at the place of their registration when the account was opened, except for operations required in compliance with the foreign country's law and related to the terms and conditions of opening these accounts.

Legal entities are entitled to carry out operations with funds credited to their account opened in banks outside the Russian Federation without limitation, except for most currency operations between residents. Individuals being residents can conduct currency operations involving funds credited on accounts opened outside the Russian Federation without any restrictions save for operations related to transferring property and providing services in the Russian Federation.

Separate transactions can only be made to a resident's account that are with banks located in the territories of the states that are members of the Organisation for Economic Cooperation and Development (OECD) or the Financial Action Task Force on Money Laundering (FATF).

Residents should provide the tax authorities with reports on cash flows in and out of their accounts in banks outside the territory of the Russian Federation with documents issued by the bank and that comply with the requirements established by the Government of the Russian Federation in coordination with the Central Bank of the Russian Federation.

The following persons are prohibited from opening and maintaining accounts in foreign banks: persons who hold public positions in the Russian Federation and the regions of the Russian Federation, position of the first deputy and deputies of the Prosecutor General, members of the Board of Directors of the Central Bank, federal public service positions, to which people are appointed or dismissed by the President, the Government or the Prosecutor General, positions of the deputy heads of the federal executive bodies, positions in state corporations, public-private companies, funds and other organisations established in the Russian Federation by virtue of the federal laws, to which people are appointed or dismissed by the President or the Government, positions of the heads of urban circles, municipal districts, spouses and minors of such persons as well as other persons in cases provided for by the federal laws.

Export Control

Export control is a comprehensive set of measures ensuring the implementation of the foreign trade procedure in respect of goods, information, works, services, results of intellectual activity (rights Export control is a comprehensive set of measures ensuring implementation of foreign trade procedure in respect of goods, information, services, the results of intellectual activity which may be used in the course of creating weapons of mass destruction, the means of their delivery, other weapons or military equipment or in the preparation for and carrying out of terrorist acts.

In the Russian Federation, export control is exercised in compliance with Federal Law 'On Export Control' number 183-FZ dated 18 July 1999.

The list of controlled goods and technologies is amended by orders of the President upon the advice of the Government. At present there is an effective list of double-purpose goods and technologies that may be used for creating weapons and military equipment which are subject to export control, approved by order of the President number 1661 dated 17 December 2011. Such goods include telecommunication equipment, pyrotechnical products and integrated microcircuits.

In the Russian Federation export control is maintained through the regulation of foreign trade, including by:

- identification of controlled goods and technologies, i.e. identifying whether specific raw materials, materials, equipment, scientific and technical information, services, results of intellectual activity correspond to the goods and technologies included in the abovementioned list;
- an authorisation-based procedure for conducting foreign trade operations with controlled goods and technologies, providing for licensing or other form of state regulation;

- customs control when conducting customs operations in respect of controlled goods and technologies imported to/exported from the Russian Federation; and
- arranging and conducting checks of compliance by Russian parties to foreign trade activity with the requirements set out by the export control legislation in respect of the procedure for carrying out foreign trade operations involving controlled goods, information, works, services, results of intellectual activity and assuming measures provided by the legislation of the Russian Federation aimed at the limiting or preventing any violations of the requirements.

Trade Regulation

The principal law regulating trade in Russia is Federal Law 'On the Principles of State Regulation of Trade in the Russian Federation' number 381-FZ dated 28 December 2009.

This law regulates relations arising from trade as well as relations between commercial entities in the course of trading. The law defines the types of trade and also the powers of federal, regional and local authorities in relation to trade regulation.

The law entitles the government to establish the maximum retail prices for basic food products if the price for these products increases by 30% or more over a 30-day period.

The maximum fee payable by a supplier for the cost of promotion of goods, logistics, services for the preparation, processing, packaging, and other similar services to a trading organisation for sales of foodstuff is not more than 5% of the price of the goods. This fee may not be paid for the purchase of basic food products, the list of which is set by the government. There are deadlines for the settlement of accounts between trade companies and food suppliers, depending on the expiry date of the products.

The supplier of foodstuff and trading company can enter into a separate contract regarding services for the promotion of goods, their processing and packaging and for other related services. However, it is prohibited to require the entering into of a supply agreement dependent upon entering into a paid services agreement. It is also not permitted to include in supply agreements a condition on the return of products that are not sold within a specified term.

It is not permitted to purchase or rent additional outlets of a trading network whose share exceeds 25% of all sold food products expressed in monetary

terms for the preceding financial year within the boundaries of a region of the Russian Federation, including in Moscow or St. Petersburg, a municipal district or an urban district.

The law provides for the creation of trade registers in the regions of the Russian Federation. The trade registers contain information on trading organisations and suppliers, and on the status of the trade in the regions. Submission of information for the trade register is voluntary.

Trade with consumers, in order words with individuals, who purchase products not for a business purpose is regulated by Federal law 'On the Protection of Consumer Rights' number 2300-1 dated 7 February 1992. It defines consumer rights, with a focus on consumer protection. The law sets out the liabilities of the seller for a breach of consumer rights.

Special trade regulations relating to certain types of goods are established by special laws or resolutions of the government. In particular, these relate to the following product:

- alcoholic and alcohol-containing products;
- electric power;
- weapons;
- pharmaceutical products;
- drugs and psychotropic substances and their derivatives; and
- certain types of goods and commodities (including food products; textile, knitted goods, clothes, furs and footwear, sophisticated household goods, perfumes and cosmetics, cars, motor machinery, trailers and numbered vehicle units, precious metals and jewellery, medical products, animals and plants, household cleaning products, pesticides and agrochemicals, copies of audiovisual works and phonograms, computer and database programmes, construction materials and products, furniture, liquefied hydrogen gas, non-periodical publications).

In the Moscow region there has been enacted a law ('On state regulation of trade in the Moscow region' number 174/2010-O3 dated 24 December 2010) which specifies the powers of the regional authorities in the field of state regulation of trade. A significant number of regulatory acts for certain issues of retail trade have been adopted at the level of local government bodies at municipal level in the Moscow region.

Regulation of operations with money and other property

Federal Law 'On Counteracting of the Legalisation (Laundering) of the Proceeds of Crime and Financing of Terrorism' number 115-FZ dated 7 August 2001 (re-

ferred to here as 'Law 115-FZ') provides a legal mechanism to counter operations with funds or other property carried out by organisations belonging to the types set out in the law. Organisations that are controlled include:

- credit institutions;
- participants in the securities market;
- insurance and leasing companies;
- federal post service organisations;
- pawn shops;
- organisations buying up, acquiring and selling precious metals and precious stones, jewelry made of them and their scrap;
- organisations operating totalisers and bookmakers offices as well as the same organising and holding lotteries, totalisers and other gambling activities, including those in an electronic format;
- organisations managing investment funds or non-public pension funds;
- organisations providing mediatory services during real estate sale and purchase transactions;
- payment processors;
- commercial entities concluding factoring agreements as financial agents;
- credit consumer cooperatives;
- micro-lenders;
- mutual insurance companies;
- non-governmental pension funds, which have a licence for pension protection and pension insurance; and
- communication operators with the right to provide services of mobile telephone communications.

The abovementioned organisations must develop and follow internal control rules, identify clients, their representatives and beneficiaries. If there are no special supervisory bodies in the sphere of business of the organisation, such an organisation must be registered with the Federal Financial Monitoring Service.

The abovementioned entities must document and submit information on the following operations to the authorised body within three business days upon conducting of such operations:

- specific operations involving funds and movable properties to the amount equal to or exceeding 600,000 roubles;
- a transaction entailing the transfer of title to real estate to the amount equal to or exceeding 3 million roubles;
- a transaction aimed at transferring to a non-profit organisation funds and/or other property from foreign states, international and foreign organisations, foreign nationals, stateless persons as well as at spending

monies or other property of the mentioned organisation in the amount exceeding 100,000 roubles;

- a transaction of crediting an account, a letter of credit or of debiting of an account or letter of credit to organisations which have a strategic importance for the military industrial complex and safety of the Russian Federation, as well as organisations which are under their direct or indirect control if its amount is equal or exceeds 50 million roubles; and
- a transaction involving funds or other property a party of which is an organisation or individual with respect to which there is information that it/he/she is engaged in extremist activity or terrorism, or a legal entity under direct or indirect ownership or control of such organisation, or person, or an individual or legal entity acting for or on behalf of such organisation or person. The list of such persons is prepared by the Federal Financial Monitoring Service and published in the official print media and on its official website (http://www.fedsfm.ru/documents/terr-list);

Competition Law

The institutional and legal principles for the protection of The institutional and legal principles for the protection of competition, including issues relating to the prevention and removal of monopolies and unfair competition in the Russian Federation are established by the Federal Law 'On the Protection of Competition' number 135-FZ dated 26 July 2006. Russian antimonopoly law is quite strict; it focuses on ensuring the unity of the economic area, free movement of goods, free business activity, protection of competition and the creation of conditions conducive to the effective functioning of the commodity, goods and financial markets.

Competition law covers matters that are connected with the protection of competition involving Russian and foreign companies, government departments and individuals, including entrepreneurs. The provisions of Russian competition law apply to agreements entered into between Russian and/or foreign organisations or individuals outside the Russian Federation and acts performed by them, if such agreements are reached and the subject matter influences on competition in Russia.

Misuse of a dominant position

In the Russian Federation it is prohibited for a dominant business entity (or a number of entities) to act or fail to act in a way that may restrict or remove competition and/or cause infringement on other persons' commercial interests or consumers. Prohibited acts include:

- the establishing and maintaining a monopoly for high or low prices for goods or a commodity;
- the withdrawal of goods or a commodity from the market if this results in an increased price for the commodity
- soliciting a contractor to include terms and conditions in an agreement that are unfavourable to the contractor or irrelevant to the subject matter of the agreement;
- reducing or phasing out production of goods or a commodity without economic and technological grounds if the goods or commodity are in demand or orders for its supply are placed and the profitable production is possible;
- the refusal to enter into or frustrating agreements with purchasers/customers without economic and technological grounds in the event of the manufacturability or supply capacity for goods or commodities;
- the creation of discriminatory conditions; and
- the imposition of obstacles to enter or exit the market.

The following are recognised as business entities:

1) individual entrepreneurs;
2) commercial entities;
3) non-commercial entities conducting profit-making activity; and
4) individuals who are not registered as individual entrepreneurs but carry out profit-making professional activity.

A number of individuals and/or business entities can be considered to be a group if they meet the specific criteria set out in the competition law. A group is a special kind of collective subject and relations regulated by the competition law.

A dominant position means a position of a business entity, group or several business entities or groups on the market of a specific commodity or goods with the opportunity to exercise a dominant influence over the general conditions of the circulation of that commodity or goods and/or to remove other business entities from that market and/or inhibit access to that market for other business entities.

Agreements and concerted practice

Competition law prohibits agreements between competitive business entities (both in writing and verbal) or concerted practices that result or may result:

- in the establishment or maintenance of prices or tariffs, discounts, additional payments or surcharges;
- the increase, reduction or maintenance of prices at auctions;
- the division of the market;
- in changes to the volume of sales or purchases of commodities or goods;
- in changes to the range of goods or commodities to be sold or the range of suppliers or customers;
- in refusal to enter into agreements with specific suppliers or customers without economic or technological grounds; or
- in a reduction in or termination of the manufacture of products.

No 'vertical' agreements between business entities are permitted – an agreement between two business entities under which one party purchases goods, and the other party sells goods, if such agreements result or may result in the establishment of a resale price for goods or a commodity (with the exception of cases where a seller fixes a maximum resale price for a purchaser), or if by such agreements the seller makes a demand not to permit the sale of the goods or commodity of a competing business entity. This prohibition does not apply to agreements relating to the organisation by the seller of the sale of goods or commodities under a trademark or company name of the seller or producer.

Other agreements between business entities or other concerted practices by business entities are also prohibited if they result or may result in the restriction of competition.

Written vertical agreements (except for vertical agreements between financial institutions) are permitted if such agreements constitute franchising agreements or if the share of each party in the market which is the subject of the vertical agreement does not exceed 20%.

Acts or omissions by business entities, agreements and concerted practices between them may be considered permissible if they do not create the opportunity for the removal of competition from the market, do not impose restrictions on the market's participants or third parties, and if they result or may result in the improvement in production, the sale of goods or commodities or the stimulation of technical and economic progress or an increase in

the competitiveness of goods or commodities of Russian origin on the world commodity market, and are beneficial to consumers.

Unfair competition

Unfair competition is also not permitted, that is to say, any act by business entities (or a group) that is intended to gain advantages in the course of business and contravenes Russian legislation, as well as being in contradiction of good business practice and the requirements of good faith, reasonableness and fairness, and which have caused or may cause losses to other competitor, or have resulted or may result in damage to their business reputation.

In particular, the following actions are considered to amount to unfair competition:

1) discrediting through the sharing of false, inaccurate or distorted information that may cause losses to a business entity or harm its business reputation;
2) misrepresentations, including in respect of the quality, consumer properties, quantity, method and place of production of goods or their producer;
3) the inappropriate comparison of a business entity or its goods with those of another;
4) the sale, exchange or other introduction into circulation of goods or a commodity, if there is an unlawful use of intellectual property as well as unfair competition associated with the acquisition and use of the exclusive right to branding of goods or services;
5) the creation of misunderstanding, in other words, a course of action or omissions that is capable of causing misunderstanding regarding the activities of a competitor or its goods or services that are sold or distributed in Russia; or
6) illegally obtaining, using or disclosing information that constitute commercial or other trade secrets protected by law.

The restriction of competition through the actions or omissions of authorities

Competition law directly prohibits the passing of any legislation or regulations or the entering into of agreements or concerted practices (as well as omissions) by federal, regional or local authorities and any organisation or department that performs the functions of or provides services on behalf of state or municipal authorities, non-budgetary funds or the Russian Central Bank that may adversely impact on competition.

Merger control and state control of economic concentration

Since some transactions and other actions may have a significant influence on competition the law sets out situations where the incorporation and restructuring of commercial entities and transactions involving their shares/interests and assets require the prior consent of the antimonopoly body.

For example, in the event of the consolidation or merger of commercial entities, the necessity to obtain the prior consent of the antimonopoly body depends on the total value of their assets and the total proceeds of the parties to the restructuring (more than seven billion roubles and ten billion roubles respectively). In the case of the incorporation of a commercial entity, the necessity for prior consent also depends on its total assets (more than seven billion roubles) or the total turnover of its owners (more than ten billion roubles).

Some transactions relating to shares/interests, assets of commercial entities and rights are also subject to the prior consent of the antimonopoly body if the total assets of the transaction parties exceeds seven billion roubles or if the total turnover of the parties exceeds ten billion roubles, and if the total assets (according to the latest balance sheet) of the object of the transaction and its group exceeds 400 million roubles.

Special rules regulate transactions involving the shares/interests and assets of financial institutions, and rights related to financial institutions and transactions, as well as in relation to transactions involving parties of a similar type.

The consequences for breaching antimonopoly legislation

The antimonopoly body can apply fairly severe measures in the event of a breach of the competition law, including administrative penalties and fines. The antimonopoly body can also apply to court for the mandatory liquidation or the breakup of an entity or entities and for the declaration of transactions as void.

If the directors of economic entities, federal bodies, regional and local authorities and organisations involved in providing state or municipal services or non-budgetary funds publicly declare their intention to behave in a way that may lead to a breach of the antimonopoly legislation, the antimonopoly authority can send to them a warning in writing about the importance to comply with antimonopoly legislation.

In order to reduce a course of action or omissions which will or may limit, reduce or remove competition and/or infringe the interests of other business entities or infringe the interests of consumers, the antimonopoly body firstly issues a written warning to the infringing party requesting that it cease its conduct or omissions, or amend or changes its regulations that appear to amount to a breach of the antimonopoly law or eliminate the grounds and conditions causing the breach and take steps to rectify the consequences of any breach. The antimonopoly body may not initiate proceedings for a breach of the antimonopoly law without first issuing a warning and before the expiration of a timeframe in which the demands specified in the warning are to be met.

The antimonopoly body is obliged to maintain a register of persons who have been found to breach antimonopoly law (although the contents of the register are not published in the media or on the Internet).

Employment

The principal source of employment law in Russia is the Russian Federation Labour Code number 197-FZ dated 30 December 2001.

The purpose of employment law is to protect the employment rights, liberties and interests of employees and employers and to create favourable working conditions.

Russian employment legislation is based on recognised principles and provisions of international law and the fundamental principles of legal regulation of labour relations and other relations directly associated with them as set out in the Constitution of the Russian Federation.

The Russian Constitution enshrines the freedom of employment and the right of each individual to manage his/her own capacity to work and profession.

In exercising this right citizens can enter into employment relations; the parties to which are the **employee** (an individual, normally over 16 years of age) and the **employer** (an individual or a legal entity). Employers who are individuals may be those who are registered as individual entrepreneurs and conduct business without forming a legal entity, private notaries, barristers who have founded legal offices, and other persons whose professional activity is subject to state registration and/or licensing pursuant to federal laws, and individuals who have entered into employment relations with employees for personal service and housekeeping assistance.

The regulation of employment relations and other relations directly associated with them may be implemented by entering into and amending of collective agreements and employment agreements and contracts. Such documents may not contain any provisions that restrict or reduce the rights and protections provided to employees under employment law. Employers (with the exception of individuals who are not entrepreneurs) can apply what are termed local normative acts containing labour provisions within the scope of their competence and in accordance with employment law, collective agreements and contracts.

The maintenance of human resources documentation, **personnel records**, in Russian companies is a fairly complicated procedure involving the drawing-up by a specialist of various documents that are mandatory under employment law (including orders, resolutions, regulations, instructions, agreements, contracts, schedules and time sheets). The absence of these documents may in some cases result in administrative liability for an organisation and other adverse consequences.

Employment relations are relations based on a contract between an employee and an employer concerning the personal performance of work and its terms along with details of the employee's salary. The employee is obliged to follow employment regulations and the employer is obliged to ensure that work conditions meet the requirements set by law. The Labour Code regulates in detail the scope of rights and obligations of both employees and employers.

Social Partnerships

A social partnership is a system of relations between employees (or representatives of employees), employers (or representatives of employers), state and local government authorities that focus on balancing and furthering the interests of employees and employers in respect of regulation of employment relations.

There are several levels of social partnership: federal, interregional, regional, branch, territorial and local.

The following types of social partnership are particularly significant: collective negotiations related to the drafting of collective agreements and contracts and the conclusion of collective agreements; mutual consultations or negotiations on employment relations, the protection of employees' employment rights and the improvement of legislation; the participation of employees or their representatives in the management of an organisation; the participation of representatives of employees and employers in the resolution of employment disputes.

Employees are represented in social partnerships by trade unions, associations or other representatives elected by the employees. The employer is represented by the company executive, an individual entrepreneur in person or his/her authorised representatives. The bodies of a social partnership act as tribunals for the regulation of social and employment relations; employees also have the right to participate in the management of such bodies directly or through their representatives.

Employment Contracts

When an individual is employed, the employee and employer enter into an employment contract. In an employment contract, the employer undertakes to provide the employee with work in accordance with a particular role and appropriate working conditions and to pay the employee's salary on time and in full. The employee undertakes to perform the role specified in the contract and to observe the employer's company policies.

The Labour Code provides for specific protections in the event of entering into an employment contract; the terms of the contract may be modified only with the agreement of the parties. An employment contract may be terminated at any time upon the mutual agreement of the parties. An employee is entitled to terminate his/her employment agreement unilaterally with two weeks' written notice to his employer and an employer may terminate the agreement only in cases expressly provided for by law. Russian employment legislation provides for the mandatory involvement of the elected body of the main trade union organisation when an employer is considering terminating an employee's contract.

Working Time and Time Off

An employee's contracted hours may not exceed 40 hours per week.

Reduced working time, part-time working and overtime is established for some categories of employees. The Russian Constitution guarantees each person the **right to time off**. By federal law, the duration of working time, days off and public holidays and a paid annual vacation are guaranteed for an employee working under an employment contract. During a working day an employee is to be allowed breaks for a period of no more two hours and no less than 30 minutes. The duration of the weekly uninterrupted rest period may be not less than 42 hours. All employees must be provided with days off and public holidays; it is expressly prohibited to instruct employees to work on such days, except in limited circumstances. Employees are also granted annual leave for a period of at least 28 calendar days without any deductions made to their employment and average salary.

Salary

A minimum salary is established for the entire territory of the Russian Federation by federal law: it may not be lower than the minimum subsistence level for an employable person which is a level set by the government.
An employee's salary is determined by the employment contract in accord-

ance with the employer's payment structure. A higher salary can be paid for working under certain conditions such as for employees engaged in physically arduous work or under harmful and dangerous conditions) – harmful and dangerous working conditions are identified by a special procedure called a special working conditions assessment.

Special Working Conditions Assessment

A special assessment of working conditions, much like a safety assessment, is a report prepared for the purpose of identifying hazardous and harmful factors in the workplace and assessing their impact on employees.

An employer is obliged to carry out such an assessment together with special organisations to assess working conditions, with the funding of such assessment to be provided by the employer. After completion of the assessment, the employer is required to share the results with its employees as well as put the results on its website. For any violation of the procedure for completing a special assessment of working conditions, an employer can be held administratively liable.

Discipline in the workplace

An employer is required to create the necessary conditions for employees to perform their work appropriately. The employment regulations of an organisation are primarily determined by its internal policies. An employer is expected to encourage employees to carry out their duties conscientiously, for example, through financial or promotions. In the event that an employee fails to fulfil the standards expected, in other words by non-performance or improper performance of his/her responsibilities and duties, an employer has the right to impose disciplinary penalties: a reprimand, a formal notice or dismissal.

As a general rule an employer may independently determine the necessity of professional training or retraining required for its needs. However, in some cases stipulated by federal laws and other legislation, professional training of employees (for examples, for auditors and railway workers) is an obligation of the employer.

Damage Liability

A party to an employment contract bears **damage liability** and can be required to compensate for damage caused to the other party. The **damage liability** of the parties may be specified in writing in the employment contract or annexes to it. The potential liability of the employer to the employee may not be lower, and potential liability of the employee to the employer may not

be greater, than that provided for by the Labour Code or other federal laws.

The employer bears full liability for damage caused to the employee. The employee, on the other hand, can incur liability only for any direct actual damage caused to the employer (loss of profits is not included) and only within the limits of his/her average monthly salary, unless otherwise provided for by the Labour Code or other federal laws. The employee is obliged to compensate the employer in full for direct actual damage in the case of a shortage of assets under his/her care on the basis of either a special written agreement or a one-time document in the event of: willful damage; damage caused in a state of self-induced intoxication; damage caused as the result of criminal conduct of the employee or as the result of an administrative offence; in the case of the disclosure of information constituting a secret protected by law; in the event of causing damage not in the course of performance of his employment duties, and in certain other cases including when an agreement on full individual or collective liability is entered into (permissible only in respect of certain occupations and types of work) between the employee and employer.

A director of a company can be held fully liable for direct actual damage caused to the company, but in cases provided for in employment contracts, deputy directors and chief accountants of a company may also incur liability.

Protection of Labour Rights and Liberties

Each person is entitled to protect his/her employment rights by any means not prohibited by law. The principal measures for the protection of employment rights are: self-protection, protection by trade unions, state supervision and control of compliance with employment legislation or other laws and through court proceedings.

State control of compliance with employment legislation and employment law by employers in Russia is managed through a federal inspectorate. In addition, trade unions are entitled to monitor compliance with employment law, fulfillment of the conditions of collective agreements and contracts. Further to these an individual who seeks to protect his/her employment rights may, with prior written notice to his/her employer or immediate supervisor or other representative of the employer, refuse to perform work not specified in his/her employment contract or work that directly threatens his/her life and health.

In Russia there are employment tribunals, engaged in the adjudication of individual employment disputes relating to employment law, collective agreements, contracts, local legal acts and employment contracts. Such disputes

can also be considered by the courts.

With respect to collective disputes in the entering into, amending and carrying out of collective agreements and contracts, and also in connection with situations when an employer refuses to take into account the opinion of an elected representative body of employees in the course of the implementation of policy changes, these can be considered and resolved within the framework of conciliatory procedures.

In accordance with the Russian Constitution, employees have the right to strike as a means of resolving a collective employment dispute. A strike is defined as a temporary voluntary refusal of employees to carry out their employment duties (entirely or in part) in order to seek to resolve a collective dispute.

Liability for a Breach of Employment Law

The Labour Code provides for liability for a breach of employment laws. Persons guilty of a breach of employment law can be held disciplinarily and financially liable in accordance with the procedure set out in the Labour Code and other federal laws and can be called to account for civil, administrative and criminal liability under the procedure set out in federal laws.

Russian Tax System: General Overview

Under the Constitution of the Russian Federation everyone shall be obliged to pay the legally established taxes and fees.

The following taxes are currently imposed in the Russian Federation.

A. Federal Taxes:
1) corporate income tax;
2) individual income tax;
3) value added tax;
4) excise duty;
5) mineral extraction tax; and
6) water tax.

B. Regional Taxes:
1) corporate property tax;
2) transport tax;
3) gambling industry tax.

C. Local Taxes:
1) land tax;
2) individual property tax.

Russian taxes are grouped into federal, regional and local taxes in accordance with allocation of taxing rights among federal government, regional governments and local authorities. Federal taxes are imposed on the entire territory of the Russian Federation by the RF Tax Code. Regional taxes are imposed by the RF Tax Code and by the regional laws on the territory of the respective region of the Russian Federation. Local taxes are imposed by the RF Tax Code and by the local acts on the territory of the respective municipality. In Moscow, St. Petersburg and Sevastopol local taxes are imposed not by the local authorities but by the city parliament (that is by the regional authorities). Therefore, definition of tax liability should be based not only on the analysis of the federal tax legislation (mainly the RF Tax Code) but also regional legislation and local acts in respect to regional and local taxes.

Together with federal, regional and local taxes Russian tax system includes special tax regimes under which several taxes (usually VAT, income and property taxes) are replaced by a single payment. The RF Tax Code currently imposes five special tax regimes:

1) unified agricultural tax;
2) simplified tax system;
3) imputed income tax;
4) production sharing agreement tax system;
5) patent based simplified tax system.

The RF Tax Code defines taxpayers as legal entities and individuals liable to pay tax according to the Code.

Russian tax legislation uses division of legal entities into Russian and foreign companies on the basis of a formal incorporation criterion:

- Russian companies are legal entities incorporated in accordance with Russian legislation;
- foreign companies are legal entities, companies and other corporate entities with civil legal capacity incorporated in accordance with legislation of a foreign state, international organizations as well as established in Russia branches and representative offices of the mentioned legal entities and international organizations.

Rules of tax assessment may vary greatly for Russian and foreign companies, especially in respect of definition of the object of taxation and way of assessment (for example, self-assessment vs withholding).

Since 1st of January 2015 the tax residence of companies is based on the place of management and place of incorporation. The companies recognized as tax residents of the Russian Federation are all Russian companies as well as foreign companies with place of effective management in the Russian Federation. With regard to foreign entities an exception to the general rule may be provided by an international treaty. Exclusively for the purposes of the application of an international treaty foreign company may be regarded as a tax resident of the Russian Federation according to another criterion on the basis of the provisions of the relevant international tax treaty.

The RF Tax Code thoroughly identifies when the Russian Federation is recognized to be a place of effective management of foreign company. In particular, the Russian Federation will be regarded as a place of effective management of the foreign company if at least one of the following conditions is fulfilled:

- executive body regularly carries out its activities in relation to this company from the territory of the Russian Federation;
- persons authorized and responsible for planning, directing and controlling the activities of the company mainly carry out their activities in the form of governing management of the foreign company in the Russian Federation.

In some cases place of bookkeeping or managerial accounting of the company, place of office work and place of staff operational management may be important for the recognition of foreign company a tax resident of the Russian Federation.

Foreign companies — tax residents of the Russian Federation are taxed as Russian companies and special rules on taxation of foreign companies are not applicable to them.

In most cases Russian companies and individual entrepreneurs pay taxes on the basis of self-assessment. Tax rules differ greatly for foreign companies — Russian tax non-residents depending on whether foreign company has a permanent establishment in Russia or doesn't have a permanent establishment in Russia but receives income from the sources in the country. Usually foreign companies that have a permanent establishment in Russia pay taxes on the basis of self-assessment, while foreign companies with no permanent establishment in Russia pay taxes on withholding basis.

Taxes are to be paid after the end of the tax period, which can be a calendar month, a quarter or a year. Usually companies are obliged to file a tax return after the expiration of the tax period. Together with tax period for some taxes special reporting periods are introduced (usually when the tax period is a calendar year, reporting periods are the first, second and third quarters) with taxpayer being obliged to pay advance payments and file a return after the expiration of the reporting period.

For many years Russia didn't have a statutory general anti-avoidance rule and the concept of the limits of permissible tax optimization was based on application of position of the Supreme Commercial Court of the Russian Federation (highest instance for commercial courts in Russia till 06 August 2014) set out in the decree of the Plenum of the Supreme Commercial Court N 53 of 12 October 2006. In August 2017 a general anti-avoidance rule was introduced in the RF Tax Code,

As for the special anti-avoidance rules (SAARs) the Russian legislation contains basic SAARs, in particular, transfer pricing rules, thin capitalization rules, controlled foreign companies rules. In the end of December 2017 73 countries have activated their CRS bilateral exchange relations with Russia, Russia is planning to send information to 56 countries.

Corporate Income Tax

Russian companies and foreign companies that have a permanent establishment in Russia or receive income from sources in Russia are liable to pay corporate income tax.

The object of taxation is taxpayers' profit with different concepts of profit being applicable to Russian and foreign companies. For Russian companies "profits" means income minus expenses. For foreign companies the definition of "profits" depends on whether the foreign company has a permanent establishment in Russia or merely receives income from the sources in Russia. For foreign company that has a permanent establishment in Russia profit is defined as income of the permanent establishment minus expenses of the permanent establishment. For foreign companies that only receive income from the sourced in Russia profit consists only of the received income with no deductible expenses.

As a general rule every income incurred in a business context is taxable and every expense incurred in a business context is deductible if it is economically justified and documented. However as corporate income taxation is very schedular in Russia there are a lot of special provisions about taxation of certain types of income and expenses.

Basic tax rate is 20%. Some types of income are taxed at rate of 0%, 9%, 10%, 15% and 30%.

The tax period is one calendar year. Along with the tax period, on the expiration of which a payment of the total tax amount shall be made and a tax return shall be filed, two types of reporting periods are established: 1) first quarter, half-year and nine-month periods of a calendar year and 2) each month of a calendar year. Taxpayers shall pay advance payments and file returns based on the results of the reporting periods.

Corporate income tax is paid on the basis of self-assessment with exception made for foreign companies that only receive income form the sources in the Russian Federation and don't have a permanent establishment in the country. For these foreign companies corporate income tax is paid through withholding at the source of income.

Value Added Tax (VAT)

Companies (both Russian and foreign), individual entrepreneurs and persons recognized as VAT taxpayers in connection with the transfer of goods across the customs border of the Customs Union are taxpayers of VAT.

The following operations shall be subject to VAT:

- sale of goods, works and services in Russia and the transfer of property rights;
- transfer of goods, works and services in Russia for one's own needs, which are not deductible in corporate income tax;
- cconstruction and installation works for one's own needs;
- import of goods to the territory of the Russian Federation or other territories under its jurisdiction.

The RF Tax Code contains an extensive list of operations not subject to VAT and operations exempt from VAT.
The tax period is one quarter.

Basic tax rate is 18%, reduced rates are 0 % (for example, for the export of goods) and 10% (for example, for the sale of food products, products for children and medical products).

Taxpayers pay VAT on the basis of self-assessment with special rules being applicable to foreign organizations. Foreign companies with several subdivisions in Russia may choose one subdivision to pay tax and file returns on all transactions of all subdivisions. If a foreign company is not registered as a taxpayer of VAT the tax is withheld by the person who is the source of payment and is registered as a taxpayer of VAT (usually a Russian company or individual entrepreneur).

Other Taxes Paid by Companies

Excise

Companies (both Russian and foreign) and individual entrepreneurs performing operations regarded as object of taxation as well as persons recognized as taxpayers in connection with the transfer of goods across the customs border of the Customs Union are considered to be excise taxpayers. The list of taxable operations is extensive with sale of excisable goods (for example, alcoholic beverages, tobacco products, petroleum products and automobiles) in Russia being one of the main taxable events. The tax period is one month. Rates are determined for each type of excisable goods.

Corporate Property Tax

Russian and foreign companies are taxpayers of corporate property tax if they own assets which are identified as taxable objects. For example, foreign companies that have a permanent base in Russia are liable to pay tax if they own

immovable and movable assets recorded in the balance sheet as fixed assets and assets received under concession agreements. Foreign companies that do not have a permanent base are liable to pay tax only if they own immovable assets in Russia or have received these assets under a concession agreement.

The Tax Code contains the list of non-taxable objects that includes land and other nature objects (for example, natural resources), federal cultural heritage objects (monuments of history and cultural items), ships registered in the Russian International Register of Vessels, icebreakers, nuclear power vessels and atomic and technology service vessels, space crafts and some other assets.

As a general rule, the tax base is defined on the basis of the average annual value of property which depends on the value indicated in the company's accounts. For certain types of property, the tax base is a cadastral value of the item as of 1 January of the taxable year.

The tax period is one calendar year. The first quarter, six months and nine months of a calendar year are defined by the Tax Code as reporting periods; however, regional parliaments have the right to not establish any reporting periods.

The tax rate is imposed by regional parliaments although the basic rate may not exceed 2.2% with an exception for the taxation of property on the basis of cadastral value – the tax rate may not exceed 2%.

Transport Tax

Companies (both Russian and foreign) and individuals are taxpayers of transport tax if they own taxable assets such as cars, motorcycles, buses, other self-propelled vehicles, pneumatic and tracked mechanisms, water craft and aircraft, excluding those expressly listed in the Tax Code.

The tax period is one calendar year. The first quarter, six months and nine months of a calendar year are defined by the Tax Code as reporting periods; however, regional parliaments have a right not to establish any reporting periods.

The tax rate is imposed by regional parliament on the basis of the Tax Code provisions.

Land Tax

Russian and foreign companies and individuals are taxpayers of land tax if they own taxable assets – some types of land plots are excluded from the list of taxable assets, for example, land plots with restricted usage, forests and

state-owned water resource. Tax base is a cadastral value of the lands as of 1 January of the taxable year.

The tax period is one calendar year. The first quarter, six months and nine months of a calendar year are defined by the Tax Code as reporting periods; however, local authorities (as well as regional governments of Moscow, St. Petersburg and Sevastopol) have the right to not establish any reporting periods.

The tax rate is imposed by the local authorities on the basis of the Tax Code provisions.

For further information about Russian tax legislation visit the official site of the Russian Federal Tax Service: www.nalog.ru

Immigration law

In the Russian Federation foreign nationals and stateless persons enjoy the same rights and bear the same responsibilities as citizens of the Russian Federation, unless otherwise stated by federal law or by international treaties to which the Russian Federation is a party.

Temporary Stay in Russia

In order to enter the Russian Federation, a foreign national is required to present a valid identity document recognised as such by the Russian Federation and an entry visa, unless a different procedure of entering the Russian Federation is established by an international treaty. The basis for obtaining a visa is an invitation. Invitations are issued by the Ministry for Foreign Affairs or its departments. Since 27 April 2015, an electronic invitation form has been available which can be sent by e-mail after an individual has submitted all the necessary documents to the Ministry.

The following persons may enter the Russian Federation without a visa:

- citizens of Commonwealth of Independent States and stateless persons permanently residing in those countries who have the right to visa-free entry to Russia;

- individuals, whose right to visa-free entry is stipulated by inter-governmental agreements on the terms and procedure for the issuance of visas and agreements on visa-free trips on diplomatic and service passports (including crewmembers of foreign airlines whose names are listed in the agreement; crewmembers of Russian vessels; foreign tourists on cruises on passenger vessels of both countries during short trips ashore, provided that they do not visit other cities and reside on board the vessel). In addition, where an appropriate agreement has been signed, foreign nationals with valid diplomatic and service passports may enter or transit the Russian Federation without obtaining a visa. They may stay in the Russian Federation for 90 days from the date of entry. Employees of diplomatic missions and consular establishments with diplomatic and

service passports may stay in the Russian Federation without a visa for the whole period of their official mission. Members of their families with diplomatic or service passports enjoy the same right.

- Individuals who arrive in the Russian Federation with a visa or who do not require an entry visa and have obtained an immigration card but do not hold a residence permit, are regarded as foreign nationals **staying temporarily** in the Russian Federation. Such individuals are required to register their foreign travel passports or other documents after their arrival and to leave the Russian Federation on or before the expiry of the term for their permitted stay. The period of temporary stay for a foreign national in the Russian Federation is limited by the validity period of the visa granted or by law.

Immigration Registration

The Russian Federation has the third largest immigrant population in the world, after the United States and Germany. Immigration, including its statutory regulation, is a complex matter that requires a host of factors to be taken into consideration. Immigration legislation in the Russian Federation is constantly changing.

According to State Migration Policy of the Russian Federation for the period up to 2025 as approved by the President of the Russian Federation among the priority goals are the creation of conditions and incentives for the permanent resettlement in the Russian Federation of fellow-nationals residing abroad, immigrants and certain categories of foreign nationals; development of various mechanisms for selecting and employing foreign labour; the encouraging internal migration; assisting educational migration and supporting academic mobility; meeting humanitarian commitments in respect of forced migrants; assisting migrants to adapt and integrate, the formation of constructive dialogue between migrants and the host community as well as reducing illegal migration.

Russian immigration legislation includes a requirement for foreign nationals to be registered with authorities. Federal law establishes a fairly complicated mechanism for the registration of a foreign national according to the place that he/she is staying at in the country and the recording of other information as required by law.

Enforcement of the immigration registration rules is the responsibility of the Department for Migration of the Ministry of Internal Affairs. Any breach of the immigration registration rules may result in administrative liability for both the host party and the foreign national in the form of a fine and in certain cases the administrative exclusion of the foreign national from the Rus-

sian Federation. A foreign national subject to administrative exclusion may be prohibited from re-entering the Russian Federation for a period of up to five years. The fines payable within the framework of administrative liability for a breach of the immigration registration rules, together with the complexity and onerousness of such rules for legal entities and individuals, is one of the most challenging problems of Russian immigration policy.

The **immigration registration** procedure consists of notifying the Department for Migration of the arrival of a foreign national at a place where he/she will be staying; it must be carried out within seven working days of the arrival of the foreign national in the Russian Federation. In this regard, it is necessary to note that all the procedures relating to immigration registration must be completed by the host party; this does not need to be done by the foreign national. On arrival at his/her place of stay, a foreign national is required to present to the host party his/her passport and the immigration card he/she completed on entering the Russian Federation.

The following persons may act as host parties:

- citizens of Russia;
- foreign nationals and stateless persons permanently residing in Russia (with a residence permit);
- legal entities, their branches or representative offices where a foreign national actually resides/stays or works; and
- hotel administration (when a foreign national stays in a hotel).

The host parties are required to notify the Department for Migration of the arrival of a foreign national within 24 hours and undertake all the necessary procedures relating to the registration of foreign nationals as well as bear responsibility for compliance with such rules.

A foreign national has the right to independently notify the immigration registration authorities of his/her arrival at a place of stay, provided that he/she files documentary evidence of valid reasons (for example, illness or physical impossibility) that prevent the host party from notifying the authorities.

Temporary and Permanent Residence in Russia

A temporary residence permit may be granted to a foreign national. Most temporary residence permits are issued from a quota set by the Government. The demographic situation in each region of the Russian Federation and the capacity of each region to accept foreign nationals for settlement is taken into account. The validity period of a temporary residence permit is three years.

A temporary residence permit may be granted to a foreign national outside the quota established by the Government only in limited circumstances expressly set out in law (for example, to a person investing in the Russian Federation, a person who is married to a Russian citizen, a person with a place of residence in Russia or a person who has a child who is a Russian citizen).

Within the period of validity of a temporary residence permit, and provided that a foreign national has legal grounds, he/she may apply for and be issued with a **permanent residence permit**. An application for a permanent residence permit can be submitted by a foreign national to the Department of Migration no later than six months before the expiry of his/her temporary residence permit. In order to obtain a residence permit a foreign national must have resided in Russia for at least one year on the basis of a temporary residence permit. Highly-qualified professionals and their family members as well as foreign nationals recognised as native Russian speakers may obtain a permanent residence permit under a simplified procedure. A permanent residence permit is granted to a foreign national for a period not exceeding 5 years. The permanent residence permit term can be extended an unlimited number of times.

A foreign national who holds a Russian permanent residence permit may leave the country using a valid identity document recognised as such by the Russian Federation and the permanent residence permit.

As a general rule, a foreign national when obtaining a temporary residence permit or a permanent residence permit is required to evidence his/her Russian language skills, knowledge on Russian history and basic legislative principles.

The Russian Federation grants **political asylum** to foreign nationals and stateless persons in accordance with generally recognised international legal regulations.

Employment

The employment of foreign nationals in the labour market is governed by Federal Law 'On Legal Status of Foreign Nationals in the Russian Federation' number 115-FZ dated 25 July 2002.

Foreign nationals may freely manage their work, choose their occupation or profession and exercise the right to use their abilities and property for entrepreneurial or other activity permitted by law, subject to the restrictions stipulated by Federal Law.

A foreign national or a stateless person may be employed in Russia upon the obtaining of a work permit if he/she is over 18. In addition, an employer must have permission to employ foreign employees. It should be noted that specific requirements regulating the involvement of foreign nationals in labour relations also cover contractors engaging foreign employees based on service agreements for services.

The specified procedure does not cover the following foreign nationals who are:

- permanently or temporary residing in the Russian Federation;
- employed by foreign legal entities (manufacturers or suppliers) that perform assembling, support service and warranty maintenance as well as post-warranty repair of technical equipment shipped to the Russian Federation;
- journalists accredited in the Russian Federation;
- invited to the Russian Federation as scientists or teachers, provided that they are invited to carry our research or pedagogic activity by educational organisations of higher education, state academies of sciences or other scientific or innovation organisations;
- invited to the Russian Federation for business or humanitarian purposes or in order to be employed and engaged, in addition, in teaching in scientific organisations and educational organisations of higher education; and
- employees of representative offices of foreign legal entities.

An employer and contractor is entitled to employ and engage foreign employees without permission, provided that the foreign employees arrived in the Russian Federation in compliance with a procedure that does not require a visa, they are highly-qualified professionals or family members of a highly qualified professional (a foreign national is classified as a highly-qualified professional if he/she has experience, skills or achievements in a specific field and he/she receives a minimum salary or remuneration that meets or exceeds that set out in law); or they are studying in the Russian Federation on a full-time basis in the professional educational organisation or educational organisation of higher education or in some other cases.

As a general rule, a foreign national when obtaining a work permit is required to evidence his/her Russian language skills, knowledge on Russian history and basic legislative principles.

An application by a foreign national for a work permit may not be refused except in circumstances where the foreign national fails to submit the necessary documents.

A foreign national temporarily staying or residing in the Russian Federation may not be employed outside the region of the Russian Federation where a work permit was issued to him/her.

For more detail on these and other matters relating to employment in Russia, see the Employment section.

Russia in the World Trade Organisation

Russia's Accession to the WTO

As of July 2016 the WTO included 164 members, including 158 internationally recognised states and custom areas, including a number of countries from the Commonwealth of Independent States (CIS). 22 countries hold observer status, with observers required to proceed to negotiations on accession within five years of receiving observer status (with the exception of the Holy See).

One of the main conditions associated with the accession of a new member state is the alignment of its national legislation and foreign trade practices with WTO regulations.

Russia started negotiating its accession to the WTO in 1993. The final impediment to Russia's WTO entry was Georgia, which had been blocking Russia's membership since a 2008 conflict. The parties argued about border controls for Abkhazia and South Ossetia, breakaway republics which had declared independence from Georgia. By the end of 2011 Russia and Georgia, with Switzerland mediating talks between the two, had reached an agreement on terms, and on 9 November 2011 the parties signed the agreement on Russia's WTO entry in Geneva. This was the last bilateral agreement on Russia's way to the WTO.

Upon Russia's WTO entry, members of the Working Group on Russia's WTO Accession indicated that Russia would have to submit information on its existing and planned free trade agreements, customs unions and economic union agreements for consideration by the WTO's Committee on Regional Trade Agreements (CRTA). Russia's representative confirmed in response to this that as to Russia's participation in preferential trade agreements, the provisions of the WTO Agreements would be observed, including Article XXIV of GATT 1994 and Article V of GATS, irrespective of whether such agreements were in effect on the date of accession or would come into force at a later date, and that Russia would, from the moment of its accession, ensure compliance with these WTO Agreements in terms of disclosures, consultations and other requirements with regard to the free trade zones and customs

unions of which Russia is a member. He confirmed that after joining the WTO the Russian Federation would regularly make disclosures and submit copies of its free trade agreements to the CRTA.

On 16 December 2011 a set of documents for admitting Russia to the WTO was approved at the 8th WTO Ministerial Conference in Geneva. The set of documents included the Working Group report describing Russia's trade regime and system-wide commitments, which confirm the compliance of this regime to WTO's standards. On 10 July 2012 the Russian State Duma adopted Federal Law No. 126-FZ 'On Ratifying the Protocol on Accession of the Russian Federation to the Marrakesh Agreement Establishing the World Trade Organisation of 15 April 1994'.

Effects of Russia's Accession to the WTO

With regard to the legal effects of Russia's accession to the WTO, it should be noted that global practice currently defines several ways of bringing national legislation into line with WTO legal regulations.

Fundamental WTO documents can be translated into the national language and published as national laws (as happened in Brazil, for example). A country can also recognize WTO agreements and, in cases when discrepancies occur, WTO legal regulations prevail over national laws (an approach adopted in Japan). There is also an alternative approach. Section 102(a)(1) of the Uruguay Round Agreements Act, which establishes the connection between the WTO Agreements and US law, sets out that 'no provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance that is inconsistent with any law of the United States shall have effect'.

Russia has found its own way and **has decided to make national laws which would include the WTO regulations, sometimes verbatim.** It has turned out to be an extremely difficult process, since many WTO provisions often lose their legal significance when translated into Russian. The point is that all WTO legal regulations have emerged historically, and why they emerged, how they developed and how they grew into what they are now defines their very essence. That is why many of these regulations, when integrated into national laws, can only be correctly understood and transferred if legislators are aware of why and how these regulations emerged and developed and what meaning they ultimately acquired as a result of the interpretation of a particular term by numerous WTO bodies in the course of their work.

Legislators working on new foreign trade laws that comply with WTO rules have to take into account another peculiarity of Russia's legislative practice.

Article 15 of the Constitution of the Russian Federation says that the provisions of an international agreement prevail over the provisions of national laws. That is why after Russia's WTO entry, WTO regulations will be directly included in Russia's legal system. This in turn will provoke the **emergence of a *sui generis* two-tier legal system in foreign trade** where national regulations disagree with WTO regulations.

Russia's accession to the WTO requires that all fundamental WTO **principles and rules** become enforceable, including the following:

- mutual most-favoured-nation treatment in trade relations;
- mutual national treatment of foreign commodities and services;
- using mainly tariff methods of trade regulation;
- abandoning quantitative and other limitations;
- transparency of trade policies; and
- resolving trade disputes through consultations and negotiations.

From an economic perspective, the main effect of Russia's accession to the WTO should be the liberalization and improvement of the country's business climate. It will help Russia diversify its economy and reduce its dependence on volatile oil prices. Russia's economy will in turn become more competitive.

That is why Russia's WTO entry is an important event with long-term effects such as the gradual improvement of the reputation of the Russian economy for foreign investors and the growth of competition. This in turn serves to enhance international investors' confidence in the Russian market and have positive effects on the economy as a whole and the banking sector in particular. In the short run, it will help stop the outflow of capital, which is one of the major risk factors threatening Russia's banking industry according to IMF experts.

International investment, scientific and technological exchange and innovation are an integral part to the country's economic modernisation. In connection with which the government has encouraged the development of technology parks, manufacturing centres and special economic zones through the introduction of special tax regimes and other measures to stimulate growth, which are accessible to both regional and international investors.

For the purpose of improving the investment climate, a National plan of action in the fight against corruption has been developed, which will introduce changes to the Criminal Code and the Code for Administrative Offences and also the OECD's Anti-Bribery Convention has been ratified. Furthermore a Commissioner to support the rights of entrepreneurs and who is to report to the Russian President has been created.

It is worth noting that to date Russia has entered into 84 international investment treaties of which 64 are currently in operation.

In the event that any member state commits an alleged breach of the WTO's rules to Russia's detriment, Russia is able to file a complaint with the WTO's Dispute Settlement Body. The decisions of this body are binding at national level for every WTO member state. Only WTO member states represented by their governments are entitled to apply to this court. According to the federal government and under constitutional law, the government takes measures to protect the interests of domestic manufacturers, contractors and service providers. Therefore, as a result of Russia's accession to the WTO, the Russian government had legal options to protect domestic manufacturers in the international arena and in accordance with WTO regulations. This is perhaps the most important advantage of WTO membership, since the business sector has now obtained access to additional legal procedures to protect its competitiveness.

Russia is already making use of its new procedural opportunities. The first dispute arising from a complaint by Russia on 23 December 2013 concerned the methodology of 'cost adjustment' used for energy costs by the European Union for calculating dumping margins for the purpose of anti-dumping policy. Subsequently Russia filed a complaint about the conduct of the European Union in respect of the energy sector and measures under the terms of the 'Third Energy Package' and submitted a complaint against Ukraine in respect of anti-dumping measures for the chemical ammonium nitrate produced in Russia. In early 2017, Russia also challenged the anti-dumping measures adopted by the European Union regarding the import of sheets of metal produced by Russia. On more than one occasion Russia has been the subject of complaints, for example, with the European Union challenging the recycling charge for cars. Russia has also actively taken part as a third-party to disputes resolved within the framework of the WTO.

Since the middle of 2012, Russia has taken steps to improve its customs procedures aimed at simplifying and improving the efficiency for both imports and exports. Furthermore the Eurasian Economic Union is working on developing a unified approach to import and export, including the streamlining and harmonising of customs regulations. An online unified information platform called Seaport Portal is now in use for cargo handling at Russian seaports. On 22 April 2016, the Russian Federation adopted an instrument for the simplification of trade procedures (Trade Facilitation Agreement). Measures were taken to reduce the number of documents required when submitting a customs declaration (reduced to four documents for export and six documents for import). The changes have reduced the time required for goods to pass through customs.

Technology for the automatic registration and release of goods, electronic declarations has also been introduced to further improve the custom procedures. An importance point for Russian economic development is that Russia is a part to the Information Technology Agreement and an observer to the multi-lateral Government Procurement Agreement.

WTO membership also required Russia to adapt **law enforcement practice in the field of customs valuation** to conform to WTO regulations, which has certainly been a positive aspect of accession. For example, under Russian law there is no clear answer to the question of whether or not interest should be included in the customs value of goods, while the WTO has addressed this issue (see Decision 3.1 of 1 October 1984 by the WTO Customs Valuation Committee, as amended on 12 May 1995).

WTO laws and regulations contain solutions that are not easy to find in Russian law, which is why Russia's WTO entry can help promptly solve certain problems connected with foreign trade.

Effects of Russia's WTO entry for the Consumer

Upon the accession to the WTO, Russia made commitments in more than two-thirds of service sectors included in the WTO classification. However, the commitments do not require changes to the current regulation system in most cases. The major exception to this rule is the insurance sector, where the total foreign participation quota for the sector should increase from 25% to 50%, while the 49% limitation on foreign participation in individual companies in fields such as life insurance and mandatory insurance increased to 51% on the date of accession and were to be cancelled within 5 years from accession. At the same time, starting from 2004, the 49% limitation on foreign participation does not apply to life insurance and mandatory insurance companies if the capital comes from EU countries.

Nine years after Russia's accession to the WTO the so-called direct branches of foreign insurance companies will be allowed to operate in the country. However, based on the limitations imposed by Russia's commitments, Russia will be able to introduce rules for entering the market similar to the rules for establishing legal entities, and create a similar business environment, which will significantly restrict their competitive advantages over Russian companies.

Certain changes also concern the education sector – Russia's accession to the WTO enables foreign universities to open branches in Russia.

Commitments in a number of sectors allow for the introduction of tougher measures compared with the existing regime. Accordingly, the Russian gov-

ernment will be able to impose a monopoly on wholesale alcohol distribution, if required. Russia's WTO entry also helps to increase competition and reduce import prices, which will eventually provide a benefit to Russian consumers and stimulate the modernisation of manufacturing industry. Accession to the WTO will continue improving the functioning of different Russian institutions, particularly in fields such as customs regulation and public procurement. More transparent investment rules and trade dispute procedures should attract investment in the medium term.

Contract Law

A contract is an instrument for commercial relations. Any foreign individual or organisation wishing to do business in Russia should be aware of the main statutory provisions relating to contract law.

Under Russian law a contract is an agreement between two or more parties that establishes, modifies, or ends private rights and obligations. As opposed to countries that use the Anglo-Saxon legal system, in the Russian system contract provisions are mainly stipulated by law, in particular by the Civil Code of the Russian Federation which has four parts. General rules on contracts are established in Part 1 of the Civil Code (1994, as amended) while certain types of contracts are stipulated in Part 2 of the Civil Code (1996, as amended).

The main principle on which Russian contract law is based is **freedom of contract**, i.e. any person may enter into any contract that is stipulated or not expressly provided for by law. Agreements that include elements of different contracts specified by law, so-called mixed contracts, are also possible. Moreover, the parties may determine any terms and conditions in the contract, except in cases where the substance of certain contracts is specified by law. However, most of the legal regulations contained in the Civil Code are non-mandatory and the parties to the contract may choose to exclude some conditions or may alter their substance.

A general principle of good faith is another important principle of Russian contract law. Russian law provides a presumption of good faith for those involved in contractual matters.

Formation of a contract

A. The Civil Code contains the general rules for contract formation. To enter into a contract, **a person or a legal entity must have legal capacity.**

(1) Individuals have general legal capacity after the age of 18 (but if a minor under 18 years of age is married, he or she is deemed to have full capacity to conclude a contract). The legal capacity of persons with serious

mental health problems and persons addicted to alcohol or drugs can be annulled or limited by the decision of a court. Children between the ages of 14 and 18 have limited capacity to conclude a contract independently, but they may enter into any contracts by their own actions with the written approval of their parents or other legal representatives. A child under 14 years of age may enter into small everyday transactions (for example, purchasing items in a shop) and spend money with the consent of his/her parents.

(2) The capacity of legal entities to enter into a contract begins from the moment of its state registration and ends at the moment of its dissolution. If a particular type of activity requires a licence or permit, the legal entity obtains legal capacity to undertake such activity and form a contract on receipt of the special licence or permit. Corporations and other legal entities may have **general or special legal capacity**. Special capacity restricts the scope of contracts that the entity can enter into. Commercial legal entities normally have general legal capacity to enter into a contract, unless limited capacity is provided for by law or by the entity's incorporation documents (such as its articles of association). In general, a contract on behalf of a legal entity can be entered into by their officers acting in accordance with its incorporation documents and legal regulations.

B. In order to form a contract the parties **must agree on all the core terms of the contract** in the required form. The core terms of a contract are its subject matter and also other terms which are described by the law as core or are required for contracts of a certain type.

A contract is deemed to have been formed at the time when the person who has made an offer receives full and unconditional acceptance. A conditional or partial acceptance is deemed to be a counter-offer and is not sufficient to form a contract.

For certain types of contracts the law requires not merely consent to the terms of the contract in the required form, but also the physical transfer of a property into the possession of another party. In such a case, the contract is formed at the time of the transfer. A contract that requires mandatory state registration becomes effective after registration, unless otherwise stipulated by law.

An offer sets out the required details of the proposed contract and expresses the intention of the offeror to enter into contract with the person who accepts the offer on the terms provided. An offer must specify the core terms of the contract. An offer binds an offeror from the time the offeree receives the offer.

An offeror may revoke his offer by notifying the offeree before the latter has received the offer. An offer which has been received by an offeree may not be revoked during the period of time specified in it, or during the reasonable time required for its receipt and for communication of its acceptance to the offeror.

An advertisement or other general notification addressed to an indeterminate number of persons not known to the offeror is deemed to be an invitation to make offers and is not an offer in itself, unless the advertisement/notification expressly states otherwise. An offer which includes all the main terms of the future contract and the intention of the offeror to enter into contract under such terms with any person that accepts it is a public offer.

Acceptance means expressing consent to accept the offer and to enter into a contract. It should be noted that silence, i.e. failure to take action or make a statement on the basis of an offer, is normally not treated as acceptance. The law or customs, parties' agreement or usual course of business may override this rule. Acceptance may also be expressed by performance (such as a transfer of funds or provision of services), which removes the need of a formal notice of acceptance. An acceptance may be revoked by a notice of revocation, which must be received by the offeror prior to or simultaneously with the notice of acceptance.

If a written offer does not specify a deadline for acceptance, a contract is deemed to have been formed if the acceptance is received within the timeframe specified by law or, if the law is silent on the matter, within the time normally required for acceptance. When a verbal offer is made without specifying a period for acceptance, a contract is deemed to have been formed only if the offeree accepts it immediately.

On 1 June 2015 a legal principle familiar to many legal systems was introduced to the Civil Code: protection from **unfair practice in the course of negotiations** on entering into a contract. Neither individuals nor legal entities can be held liable for failure to reach a contract in the course of negotiations; however, if either party conducts or ends negotiations unfairly, it can be held liable to reimburse the other party for the losses incurred (for example, for expenses incurred in connection with conducting negotiations, loss of opportunity to enter into a contract with a third party).

Unfair conduct may include, for example, conducting negotiations without an intention to reach agreement, misrepresentation in respect of the proposed terms and conditions of the contract, unreasonably ending negotiations without prior notice to the other party. The affected party is entitled to claim damages in the event of the disclosure or improper use of confidential

information received in the course of the negotiations by the other party, regardless of whether or not a contract is entered into.

A concept termed **'representation on the circumstances'** is also present in Russian legislation. If, in the course of or after entering into a contract, a party makes a misrepresentation in respect of circumstances that are material to the conclusion, performance or termination of a contract (including, *inter alia*, those related to the subject matter of the contract, its compliance with the applicable law, the availability of the necessary licences and approvals, its financial position), it may be liable to compensate for losses incurred by the other party caused by unreliability of such representations, or to pay a penalty provided for in the contract at the other party's request. Moreover, if the contract is deemed incomplete or void, it cannot impede the reimbursement of losses or damages. Liability can arise if the party which made the misrepresentations believed or reasonably believed that the other party might rely upon them.

C. Form of Contracts. Contracts may be concluded in verbal or written form. Verbal contracts are permitted if the law does not specifically prescribe another form. A contract that can be formed verbally is also deemed to be have been formed by conduct. All contracts that are performed at the moment of their formation can be made verbally unless otherwise agreed by the parties or otherwise required by law.

A written form is required (i) for all contracts that include at least one legal entity (for example, a company) as a party, (ii) for contracts between individuals for a value higher than ten minimal statutory monthly wages and (iii) in other cases prescribed by law, irrespective of the value of the contract.

It should be noted that the form of foreign trade transaction are also covered by the general rules of the Civil Code.

Under Russian law, a failure to comply with the requirement for use a written contract results in the parties being unable to rely upon witness testimony as a way to prove the existence of a contract or its terms but does not necessarily invalidate the contractual relations completely. In such a situation the contract may be proven by other evidence. Nevertheless, in certain cases provided for by law or if agreed between the parties, non-compliance with the written form results in the contract being null and void.

For some contracts as specified by the law, certification by a notary (notarial form) is required. It is also required in cases when the parties have reached an agreement on the notary form of a contract. A contract can be null and void if such certification is not obtained. Compliance with a special proce-

dure of state registration of contract is another condition of validity for certain contracts. In particular, state registration is required for some contracts involving title to land or other real estate objects, including some lease contracts (see *Real Estate and Construction* section).

D. A contract may be deemed **invalid** on grounds set out in the Civil Code by virtue of it being invalidated by a court (a disputable transaction) or without such a decision (a void transaction). A party to a transaction or other person as may be provided for by law can seek to claim that a transaction is disputable or void. In addition to the parties to a transaction, a person who has a legally protected interest can invalidate the transaction by claiming that a transaction be declared disputable or void. Individuals who have no legal interest and are not party to the contract are not able to file the mentioned claims to a court. If a contract is adjudged void, the court's function is usually limited merely to the enforcement of the legal consequences provided for in the legislation. An invalid contract does not have any legal consequences and the contract is deemed to have been invalid from the time of it being entered into. A court is entitled to refrain from enforcing the consequences for invalidated transactions if their enforcement contravenes fundamental principles of public order and morality.

General rules in respect of the invalidity of transactions are listed in Part I of Civil Code. If a contract is invalid, each of the parties undertakes to return to the other party any benefit or property received under the contract and to restore themselves to their positions before entering into the contract. In circumstances when a party cannot return such benefit or property in kind, it can compensate the other party for the value of any benefit or property, unless otherwise provided for by law.

The law contains an exhaustive list of grounds on which transactions may be deemed invalid, a few of which are listed below:

- transactions that are not in compliance with the law or other legal acts;
- transactions concluded with breach of mandatory form requirements;
- transactions concluded with breach of mandatory state registration requirements;
- transactions concluded for a purpose deliberately inconsistent with fundamental principles of law or morality;
- sham transactions (transactions concluded merely pro forma, without intention of creating legal relations) and simulated contracts (contracts entered into in order to conceal another transaction);
- transactions concluded by a legal entity for the purposes of activity that is expressly restricted in its constitutional documents (transactions contrary to the objectives of company's activities);

- transactions concluded by a minor or by a citizen considered legally incapable or incapable of understanding his/her actions or controlling them;
- transactions concluded under the influence of error, deception, violation, duress, menace or malice between a representative of one party and the other party, or in adverse circumstances;
- transactions concluded without necessary consent of a third party, corporate body or governmental authority;
- transactions concluded by a representative on behalf of a person being represented for his/her own benefit;
- transactions conducted by a representative, branch of a legal entity or a corporate body beyond the scope of its authority, as well as those conducted by such persons that prejudice the interests of the represented person; and
- transactions aimed at the disposal of property when such disposal is either prohibited or restricted by law (if the property is sequestered or if insolvency regulations apply).

There has been a tendency of easing-off from the legislators' approach to the consequences of invalidation of transactions. Transactions which violate the law are now considered disputable, but not void, except for transactions that breach the public interest or the rights of third parties. Accordingly, such transactions create legal consequences until they are declared void by a court's decision. The legal consequences for transactions concluded to be contrary to the principles of public order and morality have become less strict: at present the transferring of proceeds to the state following such transactions only takes place in cases when both sides of the transaction have acted in bad faith.

A party to a transaction should not behave in a contradictory way when demanding a transaction is declared as void. Firstly, a party that has confirmed the validity of a transaction by virtue of its conduct does not have a right to subsequently challenge the transaction on the basis that it knew or should have known when undertaking such conduct. Secondly, if a person seeking to have a transaction declared invalid has not acted in good faith, the claims filed by such person will not have legal value. The rule refers to cases where the behaviour of a person encouraged other persons to rely on the validity of the transaction after the transaction has been concluded. In addition, in commercial contracts when a party has accepted a counterparty's performance under a contract and wholly or partially failed to fulfill its own obligations, as a general rule the party does not have the right to demand that the contract be declared null and void. These rules reflect the general principle of good faith for parties entering into civil relations.

A contract may be considered invalid only partially, in which case the invalid part of the contract is severed from the contract and the remaining parts continuing to have legal effect if it is possible to assume that the contract would have been concluded without the invalid part.

Performance of a contract

The Parties should perform their contractual obligations with due diligence and in accordance with the terms and conditions of the contracts, rules of law and regulations, in the absence of such terms and conditions, rules or regulations, in accordance with usual standards of business conduct. A promisee (a person receiving the benefit in a contract) is entitled not to accept partial performance unless the parties specifically agree otherwise or performance in part is allowed by usual business conduct or by the rules of law.

The performance of a contract is incumbent upon the promisor under the contract or to a person designated by the promisor. The party performing its obligations under the contract must verify that he is providing performance to the proper person, otherwise that party will bear the risk of not making effective performance to the appropriate party. A promisor may be able to instruct a third party to make performance to a promisee. The promisee has to accept proper performance made by a third party in the following cases:

1) the promisor failed to comply with a financial obligation; or
2) the third party is in danger of losing his/her rights to property of the promisor as a result of the promisee making a claim against the property.

The period for performance may be fixed in the contract, either as a date or period of time in which performance must be completed. If a contract does not contain a reference to a particular date or period of time, as well as in cases when the period of performance of the obligation is determined by the moment of demand, the obligation should be performed within seven days after request of performance made by the promisee, unless the law, rules, regulations, customs or terms and conditions of the contract provide otherwise. As a general rule the promisor is entitled to demand that the promisee accept performance if the latter does not file a claim for non-fulfillment within a reasonable time period.

The law generally prohibits the unilateral repudiation or amendment of a contract, but provides for certain cases when this is admissible by law (such as a serious breach by the other party). The parties to a commercial contract are entitled to agree upon additional grounds that justify the unilateral repudiation or alterations to their obligations, while in consumer contracts, the right to repudiate or amend the contract unilaterally is granted

only to the consumer. This right may be subject to payment of a sum of money to the other party to the contract.

The parties to a contract may agree on any place for the performance of the contract, unless a specific place is prescribed by law.

Contractual remedies

The most common remedy for failure to perform a contract is **the payment of damages.** In Russian law damages include direct losses, (actual damages, i.e. expenses incurred and/or to be incurred as a result of the breach, deterioration or loss of property) and loss of profits (consequential damages). The person whose rights are infringed is entitled to recover as 'special damages' all benefits received by the promisor as a result of the breach. Compensation for damages caused by improper performance does not release the party in breach from having to make full performance of the contract. However, by paying damages to a promisee for a failure to perform, the party in breach is released from having to make performance. The Civil Code includes a rule according to which full compensation for damages should leave the promisee to the position it would have been in if the contract had been duly performed. In addition, unless otherwise set out by law, if the promisee applied other remedies for its breached rights provided either by law or by the contract, it cannot be deprived of its right to claim from the promisor compensation for damages caused by the non-performance or improper performance of the contract.

Damages may be payable in the event of the termination of the contract. The Civil Code includes a rule that in the event of non-performance or improper performance of a contract by the promisee results in early termination and the promisee enters into another transaction in its place (substitute transaction), he/she is entitled to claim from the promisor compensation for damages in the form of the difference between the price fixed in the terminated contract and that of the comparable goods or services under the substitute transaction. If the promisee does not enter into a substitute transaction, but in respect of the performance under the terminated contract there is a set price for the comparable goods or services, the promisee is entitled to claim from the promisor compensation for damages in the form of the difference between the price set in the terminated contract and the current price. Accordingly the Civil Code provides for recovery of not only direct losses and damages but also indirect ones.

Penalties are another common remedy that can apply if provided for by law or in a contract. Penalties do not necessarily preclude the claiming of damages. The general rule is that where a penalty is payable for breach of a con-

tract, any losses may be recovered only in the part that exceeds the amount of penalty (set-off penalty). However, a punitive penalty (recoverable on top of damages), an alternative penalty (where the promisee has an option to recover either penalty or losses) and a liquidated penalty (only the penalty but not losses are paid in case of the breach) are legal as well. A penalty may be expressed as a fixed amount or as a percentage of the value of the contract. It may also be linked to the duration of the delay in performance. The court has discretion to reduce the amount of a penalty that is disproportionate to the damage caused by a breach. Contractual penalties payable by a person conducting entrepreneurial activity may be reduced only if the promisee will receive unjustified benefits from such penalties.

If a party does not perform a contractual obligation to provide a particular item or service, the other party may perform the obligation itself or contract a third party to do so and after which seek to recover the costs and damages from the party that breached the initial contract.

Special liability is provided by the law for the violation of a monetary obligation. If a person fails to return or pay money under a contract, the other party is entitled to recover interest accrued on the amount during the period that the money is outstanding. The interest rate on obligations expressed in roubles is defined by reference to the average bank interest rates on deposits of individuals published by the Central Bank of Russia in place during the relevant period. If the amount of damages caused by the breach of a monetary obligation exceeds the amount of interest, the promisee is entitled to damages for the part that exceeds this amount. The contract may provide for a different interest rate or other rules on interest and damages. The contractual penalties and the interest for breach of the monetary obligation cannot be charged at the same time unless otherwise is provided by law or a contract. Similarly to the rule related to the reduction of penalties, the rate of interest payable may also be reduced in the event that it is disproportionate to the consequences of the breach of the terms of the contract.

As opposed to Anglo-Saxon legal system countries, **specific** performance is one of the main remedy in Russian system. For instance, the promisee may demand seizure and transfer to its possession of a designated item that was to be given to it under the contract. To award a remedy the court establishes all conditions of liability, such as: infringement of civil law, unfavorable consequences to the rights of third parties caused by the infringement and, in certain cases, the fault of the party in breach. An element of fault is found where a party has acted deliberately or negligently. Unlike in criminal prosecutions, guilt is presumed in civil cases, to disprove this presumption, the party has to prove that he was not guilty of the breach.

In cases where both the injured party and the party in breach are at fault, comparative fault rules apply and the degree of liability is adjusted accordingly. Liability for breach of the terms of a contract in the course of entrepreneurial activity arises even where no fault at all exists on part of the breaching party. Entrepreneurs can avoid liability only when the breach has been caused by a *force majeure* event.

The Civil Code provides that the parties to a commercial contract can impose an obligation on one party to compensate for the proprietary losses of another party that arise in connection with oncoming of certain circumstances indicated in the contract, but not related to its breach by any of the parties. Such losses may be caused by failure to perform the obligation or by claims being filed against the promisee by third parties. Such losses may be compensated only in the amount provided for by the contract.

For certain categories of transactions the law provides for **limited liability.** A clause on limiting liability may also be included in the contract.

Amendment and Termination of Contracts

Amendment or termination of a contract is possible only with agreement between the parties, unless otherwise is stipulated by law. On the application of one of the parties, a contract may be amended or terminated by the decision of a court in the case of a substantial breach of a contract by the other party. A substantial breach is a breach that results in losses for one of the parties and deprives that party to a large part of the benefit it expected to receive under the contract.

Another ground for the amendment or termination of a contract is a substantial change of circumstances to one of the parties following the entering into of the contract. A change of circumstances is recognised as substantial if the change is such that if the parties had known, the contract would not have been concluded by them or would have been concluded on substantially different terms.

In some cases a unilateral refusal to perform a contract in full or in part, which is permitted by law or by agreement between the parties, may result in the contract being regarded as terminated or amended.

Intellectual Property

Russian intellectual property law is based on recognised principles and norms of international law and international treaties on intellectual property to which Russia is a party, including:

- the Berne Convention on the Protection of Literary and Artistic Works (1886);
- the Paris Convention on the Protection of Industrial Property (1883);
- the Universal (Geneva) Copyright Convention (1952);
- the International (Rome) Convention on the Protection of the Rights of Performers, Phonogram Producers and Broadcasting Organisations (1961);
- the Geneva Convention on the Protection of Phonogram Producers against the Unauthorised Reproduction of their Phonograms (1971); and
- the Singapore Treaty on the Law of Trademarks (2006).
- The Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs (2017)

Wide-ranging reform of legislation on intellectual property resulted in the consolidating of intellectual property laws in the fourth part of the Civil Code.

Under Article 1225 of the Civil Code, the following intellectual property (results of intellectual activity) and branding (such as company names and trademarks) are protected in Russia:

1) scientific, literary and artistic works;
2) computer programs;
3) databases;
4) performances;
5) phonograms;
6) broadcasting on air or by cable of radio or TV programmes (broadcasting of on-air or cable companies);

7) inventions;
8) utility models;
9) industrial designs;
10) selection achievements;
11) integrated microcircuit topologies;
12) trade secrets (know-how);
13) company names;
14) trade and service marks;
15) appelations of origin;
16) trade names.

Registration of Intellectual Property

In general, the exclusive right to intellectual property is recognised and protected in the Russian Federation on the grounds of the very fact of the product's creation. In events provided for in the Civil Code, the exclusive right to intellectual property is recognised and protected subject to registration.

The following are subject to compulsory registration:

- inventions;
- utility models;
- industrial designs;
- selection achievements;
- integrated microcircuit topologies;
- trade and service marks; and
- names of places of origin of commodities.

Once intellectual property has been registered, a right-holder is obliged to notify the federal department on intellectual property of any changes relating to the registration. Should the right-holder fail to register his property, he/she risks not being able to acquire and enforce his/her rights.

In cases where, in accordance with the Civil Code, its intellectual property rights are subject to registration, the transfer or an undertaking to transfer exclusive right to such property under an agreement and the right to use such property under an agreement and the transfer of the exclusive right to such property must also be registered. The Civil Code defines the list of documents to be submitted and information to be indicated in an application needed to complete the registration of an agreement. A failure to comply with these requirements leads to the transfer or an undertaking to transfer an exclusive right, or the right to use it are considered void.

Intellectual Property Transactions

A right-holder may dispose of his/her right to intellectual property in any way that does not contradict the law and the essence of such exclusive right. Disposal can include its transfer by agreement in favour of another person (under an exclusive right transfer agreement) or by providing another person with the right to use the intellectual property within the limits specified in the agreement (under a licensing agreement).

An agreement which does not expressly indicate that the exclusive right to intellectual property is to be transferred in full is regarded as a licensing agreement, with the exception of an agreement concluded in respect of the right to use intellectual property especially created or to be created for the purposes of its inclusion in a so-called 'complex object'. A complex object is a product that includes a number of intellectual property rights, for example, a film.

The transfer of the exclusive right to intellectual property to another person without entering into an agreement with the right-holder is permitted in cases and on the grounds stipulated by law, including by way of universal succession (inheritance, restructuring of a legal entity) and in the event of enforcement of the property of the right-holder.

Transfer of Exclusive Rights

Under the terms of an exclusive right assignment agreement, a right-holder can transfer or undertake to transfer its exclusive right to intellectual property to another party, the transferee.

The exclusive right assignment agreement must be in writing and is subject to the requirement of registration as mentioned above. A failure to observe these requirements voids the agreement.

Under such an agreement, the transferee undertakes to pay to the right-holder as specified in the agreement, without which the agreement is not enforceable.

The exclusive right to intellectual property is transferred from the right-holder to the transferee at the moment of entering into an exclusive right transfer agreement, unless the parties have agreed otherwise. If the exclusive right transfer agreement is subject to registration, the exclusive right to intellectual property is transferred from the right-holder to the transferee at the moment of registration of the agreement.

Licensing Agreement

Under a licensing agreement, one party – the holder of the exclusive right to intellectual property, the licenser, can provide or undertake to provide another party, the licensee, with the right to use such intellectual property.

The licensee may use the intellectual property only within the limits of such rights and by such means as are provided for in the licensing agreement.

A licensing agreement may contain following:

1) that the licensee is entitled to use the intellectual property and the licenser reserves the right to grant licenses to other persons – an ordinary or non-exclusive licence; or
2) the licensee is entitled to use the intellectual property and the licenser does not reserve the right to grant licenses to other persons – an exclusive licence.

Unless otherwise specified in the licensing agreement, the licence is deemed to be ordinary.

As with a transfer agreement, a licensing agreement must be in writing and is subject to registration; a failure to comply with these requirements will void the agreement.

A licensing agreement should also contain a clause indicating the area in which it is permitted to use the intellectual property. If the agreement does not contain such a provision, the licensee is entitled to use the rights in the entire territory of the Russian Federation.

The period of a licensing agreement's validity may not exceed the term of the exclusive right to the intellectual property. In a case where no period of validity is specified in a licensing agreement, the agreement is to be considered as having been entered into for a period of five years, unless otherwise stated in the Civil Code. In the event of the termination of the exclusive right, the licensing agreement is rescinded.

As with an exclusive right transfer agreement, a licensing agreement is, as a rule, involves a payment for the rights acquired. In the absence of a clause stating the payment due, the licensing agreement may not be effective.

A licensing agreement must specify:

1) the subject of the agreement by means of an indication of the intellectual property, the right to the use of which is to be granted under the agreement, as well as specifying, as appropriate, the number and date of issue of the document certifying the exclusive right to the property, for example, a patent or certificate);
2) the forms in which the intellectual property can be used.

The transfer of the non-exclusive intellectual property rights to a new right-holder does not result in the amendment or termination of any other licensing agreement entered into with the previous right-holder.

With the written consent of the licenser, the licensee may grant the right to use the intellectual property rights to another person (a sub-licensing agreement).

Patent Attorneys

An applicant, a right-holder or other interested party may communicate with the federal department responsible for intellectual property matters independently or via a patent attorney registered with the department, or via another representative.

Individuals permanently residing outside the Russian Federation and foreign legal entities can communicate with the federal department for intellectual property only via registered patent attorneys, unless otherwise specified by international treaties to which the Russian Federation is a party.

The authority of a patent attorney or other representative is confirmed by a power of attorney.

Court for Intellectual Property Rights

The Court for Intellectual Property Rights, which is the first Russian specialised arbitration court, was formed in the Russia in 2013.

The Code of Arbitration Procedure of the Russian Federation determines the jurisdiction of the Court for Intellectual Property Rights. For example, as the court of first instance it considers:

1) cases related to the challenging of the acts of federal authorities that involve the rights and lawful interests of the applicant's legal protection of his/her intellectual property rights; and

2) cases for disputes related to the provisions or termination of the legal protection of intellectual property rights for legal entities, including products, services and undertakings (with the exception of objects of copyright and related rights to semiconductor products such as silicon chips).

All other disputes related to intellectual property are to be referred to arbitration courts and courts of general jurisdiction. The Court for Intellectual Property Rights can also consider cases as a court of cassation and review earlier decisions in the light of new and newly discovered circumstances. Decisions of the first instance cannot be appealed.

Real Estate and Construction

Definition of Real Estate

There are two types of immovable objects in Russia:

- objects that are immovable by their nature; and
- objects that are considered immovable by the law.

According to paragraph 1 of Article 130 of the Civil Code, the following objects are considered to be immovable (immovable property, real estate): plots of land, subsoil plots and everything that is inseparable from the land, in other words, objects that are impossible to move without causing damage to their designated purpose, including buildings and objects of unfinished construction (immovable by their nature). The following objects are also regarded by the law as being immovable: aircraft and sea vessels, inland vessels and space objects that are subject to state registration; this list is not exhaustive and other property may be declared by the law to be immovable objects. The definition of real estate includes residential and non-residential buildings, providing such buildings or their parts comply with the requirements of state cadastral registration.

A unique type of real estate is reclaimed territories (so-called 'artificial land plot', 'artificially-created land plot') which covers land created in the sea or on riverbeds either by means of banking up or depositing of soil or using other technologies and recognised as plots of land after their completion. The procedure for creating these artificial plots of land is governed by the federal law titled 'On Artificial Land Plots Created from Sea or Riverbeds under Federal Ownership and Amendment of Specific Legislative Acts of the Russian Federation' dated 19 July 2011.

The concept of a 'unified property complex' was introduced to the Civil Code by federal law number 142-FZ dated 2 July 2013. A 'unified property complex' covers all the buildings, constructions or similar facilities either physically or technologically inseparable (for example, railways, electricity lines

and pipelines) or a combination of objects located on the same plot of land and recorded as immovable property in the unified state register.

Russian legislation does not provide for the concept of a 'unified facility' under which any object built on a land plot is not recognised as an independent immovable object, but is only an addition to a land plot. However, various articles of the Civil Code and the Land Code use the general principle of the unity of a land plot and immovable objects situated on it, subject to a number of exceptions.

Real Estate Rights

In Russia rights to real estate are traditionally divided into rights *in rem* (i.e. attached to the property) and obligation rights. The following rights are considered to be rights *in rem*: right of ownership, right of economic management, right of operational management, right of lifetime inheritable possession, right to permanent/indefinite use and easements. The following rights are considered to be obligation rights: leasing rights, right of free use for a period and mortgages.

Right of ownership is the legal right to possess, use and dispose of property at the owner's discretion for the owner's benefit, provided such actions do not conflict with the law. In accordance with paragraph 2 of Article 8 of the Constitution, private, state, municipal and other types of property are equally recognised and protected in Russia. Private property is divided into the personal property of individuals and the property of legal entities; state property is divided into federal property (owned by the Russian Federation) and property belonging to the regions that make up the Russian Federation (republics, territories, regions, cities with federal status, autonomous regions and autonomous districts). Urban and rural settlements and other municipalities are classed as subjects of municipal property/

Rights of economic management and operational management are specific types of rights *in rem* which provide the rights of legal entities to the use of an owner's property and are aimed at establishing a basis for the participation of legal entities that are not property owners in civil matters. Only legal entities may be subjects of the rights of economic management and operational management; however, not all legal entities may be the subjects of such rights, only enterprises and institutions that have a specific legal form.

The difference between the right of economic management and the right of operational management is in the essence and scope of competence in respect of the property granted by the owner to the right holders. The right of economic management belonging to a unitary enterprise is essentially much more

wide-ranging than the right of operational management, which may be granted either to institutions or to state enterprises. The right of operational-management belonging to an autonomous institution is much more wide-ranging than the rights of a budgetary and private institution or a state enterprise.

Right of permanent use of a plot of land means the possession and use of a plot of land within the limits established by the law and an act granting the plot of land for use. Plots of land may be granted for permanent use to state and municipal institutions, state enterprises, centers of the historical heritage of former Presidents of the Russian Federation as well as to governmental authorities and local authorities. Individuals have not been able to be granted plots of land for permanent use since 30 October 2001.

Right of lifetime inheritable possession is a right *in rem* stipulated in civil and land legislation; only individuals may be subject to this law. The provision of plots from state and municipal lands on the basis of this right was terminated on 30 October 2001.

The right of lifetime inheritable possession, as well as the right of permanent use (for persons who cannot be granted such a right in accordance with the current legislation), are renewed as property rights and in some cases as tenants. The term for such renewal is until 1 July 2012 and is established exclusively for legal entities being neither state nor municipal unitary enterprises. Article 7.34 of the Code of Administrative Offences of the Russian Federation provides for a penalty for violation of renewal terms; current legislation does not provide for any other consequences for a delay in renewal.

Easement means the right of restricted use. A private easement is established by agreement between its owner and other property users (typically tenants) in order to satisfy their interests, which may not be guaranteed without establishing an easement (for instance, a right of way across a plot of land and the installation of facilities), and must be registered in accordance with the procedure established for the registration of property rights.

A public easement is established by law or other legal act of the Russian Federation, a regulation of a region of the Russian Federation or a regulation of local government if it is necessary to guarantee the interests of the state, local government or local population, without withdrawal of the plots of land. The easement attaches to a plot of land and may not be the subject of independent disposal by its user. Encumbrance of a plot of land by an easement does not deprive the owner of the rights of possession, use and disposal of the plot. An owner of a plot of land encumbered by an easement is entitled, unless otherwise provided for by law, to demand a payment for use of the plot of land from those for whose benefit the easement was established.

Buildings and other real estate, limited use of which is necessary regardless of the use of the plot of land, may also be encumbered by an easement.

A lease means the granting of temporary possession or temporary use by an entity to another person on a remuneration basis. The lessee is obliged to hold and use the leased property in accordance with the terms and conditions of the lease agreement and, if such terms and conditions are not specified in the agreement, he/she must hold and use the leased property in accordance with its designated purpose.

Free temporary property use means the temporary use of property by the borrower without the payment of remuneration to the lender. Only one restriction related to the structure of borrowers is stipulated by law: a commercial organisation may not grant property for free use to its founder, shareholder, executive officer or member of its management or controlling bodies.

A **mortgage** is a pledge on real estate. Two kinds of mortgage are established by Russian Federation legislation: a mortgage by virtue of the law and a mortgage by virtue of an agreement (see below).

Acquisition of Title

It is customary in Russia to distinguish between primary and derivative methods of property rights. Primary methods do not depend on the rights of the previous owner; in accordance with derivative methods a title may be transferred to a subsequent owner from his/her predecessor.

The following methods are the primary methods of acquiring real estate title: creation (construction or complete reconstruction) of a new object, unauthorised construction, acquisition of title to ownerless real estate and acquisitive prescription.

Succession is the main distinguishing mark of the derivative methods of acquisition of real estate title. They include acquisition of real estate under agreements, as a legacy or as a result of the restructuring of a legal entity.

State Registration of Rights

The creation, transfer, restriction and termination of right of ownership and all other rights in rem to real estate in Russia take place in accordance with a specific procedure in writing and subject to mandatory state registration.

In cases provided for by the law the transaction itself is subject to state registration. The following transactions currently require state registration:

- an agreement to lease a building or facility concluded for a term of one year or longer (paragraph 2, Article 651 of the Civil Code);
- an agreement to lease or provide free temporary use of a plot of land concluded for a term of longer than one year (paragraph 2, Article 26 of the Land Code);
- an agreement to lease other types of immovable objects irrespective of their period (paragraph 2, Article 609 of the Civil Code);
- a mortgage agreement (paragraph 1, Article 10 of the Federal Law dated 16 July 1998 number 102-FZ titled 'On Mortgage'); and
- a shared construction participation agreement (paragraph 3, Article 4 of the Federal Law dated 30 December 2004, number 214-FZ titled 'On the participation in the shared construction of apartment buildings and other immovable objects and on amendments to several legislative acts of the Russian Federation').

In accordance with paragraph 1 of Article 164 of the Civil Code in cases where the law provides for state registration of transactions, a transaction is only legally enforceable after its registration. A contract that requires state registration is considered entered into from the moment of its registration, unless otherwise established by law (paragraph 3 of Article 433 of the Civil Code). A transaction involving changes to a registered transaction is also subject to state registration.

State registration is carried out in the Russian Federation in accordance with a system of recording the rights established in respect of every real estate object. The corresponding records are entered in the Unified State Register of Property, which contains information on the previous and existing rights to real estate, information concerning these properties and the title-holders. Since state registration of real estate rights is open to the public, the body carrying out state registration is obliged to provide information about any registered object upon request.

Since state registration is the only proof of the existence of a registered right, a registered right to real estate may be disputed only in court.

State registration of property in Russia is regulated by a special law (see federal law number 218-FZ 'On the State Registration of Property' dated 13 July 2015).

Purchasing Real Estate by Foreign Nationals

Foreign nationals may acquire title to or lease real estate, subject to restrictions imposed by the legislation of the Russian Federation.

Overall foreign nationals and legal entities share the same regime to acquire, own, use and dispose of real estate on the same terms as Russian individuals and entities. Any exceptions to this rule must be expressly established by federal law.

In accordance with the Land Code foreign nationals, stateless persons and foreign legal entities may not own plots of land in the border territories of the Russian Federation. Foreign nationals may not be provided with plots of land owned by the state or a municipality free of charge. In addition, it is not permitted to transfer the right of ownership of agricultural lands. Such lands may be possessed and used by foreign nationals only on a leasehold basis.

Construction in Russia

Construction and reconstruction are one of the primary methods of acquiring the right to real estate. A construction is considered as an object of real estate right only via special procedures of commissioning, technical and cadastral registration. Prior to these steps, the newly constructed real estate does not exist in law. As above, in most cases a construction object is subject to state registration (See State Registration of Rights).

For the state registration of a newly constructed object it is necessary to submit documents confirming the construction of the object and the rights to the plot of land on which it has been constructed (or the documents confirming the rights to the object used as a basis for reconstructionб if applicable). The owner of a plot of land can only obtain title to a building or other real estate constructed or created on that plot of land only subject to the observation of the requirements of the law, including construction standards and rules.

Compliance with the relevant standards and rules are checked at the following stages:

a) the drafting of the design documents;
b) the issuing of a construction permit; and
c) the issuing of a commissioning permit.

In some cases provided for by law, construction work may be carried out without obtaining a construction permit and commissioning permit subsequently.

A construction permit is a document confirming compliance of the design documents with town planning regulations, the land surveying project and grants the developer the right to construct or reconstruct the building.

Whereas a commissioning permit is a document that confirms the completion of the construction or reconstruction.

An unauthorised construction can be a building built on a plot of land for a purpose that is not permitted or built without the necessary permits or in breach of city planning and construction standards and rules. A building that is considered to be an unauthorised construction may have to be demolished; however, in some cases a court may adjudicate that a person who owns the plot of land where such a construction was built has the title to the unauthorised construction.

The principal contract form for construction in Russia is the construction contract stipulated by the Civil Code (see paragraph 3 of Article 37 of the Civil Code). Under a construction contract, a contractor undertakes to construct a specific object or carry out other construction works pursuant to the client's orders within the terms of the contract and the client undertakes to create the conditions necessary for the contractor to carry out the work, accept the result of the work and pay the stipulated price.

One of the specific characteristics of the legal regulation of construction contracts is the existence of a system of technical regulations for processes relating to the design of objects and their construction as well as for determining the technical requirements for materials, structures and items used. The most important documents for technical regulation system are Technical Regulations which are to be adopted in the form of federal laws. Prior to adopting relevant Technical Regulations, previous regulatory and technical documents are valid. First and foremost, these are the construction standards and regulations and sanitary standards and regulation. State and industry standards and technical specifications are also widely applied.

For major investment projects implemented under a construction contract, it is normal to employ several contractors to carry out the work. Relations between clients and contractors may take various legal forms but the most common is the general contract system, under which a client enters into a contract with one person (the general contractor) who in turn engages subcontractors to carry out the contractual obligations. The subcontractors can be organisations incorporated in various legal forms and individual entrepreneurs.

In order to carry out work in the construction field (as well as design and engineering survey) an organisation or individual entrepreneur must be a member of a self-regulating organisation in the field and have a certificate of competence relating to a specific type of work.

Sale and Purchase of Real Estate

The Civil Code is the basic legislation regulating the legal regime for the sale and purchase of real estate. The regulations for the Civil Code have been expanded by codifying statutes and other federal laws.

The sale and purchase of real estate is the most common method of acquiring the right to ownership of real estate in Russia.

A real estate sale and purchase agreement must be in writing in a single document to be signed by the parties. It must contain information precisely describing the transferred real estate and its price. According to the position of the Higher Arbitration Court, it is usually sufficient to indicate the registered property number of real estate objects in the contract. A point of note is that only a land plot which has been registered can be the subject of contract of sale (paragraph 1, Article 37 of the Land Code).

Contracts of sale of immovable property, which will be constructed or acquired by the seller in the future, have become widespread. Relations between an investor and a developer can be also regulated by such a contract. The transfer of ownership right to the constructed property can be registered only after the registration of ownership right of the seller. Such contracts are expressly provided for by the Civil Code and are governed by the general rules applicable to contracts of sale of immovable property. In accordance with the current legislation it is unacceptable to enter into contracts for the sale of flats in buildings which will be constructed or acquired by the seller in the future with individuals. A shared construction participation agreement is the main legal form for such relationships regulated by the federal law dated 30 December 2004 number 214-FZ 'On Participation in the shared construction of apartment buildings and other immovable objects and on amendments to several legislative acts of the Russian Federation', other legal forms for such relationships are exhaustively listed in paragraph 2 Article 1 of this law.

In cases where the seller is the owner of the plot of land on which the transferred building or other structure is located, the right of ownership of the plot of land shall be transferred to the purchaser. The sale of property situated on a plot of land not owned by the seller is permitted without the prior consent of the owner of the plot, provided that it does not contradict the terms and conditions of use of the plot established by law or by a contract. In the event of the sale of such real estate, the buyer acquires the right to use the plot of land on the same conditions as the seller of the real estate.

Privatisation of Real Estate

In accordance with legislation, privatisation means the transfer of state property (property held by the Russian Federation or regions of the Russian Federation) or municipal property to the ownership of individuals and/or legal entities. Privatisation is based on the recognition of the equal rights of purchasers of state and municipal property and the transparency of the activities of state and local authorities. Not all types of state and municipal property may be privatised; some categories of plots of land, natural resources and real estate belonging to state nature reserves may not be privatised.

The privatisation of property in Russia is achieved in accordance with the federal law 'On the Privatisation of State and Municipal Property' dated 21 December 2001 except for issues related to land plots for the purpose of construction and operation of real estate, and other special types of privatisation.

The government annually approves a plan for privatisation of federal property for the year. The structure and price of privatised property is determined during privatisation process. In Russia, privatisation may be carried out by one of ten methods, subject to the compliance with special characteristics of the privatisation for certain types of property. The methods of privatisation include:

- the transformation of a unitary enterprise into an joint-stock company or a limited liability company;
- the sale of shares in a joint-stock company at a special auction;
- the sale of state or municipal property via a tender;
- the sale of publicly-owned shares of joint-stock companies outside Russia;
- the sale of state or municipal property by means of a public offer or without announcing the price;
- the contribution of state or municipal property to the charter capitals of joint-stock companies; and
- the sale of shares of joint-stock companies based on the results of trust management.

The privatisation process in Russia consists of several phases:

1) filing of a privatisation request;
2) adoption of a resolution on the privatisation of a specific object by the relevant state or local government body;
3) drawing up and approval of the privatisation plan; and
4) entering into an agreement with the purchaser of the privatised enterprise/property.

Privatisation legislation specifies certain criteria for the purchasers of privatised objects. State and municipal unitary enterprises, including state and municipal enterprises and other legal entities in whose charter capital the share of the Russian Federation, its regions or municipalities exceeds 25%, may not act as purchasers. An exception to this rule applies when the capital is held in a joint-stock company.

Provision for land plots that are state or municipal property

In accordance with the Article 39.20 of the Land Code, individuals and legal entities which have ownership rights in relation to buildings and facilities located on land plots have the exclusive right to purchase such land plots or to acquire the right to lease them.

The vast majority of land plots not occupied by buildings or facilities are state-owned. In accordance with paragraph 1 of Article 16 of the Land Code, land plots not owned by individuals, legal entities or municipalities belong to the state; often ownership of such property is not distinguished between the Russian Federation and its regions.

Pursuant to federal law number 137-FZ 'On the Enactment of the Land Code of the Russian Federation' dated 25 October 2001 those land plots for which the public domain is not delimited is as a general rule deposed by local government authorities. These authorities also dispose of those land plots that are in municipal ownership. Exception is made for cities which have special federal status (Moscow, St. Petersburg and Sevastopol), in which such deposal is carried out by executive bodies of the regions of the Russian Federation.

Since 5 July 2014 authority to depose of land plots can be delegated to the regions.

Generally, the allocation of land plots for construction is carried out by means of an auction although a complete list of cases when land plots can be provided without a prior auction is defined in the Land Code. In the vast majority of cases the relationship related to allocation of land plots for the purposes of construction are formalised by a lease agreement.

Leasing of Real Estate

The main sources legislation regulating the leasing of real estate is the Civil Code and the Land Code.

Under a lease agreement for a building or other structure, provided for by the Civil Code, the lessor transfers to the lessee temporary possession or

temporary use of a building or other structure, or non-residential premises located in such a building or other structure, providing the lessee with the right to the part of the plot of land that is occupied by the real estate and essential for its use.

A lease for land is similarly regulated by the Land Code. Leases of the other real estate objects are regulated by the general rules of the Civil Code.

A lease agreement for a building or other structure must be a single document in writing signed by the parties. Besides it, real estate lease contracts concluded for a period of a year or more, and if at least one of the parties to a contract is a legal entity, then regardless of the period, must also be in writing.

A lease agreement must contain a provision on the agreed amount of rent, otherwise the agreement is deemed ineffective. The right to the plot of land on which the leased property is situated and essential for its use is automatically transferred to the lessee.

Mortgages

A mortgage is a real estate pledge and constitutes an encumbrance to the title of a property, restricting the ability of the owner to dispose of the property.

The main regulations governing mortgages in Russia are the Civil Code, the federal law 'On Mortgages (Real Estate Pledges)' dated 16 July 1998, the Housing Code and federal law number 122-FZ 'On the State Registration of the Rights to Real Estate and Transactions' dated 21 July 1997.

In the event of a property being subject to a mortgage, it is not transferred to the lender, but the rights of the mortgagor relating to the disposal of the mortgaged property may be exercised only with the prior consent of the lender. A building or other construction may not be mortgaged without a simultaneous mortgage of the plot of land on which it is situated.

A mortgage is formalised by a mortgage agreement, which must be a single document in writing and signed by the parties and registered with the state. The creation of a mortgage right may be accompanied by the issuance of a mortgage deed, which is a registered security.

The Protection of Objects of Cultural Heritage

The protection of objects of cultural heritage is regulated by the Constitution, the Civil Code, the basic legislative principles of the Russian Federation for culture, the federal law 'On Objects of Cultural Heritage (Historical and Cultural

Monuments) of Peoples of the Russian Federation', as well as the laws of regions of the Russian Federation relating to objects of cultural heritage within their authority.

Objects of cultural heritage include real estate with paintings, sculptures, works of decorative applied art, and objects and articles of culture that are the result of historical events and are of value in terms of their history, archeology, town development, arts, science and technology, and are evidence of epochs and civilisations and sources of information about the origin and development of culture.

Legal entities, individuals and associations that use, manage or own objects of cultural heritage are obliged to look after the objects, observe the rules for their protection, use, registration and restoration in accordance with the legislation of the Russian Federation.

Protection of objects of cultural heritage is a system of legal, organisational, financial, material and technical and other measures aimed at identifying, registering and studying objects of cultural heritage, preventing their destruction or damage and controlling their preservation and use. This system includes state control over the observation of legislation relating to the protection and use of objects of cultural heritage, state registration of objects with marks of cultural heritage, the carrying out of historical and cultural examinations, the imposition of liability for any damage or destruction of an object of cultural heritage, and the granting of permission to undertake work to preserve an object of cultural heritage.

An owner of an object of cultural heritage is responsible for preserving it. Such responsibilities act as restrictions of the property right to the object and are specified in a preservation order on the title to an object of cultural heritage. A preservation order is an essential part of the agreement providing for transfer of ownership to an object of cultural heritage.

Preservation orders are subject to the approval of the appropriate bodies for protection of objects of cultural heritage and must include requirements for the maintenance of the object of cultural heritage, conditions for providing access to it, the order and timing of any restoration, repair and other works for its preservation, as well as other requirements that ensure the safety of the object.

If a decision is made to exclude an object of cultural heritage from the register, a preservation order in respect of that object becomes ineffective from the date that the decision is made.

Public-Private Partnerships in Infrastructure

Brief summary:

A public-private partnership as a form of structuring projects in infrastructure provides for cooperation between public and private partners based on consolidating of investments and the allocation of risks aimed at addressing public and socially important objectives. Projects are carried out through investments in public infrastructure that are under public control.[1]

PPP (Public-Private Partnership) emerged in the United Kingdom in early 1990s in connection with the implementation of a new public property management concept, namely a private financial initiative (PFI). Later on PPP was used in other European countries, the USA, Australia, Canada and other countries. Over the 20 years' of its existence PPP has gained a reputation as an effective tool for cooperation between public and private enterprises in typically large socially important investment programmes and projects in areas such as education, healthcare, road construction, environment management, housing and utility services, public transport, agriculture, forestry and the energy industry.

PPP is important since its application can save significant budgetary resources for government thanks to more efficient use of funds and by attracting private investments, the expertise of private enterprises, lowering the cost of public services and reducing government management of projects.

The development of public-private partnership (PPP) in Russia (usually referred to as a 'state-private partnership', as municipal projects may fall outside the concept of PPP and too small for PPP structuring) is still at an early stage; however, the prospects for PPP in Russia are very encouraging with many large and medium-sized infrastructural projects in the country's vast territory being potentially well-suited to PPP.

[1] A.V. Belitskaya Legal mechanism for implementation of public-private partnership in the social sphere – Russian annual bulletin of entrepreneurial (commercial) law. No. 5, 2011 – Ed. by V.F. Popondopulo. SPb, 2012. P.197.

In general, the regulatory environment for PPP in Russia is **rather inconsistent**, mostly due to the **lack of unified fundamental federal law regulating PPP**. Specifically, there is no general definition of PPP to cover all types of PPP clearly define the concept, principles of its organisation and development and, consequently, a weak systematisation and codifying of regulation.

In the absence of a unified law, the federal PPP regulation system is represented by a number of federal laws and subordinate legislation governing specific private and public legal relationships that arise in the course of PPP projects.

Federal Legislation

The fundamentals of public-private regulations and general provisions governing all types of PPP agreements are contained in the **Part I and Part II of the Russian Civil Code**.

Articles 1 and 421 of the Russian Civil Code enshrine the principle of freedom of agreement; allowing parties to enter into PPP agreements, both provided by legislation and not, and to agree the terms of such agreements at their own discretion, unless otherwise expressly provided for by legislation.

Despite the principle of freedom of contract in Russian law, PPP is one of the most resource-demanding forms of investment activity, with its long payoff period it requires special regulation to seek to minimise the political and law enforcement risks that are common in Russia. The special feature of the Russian legislation governing individual types of obligations, different elements of agreements, conditions for their conclusion, performance and termination is often considered to be a qualification by lawmakers on the parties' freedom to choose a type of contract. Taking into account that such norms are not well adapted to the specific relationships of PPP parties, in addition to the peculiarities in the regulation of deals concluded under such conditions, restrictions of budget and tax legislations as well as state and municipal procurement legislation applicable to individual types of contractual obligations, the necessity of free allocation of risks and warranties – all these factors support the need for comprehensive regulation of PPP in Russia.

The first attempts at comprehensive regulation of PPP are contained in the **Federal Law number 225-FZ 'On Production Sharing Agreements' dated 31 December 1995** that created a legal platform for relationships that emerge in the course of Russian and foreign investments in exploration, survey and extraction of raw materials within the jurisdiction of Russia and based on production sharing agreements. The law has been developed afterwards by the **Federal Law number 115-FZ 'On Concession Agreements' dated**

27 July 2005 (below referred to as the **'Concession Law'**) and Federal law dated 13 July 2015 number 224-F3 'On private-public partnership, municipal-private partnership in the Russian Federation and other changes to legislation of the Russian Federation' (referred to in this text as 'the Law on PPP'). These two acts have become the most notable landmarks in development of Russian regulation of PPPs; however, in practice the law does not meet all the expectations of investors.

Concession Law

The Concession Law governs relationships that arise in connection with the preparing, entering into, performance and termination of agreements in which one party (a concessionary/private partner) undertakes at its expense:

(i) to construct and/or reconstruct property (real estate with or without chattels (i.e. property that is not fixed to land) that is connected with each other and designed to carry out operations provided for by a concession agreement), the title to which belongs or will belong to the other party (i.e. the grantor/public partner),
(ii) to conduct business using the subject of the concession agreement, and the public partner undertakes to grant to the private partner a right to use and hold the subject of the concession agreement for the term provided for the purposes of conducting an activity (a so-called 'build-transfer-operate' model).

The Concession Law amended the law to permit returns for investments made by the private partner both by means of tariffs payable by users and by means of periodical payments made by the public partner for so-called 'operational availability' or 'availability payments' which is important for the effective use of budgetary funds. The second of the formats permitted by law, the collaboration between public and private partners are the so-called life-cycle contracts which are particularly valuable for investment projects as it does not involve collection of final consumers (for example, for construction of public roads, social health facilities or prison facilities).

Concession agreements in Russia are prepared in accordance with Model Concession Agreements that have been approved by the Russian Government for the purposes of each possible subject of concession agreement.[2]

[2] By its legal nature a Model Concession Agreement is a regulation which together with the Concession Law constitutes a regulatory framework for entering into a specific concession agreement. Using the Model Agreements constitutes an additional guarantee of rights to the parties to PPP. If a Model Agreement contains any provisions infringing on the rights of private investors (for example, unlawfully restrict access to projects, contain onerous terms) such provisions can be declared void by a court.

Concession agreements must contain the main clauses that are set out by the Concession Law; other federal laws may also contain clauses that are not governed by the Model Concession Agreements.

The current notable shortcomings in the Concessions Law include:

- a limited number of the permitted forms of concession (possibility to create concessions only of BTO (build-transfer-operate) and DBFO/DBFM (life cycle contracts) type which do not provide, for example, that ownership title to the object may arise or can be acquired by the private partner);
- a lack of flexibility and discretion with respect to the clauses of concession agreements (including clauses of a mandatory nature in Model Concession Agreements);
- a limited list of structures that can be the subject of PPP projects (such as restrictions on social housing, state and municipal administration facilities);
- the absence of a wide range of guarantees for private investors;
- insufficient flexibility of the rules on pledging and assignment change of party to the relations under an concession agreement;
- the absence of a proper mechanism for the implementation of private initiatives in PPP projects i.e. unsolicited proposals to public partners; such proposals are provided for in the law, but there are no provisions to claim compensation for the investors expenses incurred during a project's preparation when initiated by the investor, the investor does not get any benefits when competing for the project prepared by him); and
- insufficient adaptation of tax laws and legislation on government spending.

Nevertheless PPP regulation has significantly improved over the last few years, which has included:

- the list of objects of concession agreements being streamlined and expanded, for example, gas supply facilities, production, processing and storage of agricultural products have been added;
- specific regulation have been added for concession agreements for utilities including water supply and waste, as well as for property of the Armed Forces;
- the possibility to enter into agreements directly with financial institutions (previously it was only possible when constructing motorways); and
- the possibility for the joint participation of several public partners has been introduced along with strengthening of the rights of private partners, namely detailed regulation of the grounds and procedure for changing clauses of concession agreements upon the request of the private partner, the possibility to extend the period of compensation for the private partner's expenses up to two years, limitation of the

grounds for termination of the concession agreement at the initiative of the public partner and more detailed regulation of so-called 'grandfather clause' (a clause that protects pre-existing agreements against any subsequent adverse changes in law).

The Law on Public-Private Partnership

On 1 January 2016 the long-waited Law on PPP came into force.

Setting aside the reasonably small number of projects that were structured on the basis of regional legislation (for further information see the next section titled 'Regional Legislation'), prior to the new federal law coming into force, PPP projects were only of the types referred to above mentioned (BTO, DBFO/DBFM), under which infrastructure had to be transferred to the public partner upon completion. Under the Law on PPP it is now possible to structure PPP projects, including concessions, so that the ownership is held by the private partner, either with a commitment to transfer the title to the public partner in the future or without such a commitment. In the latter, the size of the financing of the project provided by the public partner and the market value of the property transferred should not be higher than the size of the financing of the infrastructure by the private partner.

The Law on PPP is the result of almost three years' work, during which time numerous editions and amendments were made to the legislation, in fact the size of the law passed increased ten times from the initial draft which was passed at the first reading in Parliament. Although the passage of the legislation was supervised by the Ministry of Economics and the Committee for Property Rights of the Russian Duma (the lower chamber of the Russian Parliament), during the development of the text legal experts in the area of PPP were invited to contribute.

Nevertheless, the process of agreeing the legislation with the Ministry of Finance, the Federal Antimonopoly Service, and the President's administration turned out to be extremely difficult with the parties' position diverging on a whole variety of key matters, which might be indicative of the lack of expertise in the sphere of PPP amongst the political powers in Russia. As a result, the country's leadership decided to adopt the law to the extent that it had been agreed with the remaining provisions to be passed as amendments as and when they could be agreed. This impractical compromise has affected both the law as a whole piece of legislation and its individual amendments.

For example, the Law on PPP introduced a special concept of PPP that differs to that used in other countries. The traditional understanding of PPP is typically that it covers special projects of public-private involvement in which the return of investments is at the expense of a public partner (unlike concessions

in which the return of investments is carried out by a private partner with the returns made through subsequently collecting fees from users). Under the new federal law, PPP is understood to relate to projects in which private ownership of a piece of infrastructure is involved and all other projects, including traditional concessions and traditional PPP projects, are termed as concessions. It is interesting that initially the Russian regions that enacted their own PPP laws starting in the beginning of the 2000s understood public-private partnerships both to be concessions and traditional PPPs. Since 1 July 2016 all regional and municipal laws have been brought into line with the Law on PPP.

Whilst the current law enables partners to structure various projects in infrastructure for transport, healthcare, culture and sports, electricity supply, waste processing and some others, the list of possible projects has remained limited and indeed is significantly reduced in comparison with the Law on Concessions. Most public facilities, social housing and other infrastructure do not fall within the scope of the law.

Among the strengths of the Law on PPP, apart from the opportunity to acquire the ownership of infrastructure by the private partner, is the possibility of borrowing against the infrastructure for the purpose of project financing. Further advantages include it not being necessary to enter into agreements as set out in models (as is the case in the Law on Concessions) and flexible regulation for entering into direct agreements with financial institutions. These combined measures increase the commercial appeal of PPP projects in Russia.

Among the shortcomings of the federal law, in addition to the restrictions on when PPP can be used, is the very limited models of PPP provided for in the current law, the obligation on municipalities to approve PPP projects with regional authorities of the Russian Federation, the strict periods for entering into agreements on PPP, the narrow list of situations when a number of public subjects can be involved in a PPP project as a public partner. Furthermore the mechanism for unsolicited proposals is addressed in a limited form (as is the case with concessionary agreements) a private partner does not receive any benefits from being able to enter into a PPP agreement and cannot recover any expenses incurred when preparing a bid in the event that the bid is unsuccessful.

Despite its shortcomings, experts in Russia overall welcomed the new law on public-private partnership; doubtlessly the law's enactment was a significant moment for the Russian infrastructure market. Importantly, the law takes into account the interests of public and private partners wishing to pursue investment projects on the model of private ownership.

Regional Legislation

There has been an attempt to eliminate the abovementioned disadvantages of the federal laws for PPP through the use of regional laws. At the point when the PPP law was enacted, most regions of the Russian federation had in place special laws on private-public partnerships, mostly, on the basis of the **Regional Model Law 'On Participation of a Federal Subject of the Russian Federation, Municipality in Public-Private Partnership Projects'** approved on 22 April 2009 as well as the highly successful experience of the Law of St. Petersburg dated 25 December 2006 number 627-100 'On participation of St. Petersburg in public-private partnerships'.

Standardisation of PPP legislation in CIS countries

On 28 November 2014 during a session of the Inter-parliamentary Assembly of the Commonwealth of Independent States (CIS) a Model PPP Law for the CIS Member States was approved.

The law was prepared at the request of the Inter-parliamentary Assembly by a working group consisting of academics and legal practitioners representing the Law Faculty of Saint Petersburg State University, namely Vladimir Popondopulo as a head of the working group (Professor, Head of Commercial Law department of the Law Faculty), Natalia Sheveleva (Professor, Dean of the Law Faculty) and other respected professionals, including Vladimir Kilinkarov (partner at Maxima Legal) and Elena Kilinkarova (Counsel at Maxima Legal and Associate Professor at the Law Faculty).

The authors of this model PPP law sought to take into account the recommendations of international institutes and organisations as well as experience of PPP regulation of the leading economies and those countries where PPP laws are well-established. Experts from European Bank for Reconstruction and Development as well as a number of large international law firms specialising in PPP contributed to the model. The wide variety of contributors helps the model law, as much as possible match the needs of the participants of PPP projects.

It is hoped that this academically progressive model law that was founded on free-market principles and a balancing of the interests of private and public partners and financial institutions will help solve many of the problems related to legal regulation of PPP in Russia and CIS countries. Although the document is advisory and non-binding on CIS member states, it can be used by any member state, including Russia, in the course of development and reforming its PPP regulations.

The Court System

In the Russian Federation judicial power is exercised only by the courts. The courts are independent and act separately from the legislative and executive branches of power. Judicial power is exercised by means of constitutional, civil, administrative and criminal legal procedures.

Only courts operating in accordance with the Constitution and federal constitutional law 'On the Judiciary System of the Russian Federation' number 1-FKZ dated 31 December 1996 can perform judicial functions.

The court system in Russia is made up of **three branches**:

1) A system of constitutional courts consisting of the Constitutional Court of the Russian Federation and the regional constitutional courts from the federal subjects that make up the Russian Federation (although not every federal subject of the Federation has a regional constitutional court).
2) A system of Courts of General Jurisdiction consisting of trial courts, district courts and garrison military courts, regional supreme courts, circuit (navy) military courts and the Supreme Court of the Russian Federation.
3) A system of national '*arbitrazh* courts' (confusingly not arbitration courts or tribunals but commercial courts, for ease referred to here as the 'commercial courts') consisting of commercial courts of the federal subjects of the Russian Federation, district commercial courts (commercial courts of cassation and the Supreme Court of the Russian Federation. A specialised Court for Intellectual Property Rights operates within the system of commercial courts.

Previously the system of commercial courts was headed by the Supreme Commercial Court of the Russian Federation which has since been abolished. The highest judicial body for civil cases, cases on commercial disputes, criminal, administrative and other cases is the Supreme Court of the Russian Federation.

The court system comprises federal courts and courts of the federal subjects of the Russian Federation. The latter includes regional constitutional courts and regional trial courts. The remaining courts are federal and funded from the federal budget.

A court ruling that has entered into legal force, or lawful instructions, demands, orders, summons and other directions of a court **are binding throughout** the Russian Federation. A failure to comply with a court order is against the law and can result in an individual or party incurring liability.

In compliance with the principle of openness, court proceedings in all courts are public. Closed hearings are only permitted in limited cases provided for by federal law, for example, if public proceedings may lead to disclosure of a legally protected secret.

Proceedings in the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and other commercial and military courts are held in Russian. Proceedings in other courts may also be held in the official language of the republic where the court is located. The parties to the proceedings that do not speak the language of the proceedings are entitled to speak or obtain translations in their native language or in any other language and to use an interpreter.

Jurisdiction

The Constitutional Court has jurisdiction over compliance with the Constitution by federal laws and regulations issued by the President and the Government, as well as the constitutions and laws of the regions of the Russian Federation. In addition, the Constitutional Court provides the official interpretation of the Constitution of the Russian Federation. Regional constitutional courts of the federal subjects of the Russian Federation check compliance of the regulations of the territory with the constitution of the territory and provide the interpretation of the constitution.

Under a hierarchy of courts, the Constitutional Court is not superior to the regional constitutional courts as their jurisdictions differ.

Commercial courts have jurisdiction over economic disputes and other cases relating to the commercial activity. In general, there are two criteria that determine whether the commercial courts have jurisdiction over a case: firstly, if the dispute is of an economic nature and secondly, who the parties are, i.e. whether legal entities and individual entrepreneurs. Although the latter criterion is not determinative, it still serves as supplementary to the criterion on the nature of the dispute.

In cases that fall within the special jurisdiction of a commercial court, it is irrelevant whether legal entities or individuals are the parties to the proceedings. Insolvency or bankruptcy cases, corporate disputes, some disputes on protection of intellectual property rights, disputes on pro-

tection of business reputation and some other cases come within this special jurisdiction.

Commercial courts consider cases on challenging the non-legislative acts, decisions, actions and omissions of authorities and officials if they affect the rights and interests of an applicant in the area of commercial activities. These courts also consider cases on challenging the legislative acts of federal executive bodies in the field of patent rights and rights to selection achievements, topographies of integrated circuits, trade secrets (know-how), company brands, goods, services and enterprises and rights to use the results of intellectual activity.

Courts of general jurisdiction consider cases which do not fall within the jurisdiction of commercial courts (specifically, those cases in which one of the parties is an individual who is not carrying out commercial activity, unless such a case is referred to the special jurisdiction of a commercial court). Courts of general jurisdiction consider cases involving individuals and cases involving legal entities that are not of a commercial nature.

The Court System of General Jurisdiction

The courts of general jurisdiction consider criminal, administrative and civil cases.

A system of military courts stands separate in the system of courts of general jurisdiction. Military courts are formed on geographical basis and exercise judicial power over servicemen and women and military bodies and commands. The system of military courts consists of garrison military courts and circuit (navy) military courts.

In other matters, the system of courts of general jurisdiction consists of magistrates, district courts and the supreme courts of the federal subjects of the Russian Federation.

The authority of these courts is strictly set out in federal law. The authority of trial, regional Supreme Courts and the Federal Supreme Court are determined separately. The competence of a district court is determined on a leftover principle, i.e. that only any matters that do not fall within the jurisdiction of the other courts are dealt with by the district court.

The trial court is the first instance for a variety of cases. The district court considers cases as the court of the first instance and appeals and is superior to the trial court. The regional Supreme Courts also considers specific types of cases as the court of first instance, appeals and cassation instance and is higher than to the district courts.

The System of Commercial Courts

The main objectives of commercial courts when they hear disputes are to protect the breached or disputed rights and lawful interests of enterprises, institutions, organisations and individuals and maintain the rule of law.

The system of commercial courts in the Russian Federation consists of:

- Commercial Courts of First Instance in each federal subject of the Russian Federation;
- Commercial Courts of Appeal; and
- District Commercial Courts (also called commercial courts of cassation).

A specialised court also operates in the system of commercial courts, namely the Court for Intellectual Property Rights.

The authority of commercial courts is set out in federal law.

On the basis of the nature of a case whether it falls in the competence of District Commercial Court, Commercial Court of Appeal and Court for Intellectual Property Rights is determined. The competence of a Commercial Court of First Instance is determined on basis of the leftover principle.

Within the framework of the appeal procedure, Commercial Courts of Appeal can be asked to review the lawfulness and reasonableness of awards made by lower Commercial Courts provided that the decision has not yet come into force.

All in all there are 21 Commercial Courts of Appeal in Russia.

Within the framework of the appeal procedure, a District Commercial Court can review the lawfulness and reasonableness of awards made in cases by both the Commercial Courts and Commercial Courts of Appeal even if the decision has come into legal force. The District Commercial Court is also able to try some categories of cases as if it is a court of first instance.

The Court for Intellectual Property Rights is a specialised commercial court which has been in operation since 2013. It hears specific categories of cases related to disputes involving the protection of intellectual property rights falling within its competence as a court of first instance and an appeal court. In particular, as a court of the first instance, the Court for Intellectual Property Rights considers cases such as disputes over who is a patent holder, invalidation of patents, the early termination of legal protection of a trademark

if it is not used. Those disputes that do not come within the jurisdiction of the Court for Intellectual Property Rights expressly set out in law can be heard in other commercial courts and courts of general jurisdiction.

For more details on the Court for Intellectual Property Rights, please see the *Intellectual Property* section.

Supreme Court of the Russian Federation

The Supreme Court of the Russian Federation consists of five Divisions (sometimes called Chambers):

- the Division for Administrative Cases,
- the Division for Civil Cases,
- the Division for Criminal Cases,
- the Division for Economic Disputes; and
- the Military Division

Each Division can consider cases as courts of first instance, as well as appeals.

The Supreme Court is comprised of two branches: an Appeal branch and a Disciplinary branch. The Appeal branch considers cases on appeal, which were previously considered at first instance by one of the Divisions as well as cases to be reviewed on the basis of new or newly discovered facts. The Disciplinary branch considers appeals of certain decisions of the High Qualification Board of Judges.

The structure of the Supreme Court of the Russian Federation contains the Presidium of the Supreme Court, which reviews the judgments of lower courts and to maintain uniformity to the interpretation of the law, and the Plenum, which seeks to clarify issues related to the application of legislation. Decisions of the Plenum on the application of legislation are binding on all other courts and have a significant influence on court practice.

Constitutional Court Proceedings

During Constitutional Court proceedings, whether at a federal or regional level, only matters of law can be resolved, i.e. the factual or evidential matters behind a case are not considered if it falls within the competence of other courts.

Constitutional court proceedings may be initiated following an application from a governmental department or by a court, if the point of law concerns a specific case being heard by that court. Proceedings may also be initiated by

individuals or legal entities if it concerns a point of law relevant to a particular case to which they are party.

A decision of the Constitutional Court is final and cannot be appealed. Any legislative acts that are recognised as unconstitutional are made void.

Civil and Arbitration Proceedings

Civil proceedings are carried out by the courts of general jurisdiction and commercial courts depending on their jurisdiction.

The main regulations governing civil proceedings are the Code of Civil Procedure of the Russian Federation and the Code of Arbitration Procedure of the Russian Federation (referred to here as the 'RF APC'). Civil and arbitration proceedings are regulated at federal level only and are based on similar principles and norms (as above, the term 'arbitration proceedings' refers to the Commercial Courts and not to arbitration proceedings).

In civil and arbitration proceedings individuals may participate in the proceedings in person or with representatives, for example, by instructing a law firm. If an individual participates in proceedings in person, he retains a right to subsequently appoint a representative should he/she so wish. An organisation can be represented in court by its in-house lawyers or by other appointed representatives.

In civil proceedings, the evidence in the case is information derived from facts that have been obtained in accordance with the law. Based on the evidence, the court determines whether or not there are grounds for demands or objections of the parties to the proceedings and other circumstances important for the legitimate review and resolution of the case. Such information may be obtained through explanations of the parties to the proceedings or of third parties, witness testimonies, written or physical evidence, audio and video records and expert opinions.

Any evidence that has been obtained in breach of the law is not admissible. Each party to the proceedings bears a burden on proof in respect of the evidence it puts forward as the grounds for its case.

As with both the courts of general jurisdiction and commercial courts, civil proceedings are divided into groups, which are:

- action proceedings;
- order proceedings;
- proceedings concerning public legal relations; and
- special proceedings.

Action proceedings are unique in that it is the only group that involves a dispute regarding certain claimed rights between parties.

Order proceedings may not involve a dispute and simply seek the court to issue an order which can then be enforced if breached.

For cases involving regulations, decisions, actions or omissions of governmental authorities and officials, the court determines whether the disputed action or omission is lawful. If the action or omission is considered to be unlawful the court can direct that the regulation be declared invalid and ineffective or if the dispute relates to an action or omission, the government department or official can be directed to remedy the violation.

Under special proceedings the court determines facts that have legal implications. In addition, cases on insolvency or bankruptcy and some other categories of cases are considered under special proceedings.

A Code of Administrative Procedure of the Russian Federation came into force on 15 September 2015. This Code regulates administrative proceedings when considering the following administrative cases by the Supreme Court of the Russian Federation and courts of general jurisdiction: cases for the defence of human rights, freedoms and legitimate interests, rights of organisations as well as other administrative cases resulting from administrative and other public legal relationships related to judicial control of the exercise of power by state and other public authorities.

Proceedings involving Foreign Nationals or Entities

Foreign nationals, stateless persons, foreign entities and international organisations are entitled to apply to the courts for protection of their rights. Foreign individuals and entities enjoy the same procedural rights and fulfill the same procedural duties as Russian citizens and organisations.

The standing of foreign nationals in court in civil proceedings, their legal capacity and the capacity of foreign entities to litigate is primarily governed by the law of the country that the foreign national or foreign entity is based or incorporated. Although a foreign national or entity lacking legal capacity or capacity to litigate in another jurisdiction may be eligible to initiate proceedings under Russian law.

The law contains a list of situations where the Russian courts are entitled to hear cases involving foreign nationals and entities. Most commonly a party will have standing if:

- the defendant is located in the Russia;
- if the matter arises out of an agreement performed or to be performed partly or in full in Russia; or
- if the parties entered into the agreement which specifies that disputes are to be resolved in Russia.

The law includes an exhaustive list of cases involving foreign nationals and entities to be considered solely by Russian courts. For example, cases on disputes arising out of transportation agreements if the carriers are located in Russia or disputes about title to real estate located in Russia.

Enforcement of Court Decisions

As soon as a Court decision enters into effect, a copy of the decision is served on the parties.

In accordance with federal law 'On Enforcement Proceedings' number 229-FZ dated 2 October 2007, once a court order has been made, a bailiff can begin the process of fulfilling any demands set out in the Court's decision.

The bailiff is able to seize a debtor's property or introduce other restrictions in order to satisfy the terms of a Court decision. The law places restrictions on what kinds of property may be seized, for example, some private belongings cannot be. Once any claims set out in the court decision have been satisfied, enforcement proceedings can be brought to an end.

Administrative Proceedings

Administrative proceedings are carried out in the courts of general jurisdiction and commercial courts.

The main regulations governing administrative proceedings are the Code of Administrative Offences of the Russian Federation (referred to here as the "**RF AOC**") and the RF APC (referred to above).

In the commercial court system, administrative proceedings are governed by the RF APC, whereas in the system of courts of general jurisdiction they are governed by the RF AOC.

Proceedings relating to administrative offences are primarily concerned with the full and timely investigation of the factual background of each case, resolving any dispute in accordance with the law, ensuring compliance with any ruling made and discovering the grounds and conditions that resulted in the administrative offences being committed in the first place.

Unlike in civil proceedings, in administrative proceedings there is a presumption of innocence: it is presumed that the respondent is innocent of the offence and the burden of proof falls upon the applicant.

Alternative Dispute Resolution

Alternative Dispute Resolution has found its way into Russian legislation following its increased usage in international matters. At present arbitration proceedings and mediation are used in Russia, although the latter remains comparatively new and uncommon for Russian business.

Arbitration

Arbitration proceedings are an alternative dispute method resolution method that is well-established in Russia and regulated by the federal law which came into force on 1 September 2016 and seeks to develop arbitration proceedings in Russia.

Provided the law does not impose any restrictions, parties can choose to enter into arbitration as opposed to pursuing a matter through the courts. A positive recent legislative change is the introduction of the arbitration for most corporate disputes (previously corporate disputes were in the exclusive jurisdiction of state courts).

In Russia, a dispute can be referred to an arbitration tribunal only if the parties have entered into an arbitration agreement.

An arbitration agreement may be entered into by the parties either in respect of all or specific disputes that have arisen or may arise between them. An arbitration agreement in the form of an arbitration clause in a contract can be deemed severable from the other provisions.

There are two types of arbitration tribunal:

1) permanent tribunal – which operates on the basis of rules for permanent arbitration; and
2) temporary tribunal which are formed to resolve a specific dispute and whose rules can be agreed between the parties.

Unless the parties have agreed in the arbitration agreement that the arbitration tribunal award is to be final and binding, a party can appeal the arbitration tribunal's decision to court.

An arbitration tribunal award is to be performed voluntarily in accordance

with the procedure and within the timelines specified in the award. If it is not performed within the specified timelines, a party can apply to court to obtain an order for its enforcement.

International Commercial Arbitration Tribunal

When international commercial arbitration takes place in the Russian Federation, the federal law 'On International Commercial Arbitration' number 5338-1 dated 7 July 1993 applies.

Parties to a contract may agree that certain types of disputes may be referred to an international commercial arbitration tribunal including disputes arising in connection with foreign trade and other international economic relations, provided that the commercial entity of at least of one of the parties is located abroad, as well as disputes between foreign investment enterprises and international associations and organisations incorporated in the Russian Federation and disputes between their members and with other Russian legal entities.

An arbitration agreement means an agreement of the parties to refer to arbitration any and all disputes that have arisen or may arise between them in connection with any specific matter, regardless of whether it was a contractual matter or not.

An arbitration agreement may be entered into in the form of an arbitration clause in a contract or as a separate document. An arbitration clause is severable from the other provisions of a contract and therefore can remain in force if the other parts of a contract are deemed void.

An award by made an international commercial arbitration tribunal may be appealed and declared void on limited grounds by a competent national court, unless otherwise agreed by the parties in an arbitration agreement. An award, regardless of the country in which it was made, can made binding and enforced provided that the necessary application is filed with the relevant court.

There are two permanent international commercial arbitration tribunals in the Russian Federation: the International Commercial Arbitration Tribunal at the Chamber of Commerce and the Maritime Arbitration Commission at the Chamber of Commerce.

Mediation

Mediation is a method of resolving disputes on the basis of consent of the parties and is aimed at achieving a mutually acceptable outcome that supports commercial relations and good business.

Mediation is regulated by the federal law 'On Alternative Dispute Resolution with the Assistance of a Mediator (Mediation Procedure)'.

Mediation can be used for disputes arising out of civil law matters, including those connected to commercial matters as well as to employment disputes or family matters. The mediation procedure may be pursued before a dispute has been considered in civil or arbitration proceedings.

An agreement to pursue mediation cannot prevent an application to a Court or Commercial Court, unless otherwise provided by for federal law.

The mediator can be either a professional or an amateur although for some disputes amateur mediators may be excluded.

Based on the results of mediation, the parties can enter into a mediation agreement. A mediation agreement contains the terms agreed in mediation and their timelines for completion. A mediation agreement can be enforce as a contract between the parties. A mediation agreement can also be entered into after a dispute has been referred to a court or arbitration tribunal and may then be adopted as part of a settlement agreement.

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DOING BUSINESS IN RUSSIA

BRIEF LEGAL GUIDE

5th edition

Edited by Maxima Legal LLC, Russia

St. Petersburg, Russia

2018