

**Melling  
Voitishkin  
& Partners**

**DOING BUSINESS  
IN RUSSIA**

**2023**



# Melling Voitishkin & Partners

## Doing Business in Russia 2023

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## Table of contents

1. Overview.....	22
1.1    Geography .....	22
1.2    Population .....	22
1.3    Political System.....	22
1.4    International Relations .....	25
1.5    Economy .....	27
2. Judicial System.....	29
2.1    What are the basic distinctions between the jurisdictions of courts in the Russian judicial system?.....	29
2.2    What is the procedure for resolving disputes in courts of general jurisdiction? .....	30
2.3    What is the procedure for resolving disputes in arbitrazh (state commercial) courts?.....	33
2.4    What are the procedural rules for administrative judicial proceedings? .....	42
2.5    What is international arbitration? .....	46
2.6    What is the regulation regarding the enforcement of judgments and arbitral awards in Russia?.....	50
2.7    What are the main rules for alternative dispute resolution and mediation in Russia? .....	51
2.8    What changes to the Russian judicial system are anticipated in the near future? .....	52
3. Promoting Foreign Investment in Russia .....	53

3.1	What is the legal framework for foreign investment?.....	53
3.2	What is the legal definition of a foreign investor?.....	56
3.3	Does Russian law provide for a stabilization clause?.....	56
3.4	What are the main incentives for attracting foreign investment in Russia?.....	59
3.5	What are the restrictions and limitations on foreign investment in Russia?.....	73
3.6	What restrictions apply to foreign investments in strategic companies?.....	74
3.7	What are the government bodies competent to review applications for transaction approval and to receive post-transaction notifications?.....	74
3.8	How is a strategic company defined?.....	75
3.9	Which transactions (actions) are subject to preliminary approval?.....	76
3.10	Who is responsible for securing preliminary transaction approval?.....	79
3.11	How does one obtain a preliminary transaction approval?.....	79
3.12	How long does an application review take?.....	80
3.13	How much discretion do the authorities have when rendering a decision after an application review?.....	80
3.14	If preliminary approval for a transaction is not granted, can such a decision be challenged?.....	80
3.15	When is a post-transaction notification required?.....	80

3.16	What are the exemptions to the Strategic Companies Law? .....	81
3.17	What are the consequences of violating the Strategic Companies Law? .....	81
3.18	Are there special rules for investments made by foreign states, international organizations and investors not providing information? .....	82
4.	Establishing a Legal Presence.....	85
4.1	Representative office or branch of a foreign legal entity .....	85
4.2	Forming a Russian legal entity.....	86
5.	Corporate Compliance .....	101
5.1	What are the key provisions of anti-bribery laws in Russia? .....	101
5.2	What liability does a legal entity incur for corrupt conduct? .....	102
5.3	What are the major types of criminal offenses for corrupt conduct? .....	107
5.4	What restrictions in respect of gifts exist in Russia? .....	113
5.5	What changes to anti-corruption laws are anticipated in the near future? .....	114
6.	Taxation .....	116
6.1	What are the main Russian legislative acts that contain tax law provisions? .....	116
6.2	What are the main recent changes in the Russian tax system? .....	116
6.3	What types of tax comprise the Russian tax system? .....	122

6.4	What types of tax audits do the Russian tax authorities conduct? .....	123
6.5	How may taxes be paid in Russia? .....	124
6.6	Does Russia have a tax monitoring regime? .....	125
6.7	What transfer pricing rules does Russia apply? .....	126
6.8	Do Russian transfer pricing rules provide for advance pricing agreements? .....	129
6.9	What is the standard Russian corporate profits tax rate? .....	130
6.10	Are there any specific corporate profits tax rates for dividend income? .....	130
6.11	Are there any other participation exemptions? .....	131
6.12	How is taxable profits calculated? .....	133
6.13	Does the Tax Code provide for a tax consolidation regime? .....	133
6.14	Are there any other special corporate profits tax regimes? .....	134
6.15	Are there any special interest deductibility rules? .....	134
6.16	Does Russia apply thin capitalization rules? .....	136
6.17	What are the Russian asset depreciation and loss carry forward rules? .....	138
6.18	Does Russia apply any corporate profits tax investment benefits? .....	139
6.19	What are the specifics of foreign companies' taxation in Russia? .....	140
6.20	Does Russia apply any CFC rules? .....	142
6.21	Are there any specific tax residency rules for foreign companies? .....	146

6.22	Does Russia apply beneficial ownership rules? .....	147
6.23	Is there any additional reporting for foreign companies that have a presence in Russia? .....	149
6.24	How many double taxation treaties has Russia signed and ratified as of 1 January 2022? .....	149
6.25	Does Russia apply VAT? .....	163
6.26	What are the main benefits of the new preferential tax regime for IT companies? .....	168
6.27	Are there any specific taxes for licensed subsoil users? .....	169
6.28	What are the main specifics of the special tax regime used by participants of production sharing agreements? .....	173
6.29	What are the main specifics of corporate property taxation in Russia? .....	174
6.30	Does Russia apply any social security taxes?.....	175
6.31	What are the main specifics of individual income taxation in Russia? .....	176
6.32	What other regional and local taxes apply in Russia? .....	179
<b>7.</b>	<b>Customs, Trade and WTO Aspects .....</b>	<b>181</b>
7.1	Introduction .....	181
7.2	The EAEU .....	181
7.3	Unified tariff regulations of the EAEU .....	182
7.4	Sanitary-epidemiological measures .....	183
7.5	Technical regulations (confirmation of compliance).....	184

7.6	Phyosanitary and veterinary control .....	186
7.7	Import and export licensing.....	187
7.8	Regulatory framework in the sphere of customs regulations .....	187
7.9	The Russian customs authorities.....	188
7.10	Declarant (importer of record).....	188
7.11	Registration of an importer of record with the local customs authorities.....	189
7.12	Customs brokers (representatives/brokers).....	190
7.13	Authorized Economic Operators.....	190
7.14	Customs clearance .....	191
7.15	Electronic customs declaration .....	192
7.16	Customs clearance procedures .....	193
7.17	Preliminary classification decisions.....	199
7.18	Customs valuation rules.....	200
7.19	Rules of origin .....	206
7.20	In-kind contribution.....	206
7.21	Customs inspection and liability.....	206
7.22	Safeguard measures.....	210
7.23	Export controls .....	212
7.24	Product safety and protection of consumer rights .....	214
7.25	Russia's countermeasures (temporary export restrictions).....	216
<b>8.</b>	<b>Sanctions .....</b>	<b>218</b>
8.1	Overview of sanctions regimes.....	218



8.2	US sanctions framework .....	220
8.3	EU sanctions framework .....	223
8.4	UK sanctions framework .....	227
8.5	Swiss sanctions framework.....	230
8.6	Japanese sanctions framework .....	232
8.7	Ukrainian sanctions framework.....	234
8.8	Russian countermeasures .....	236
9.	Employment.....	247
9.1	Sources of Russian labor law .....	247
9.2	Recruitment process .....	249
9.3	Entering into an employment agreement.....	251
9.4	Working terms and conditions.....	255
9.5	Leave .....	258
9.6	Termination of employment agreement .....	261
9.7	Employment of foreigners in Russia .....	263
9.8	What measures will an employer take to protect the personal data of employees?.....	267
10.	Property Rights .....	269
10.1	What is particular about property rights in Russia? .....	269
10.2	What about other real estate?.....	280
10.3	When is the state registration of rights to real estate required? .....	285
10.4	Is there any classification of real estate? .....	288
10.5	What are the foreign currency restrictions affecting payments for leasing and buying real properties? .....	288

10.6	How is residential real estate regulated? .....	289
10.7	What is the mortgage of real properties under Russian law? .....	290
10.8	Are there any restrictions for real estate transactions? .....	295
<b>11.</b>	<b>Privatization .....</b>	<b>298</b>
11.1	What is privatization? .....	298
11.2	How is privatization regulated? .....	298
11.3	What property is subject to privatization? .....	298
11.4	Who acts as the seller of property subject to privatization? .....	298
11.5	Who may purchase property subject to privatization? .....	298
11.6	How is the privatization procedure implemented? .....	299
11.7	What are the most common ways of privatizing a publicly owned property? .....	300
<b>12.</b>	<b>Language Policy .....</b>	<b>301</b>
<b>13.</b>	<b>Contract Law .....</b>	<b>304</b>
13.1	Are there any mandatory contractual terms under Russian law? .....	304
13.2	What types of contracts are recognized under Russian law? .....	304
13.3	Are there any rules for entering into a contract? .....	305
13.4	How to secure the proper performance of a contract under Russian law? .....	305

13.5	What are the rules relating to the alteration or termination of contracts? .....	305
13.6	What are the rules relating to the invalidity of contracts?.....	306
13.7	Contract liability and its limitation.....	307
<b>14.</b>	<b>Intellectual Property .....</b>	<b>309</b>
14.1	What is the regulatory environment of intellectual property rights protection in Russia? .....	309
14.2	What IP objects may be protected in Russia? .....	311
14.3	Overview of IP objects protected in Russia .....	312
14.4	Are domain names protected and recognized as IP objects in Russia? .....	328
14.5	Who owns the IP rights to employee creations under Russian law? .....	329
14.6	What are the legal requirements applicable to IP rights assignment, license and franchise agreements? .....	331
14.7	How can infringed IP rights be enforced in Russia and what are the available remedies? .....	334
14.8	Are there any specialized IP courts in Russia? .....	336
14.9	What mechanisms can IP owners use to combat online piracy in Russia? .....	337
14.10	Can ISPs be held liable for infringing content placed by third-party users?.....	338
<b>15.</b>	<b>Insolvency.....</b>	<b>340</b>
15.1	Overview .....	340

15.2	What law applies? .....	341
15.3	What are the requirements to initiate insolvency? .....	341
15.4	What are the stages of insolvency? .....	345
15.5	What is the role of the insolvency practitioner? .....	351
15.6	When may transactions be clawed back? .....	353
15.7	How are creditors paid in insolvency? .....	354
15.8	How are secured debts handled? .....	355
15.9	What are the grounds for the secondary liability of controlling persons? .....	357
15.10	Subordination of claims filed by controlling and/or affiliated creditors.....	362
16.	Natural Resources (Oil and Gas / Mining) .....	365
16.1	What is the key feature of subsoil regulation in Russia? .....	365
16.2	What is the legal framework for subsoil use? .....	365
16.3	What types of licenses can be issued in Russia? .....	366
16.4	What is the general term of a subsoil license? .....	366
16.5	Who is in charge of licensing subsoil use? .....	366
16.6	Are there any restrictions applicable to foreign investors on acquiring subsoil licenses in Russia? .....	367
16.7	How can a subsoil license be obtained?.....	368
16.8	Can rights under a subsoil license be transferred?.....	368

16.9	How is the transfer of subsoil rights granted under the relevant license effected? .....	369
16.10	What are "strategic" deposits? .....	370
16.11	Is the extraction of natural resources under production sharing agreements a viable alternative to a subsoil license? .....	371
16.12	Is it possible to export natural gas and LNG from Russia? .....	371
16.13	What is it essential to know about precious metals and gemstones? .....	372
16.14	Who can refine precious metals? .....	373
16.15	Are precious metals and gemstones freely traded? .....	373
16.16	Does Russia have any environmental and climate laws affecting the natural resources industry? .....	373
16.17	Does Russian law incentivize investments in natural resources projects? .....	374
<b>17.</b>	<b>Power .....</b>	<b>375</b>
17.1	How is the Russian power market structured? .....	375
17.2	What is the regulatory framework for the power industry in Russia? .....	376
17.3	What are the main market regulators and commercial infrastructure players? .....	378
17.4	How can a foreign investor enter the Russian power market? .....	380
17.5	Is it possible to export power from Russia? .....	381
17.6	Are there any incentives for the modernization of conventional power stations? .....	382

17.7	Are there any notable smart power regulatory developments?.....	383
17.8	Are there any incentives for renewable energy projects?.....	384
17.9	Are national guarantees of origin or voluntary renewable energy certificates available in Russia? .....	386
17.10	Are there any programs relating to hydrogen production and use? .....	386
17.11	Are there any other incentives for investments in the power sector, including renewables and hydrogen?.....	387
18.	Insurance in Russia .....	388
18.1	Which law regulates insurance in Russia? .....	388
18.2	What are the types of licenses required? .....	388
18.3	Are there any restrictions on foreign investments? .....	388
18.4	Can foreign insurance companies carry out insurance activities in Russia?.....	389
18.5	How are the insurance market and products regulated? .....	391
18.6	What are the different types of insurance in Russia? .....	392
18.7	What are special economic measures in the sphere of insurance? .....	392
19.	Telecommunications, Information Technologies and Mass Media .....	394
19.1	Telecommunications .....	394

19.2	Information technologies.....	407
19.3	Mass media regulation.....	423
<b>20.</b>	<b>Sustainability / Environmental, Social, and Corporate Governance .....</b>	<b>432</b>
20.1	Russian ESG legal and policy framework.....	432
20.2	Environment.....	435
20.3	Social .....	508
20.4	Governance.....	511
<b>21.</b>	<b>E-commerce .....</b>	<b>517</b>
21.1	What regulations govern business on the internet? .....	517
21.2	Which administrative body is responsible for regulating e-commerce, data protection and the internet? .....	517
21.3	What rules are applied by Russian courts to determine the jurisdiction for internet-related transactions or disputes in cases where the defendant is resident or provides goods or services from outside the jurisdiction? .....	518
21.4	Is it possible to form and conclude contracts electronically? .....	519
21.5	What rules govern advertising on the internet? .....	521
<b>22.</b>	<b>Personal Data .....</b>	<b>522</b>
22.1	What laws apply to personal data, and what is the competent state body? .....	522
22.2	Does the Russian Personal Data Law apply to foreign entities?.....	522

22.3	What are personal data and data processing?.....	522
22.4	What are the basic requirements for data processing?.....	523
22.5	What requirements should be met to transfer personal data to third parties? .....	524
22.6	Are there any special rules for cross-border transfers? .....	525
22.7	Are there any special requirements for the distribution of personal data?.....	526
22.8	Where can personal data be stored?.....	526
22.9	Are there any state authorities that must be notified if a company begins to process personal data? .....	527
22.10	What steps should the operator take in case of a data breach?.....	527
22.11	How do companies protect personal data in Russia? .....	528
22.12	What is the liability for a violation of personal data legislation? .....	528
<b>23.</b>	<b>Consumer Protection .....</b>	<b>530</b>
23.1	What regulations govern sales to Russian consumers and which administrative bodies control their enforcement? .....	530
23.2	What represents a consumer sale?.....	531
23.3	What remedies are generally available to Russian consumers (warranty undertakings of the manufacturer and the seller)?.....	531
23.4	Can the manufacturer's and/or seller's liability be limited under the contract with the consumer? .....	533



23.5	Product disclosure obligations .....	533
23.6	Rights of consumers to claim a return/refund when purchasing products through distance sales methods .....	535
23.7	Application of Russian distance selling rules .....	535
23.8	Class actions .....	536
23.9	Trends of recent enforcement practice .....	537
<b>24. The Pharmaceuticals and Healthcare Industry .....</b>		<b>539</b>
24.1	What is the general legal framework governing healthcare in Russia? .....	539
24.2	Regulations enacted to adopt Russian medicine and medical device markets to the restrictive economic measures implemented against Russia .....	540
24.3	Measures related to supply of medicines and medical devices due to spread of COVID-19 .....	548
24.4	What are the key regulatory bodies in this area? .....	552
24.5	How are clinical trials of medicinal preparations and clinical studies of medical devices regulated? .....	554
24.6	How is the registration of medicinal preparations and medical devices organized? .....	558
24.7	How does a shipment of a medicinal preparation or medical device enter the Russian market? .....	567
24.8	How is the manufacturing of medicines and medical devices regulated? .....	570

24.9	How is the importation of medicines and medical devices regulated? .....	572
24.10	How is the wholesale of medicines and medical devices regulated? .....	573
24.11	How is the retail sale of medicinal preparations and medical devices regulated? .....	575
24.12	How does the state regulation of prices of medicinal preparations and medical devices operate? .....	577
24.13	How is the interchangeability of medicinal preparations and medical devices defined? .....	579
24.14	How is the technical maintenance of medical equipment regulated? .....	581
24.15	How do government-run programs for medicinal supplies operate? .....	582
24.16	How is the promotion of medicinal preparations and medical devices regulated? .....	590
<b>25.</b>	<b>Competition Protection Law .....</b>	<b>595</b>
25.1	General section .....	595
25.2	Abuse of market dominance .....	596
25.3	Anti-competitive agreements, concerted actions and actions of state bodies limiting competition .....	599
25.4	Requirements for tenders and price quotations .....	604
25.5	State aid .....	605
25.6	Merger control .....	607
25.7	Unfair competition and marketing .....	616

25.8	Russia is a member state of the EAEU. Are there any special competition rules in the EAEU? .....	617
<b>26. Issuance and regulation of securities.....</b>		<b>618</b>
26.1	What are the primary sources of legislation covering the issuance and regulation of securities in Russia? .....	618
26.2	What types of securities exist in Russia? .....	618
26.3	What are the information disclosure requirements in case of issuance of securities in Russia? .....	619
26.4	What are the requirements for the placement and circulation of foreign securities in Russia? .....	620
26.5	What types of securities can be used for raising equity capital? .....	622
26.6	What legislation governs the issuance of domestic bonds? .....	623
26.7	How are promissory notes and bills of exchange regulated in Russia?.....	623
26.8	How are exchange-traded bonds, commercial bonds and structured bonds different from usual domestic Russian bonds? .....	624
26.9	What powers does the general meeting of bondholders have? .....	625
26.10	What are the functions of the bondholders' representative? .....	626
26.11	How can mortgage loans be securitized in Russia? .....	627
26.12	What are the requirements for the cover pool of mortgage-backed securities?.....	629

26.13	How is the cover pool of mortgage-backed bonds distributed in case of the issuer's bankruptcy?.....	630
26.14	Is the securitization of assets other than mortgage loans possible in Russia? .....	630
26.15	Who can issue Russian depository receipts and what obligations does the foreign issuer assume to their holders?.....	632
26.16	What types of collective investment schemes are recognized in Russia? .....	632
26.17	What professional participants are there on the Russian securities market?.....	634
26.18	What are the licensed intermediaries on the Russian securities market?.....	634
26.19	Who are investment counsels?.....	635
26.20	Who records the transfer of rights to securities in Russia? .....	635
26.21	What are the functions of the Central Depository in Russia? .....	636
26.22	What legislation governs the activities of organizers of trade, stock exchanges and clearing organizations in Russia? .....	638
26.23	What are the main powers and functions of the Bank of Russia as the securities market regulator? .....	639
26.24	What is the purpose of SROs in Russia? .....	639
26.25	Are there any requirements for purchasing a significant amount of voting shares in a Russian public JSC? .....	641
26.26	What are the requirements for the placement and circulation of Russian shares overseas? .....	642
26.27	Are derivative transactions awarded civil law recognition in Russia?.....	642

26.28	What are the regulations on derivatives on the securities market in Russia? .....	643
26.29	Is there an equivalent of the International Swaps and Derivatives Association Master Agreement on the Russian market? .....	643
26.30	What are the requirements for netting claims? .....	643
26.31	What are the functions of a repository? .....	644
26.32	What constitutes inside information in Russia? .....	645
26.33	Who can be an insider in Russia? .....	645
26.34	What are the obligations of insiders in Russia? .....	646
26.35	What are the penalties for violating the Inside Information Law? .....	647
<b>27.</b>	<b>Banking.....</b>	<b>649</b>
27.1	What is the structure of the banking system in Russia? .....	649
27.2	What are the primary sources of legislation covering banking in Russia? .....	650
27.3	Can a foreign bank operate in Russia? .....	650
27.4	What are the requirements for the establishment of a local subsidiary of a foreign bank in Russia? .....	651
27.5	What are the requirements for establishing a representative office of a foreign bank in Russia? .....	652
27.6	What activities do Russian banks generally engage in and how are they regulated? .....	653
27.7	What are the peculiarities of corporate lending in Russia? .....	655

27.8	How is consumer lending regulated in Russia? .....	656
27.9	What financial authorities are established in Russia to oversee banking activities in Russia? .....	658
27.10	What approvals are required to purchase shares in Russian banks? .....	659
27.11	What regulatory powers does the Bank of Russia have? .....	661
27.12	How are bank deposits protected in Russia? .....	662
27.13	What are the anti-money laundering requirements in Russia? .....	663
27.14	What are the capital adequacy requirements in Russia? .....	664
27.15	What are the eligibility requirements for including subordinated instruments in the regulatory capital of a bank? .....	665
27.16	What is the status of the implementation of the Basel III liquidity coverage ratio (the "LCR") rules in Russia? .....	666
27.17	What is the status of the implementation of the remuneration policy under Basel III in Russia? .....	666
27.18	What accounting and reporting standards are applicable to Russian banks? .....	667
28.Currency Regulations .....		669
28.1	What currencies can be used for settlement in Russia? .....	673
28.2	Which transactions are subject to currency regulation in Russia? .....	673

28.3	Who are considered residents and non-residents under Russian currency control regulations?.....	67I
28.4	Are there any special currency control rules in Russia? .....	67Í
28.5	What are the requirements under Russian Currency Law to transactions between local and foreign counterparties? .....	67Î
28.6	What rules are applicable to foreign accounts of Russian residents? .....	67Ï
28.7	What rules are applicable to all Russian residents?.....	67Ï
28.8	What rules are applicable to Russian resident individuals? .....	67Ì
28.9	What are the penalties for violating Russian currency regulations?.....	679

## 1. Overview

### 1.1 Geography

The Russian Federation stretches across Eurasia from Eastern Europe to the Pacific coast and is the largest country in the world in terms of territory.

### 1.2 Population

The population of the Russian Federation is approximately 146.4 million. Although about 81% of the country's population is ethnically Russian, the Russian Federation is a multinational state and is home to numerous ethnic minority groups, including sizeable Tatar (3.9%) and Ukrainian (1.4%) populations. Roughly 75% of the population lives in urban areas and 16 cities have a population of over one million. The largest city is Moscow, with a population of approximately 13.1 million, followed by St. Petersburg, with a population of approximately 5.6 million.

### 1.3 Political System

The Russian Federation is a federal republic consisting of constituent entities of six categories. All constituent entities, while subtly different in classification, are constitutionally defined as equal members of the federation. Republics (corresponding to the homelands of various ethnic groups) enjoy a certain degree of regional autonomy. The federation is further divided into oblasts (regions), an autonomous oblast (autonomous region), cities of federal significance and krais (territories) in which autonomous okrugs (autonomous districts, also delineated for various ethnic groups) are located. In 2000 Russia was further divided into seven federal super-districts (circuits) with the aim of ensuring federal supervision over regional affairs. In 2010, the number of federal super districts (circuits) was increased to eight.

Each constituent entity of the federation possesses its own charters, political institutions and local legislation. Approximately half of the constituent entities have signed bilateral treaties regulating the relationship between the regional and federal governments. Significant



progress has been made towards greater consistency between the regional and federal legal systems. However, when conducting business transactions at the regional level, treaty stipulations should be carefully reviewed as they may assign slightly different rights and privileges to the constituent entity in question.

Constitutionally, the President of the Russian Federation is elected for a six-year term (which was extended from four to six years in 2008). Any given individual is limited to two terms. As a result of the constitutional reform in July 2020, this restriction applies to a person who held or holds the post of the President without taking into account the number of terms during which he or she held or holds this position at the time of entry into force of the amendments to the Constitution.

The President is vested with extensive powers, serving as the head of state, the commander-in-chief of the armed forces, and the highest executive authority of the federation. The office of the President also includes the powers of decree, legislative veto, and the power to appoint and dissolve the Government. The President is primarily responsible for domestic and foreign policy and represents Russia in international relations.

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

Since the election of Vladimir Putin to the Russian presidency in May 2000, the country has undergone a number of sweeping political reforms aimed at centralizing power within the federal executive.

Legislative power is exercised by a bicameral Federal Assembly, which consists of the Federation Council (upper house) and the State Duma (lower house). Since January 2002 the Federation Council has consisted of two representatives ("senators") from each federal

constituent entity, one from the executive branch appointed by the regional governor, and one from the legislature nominated by the regional assembly. Since July 2020, the Federation Council also includes no more than 30 representatives of the Russian Federation appointed by the President, of whom no more than seven may be appointed for life. A former President who completed his term or resigned also becomes a senator for life. The State Duma consists of 450 members elected nationwide under a mixed electoral system: 225 are elected by proportional representation based on party lists (proportional system), and another 225 are elected in single-member districts (majority system). To obtain seats in the Duma under the proportional system, parties have to overcome the 5% barrier, and for candidates in the districts it is enough to get a relative majority of votes.

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

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

In July 2020 the Constitution was amended. The amendments, among other things, establish the priority of the Constitution over the requirements of international law – decisions of intergovernmental bodies, taken on the basis of international treaties of Russia, will not be

enforceable in Russia if the Constitutional Court establishes that they contradict the Constitution. The amendments expand the powers of the President to exercise "general management" of the government's activities and dismiss the Prime Minister, to appoint and dismiss heads of federal executive bodies responsible for defense, state and public security, domestic and foreign affairs, justice and the prevention of emergency situations, to appoint the Prosecutor General, his deputies and regional prosecutors, to propose to the Federation Council the termination of the powers of judges of the Constitutional Court, Supreme Court, and cassation and appeal courts.

According to the amendments, the Duma must approve the candidacy of the Prime Minister, deputy prime ministers and ministers (except for the ministers of defense and foreign affairs and top security officials).

The amendments reduced the number of judges of the Constitutional Court from 19 to 11. The Constitutional Court can review the constitutionality of laws on complaints of Russians only if "all other domestic remedies have been exhausted". Upon request of the President the court has jurisdiction to verify the constitutionality of draft federal laws prior to their signing by the President, and laws of constituent entities of the Russian Federation prior to their promulgation.

## 1.4 International Relations

At present, Russia's international relations with developed countries are strained.

After Crimea became part of Russia in 2014, the relations of the Russian Federation with Western countries deteriorated. Most Western countries imposed sanctions against the Russian Federation and certain sectors of the economy (financial and economic, infrastructure, transport, energy and other). As a retaliatory measure, the Russian Federation imposed a food embargo and restrictions on imports of some light industrial goods from the states that imposed sanctions against the Russian Federation.

In the following years, sanctions pressure on the Russian Federation increased. In February 2022, the Russian Federation started a special

military operation in Ukraine. In September 2022, four regions of Ukraine were incorporated into the Russian Federation. These actions entailed new unprecedented Western sanctions, including diplomatic, visa and logistical relations, among others. The participation of the Russian Federation and its officials in certain intergovernmental organizations and associations (the Council of Europe, the Coordinating Group of Developed Countries within the World Trade Organization and others) was suspended.

The Russian Federation retaliated with its own measures, imposing restrictions on dealings with states that carry out unfriendly actions against Russia, Russian legal entities and individuals. The list of "unfriendly" states includes EU countries, USA, Australia, UK, Canada, Singapore and other Western states. Russia reoriented its focus on relations with other states that did not impose sanctions against it. For more details, see Section 8 ("Sanctions"). Russia has deepened integration within the Eurasian Economic Union (EAEU) with Armenia, Belarus, Kazakhstan and the Kyrgyz Republic in pursuit of greater cooperation aiming at improving competitiveness of the economies of EAEU Member States and living standards in member countries. The EAEU aims to ensure the freedom of movement of goods, services, capital and labor resources, and to become a platform for the implementation of joint infrastructure and investment projects.

Internationally, Russia continues to be a member of all bodies of the United Nations and retains a permanent seat on the Security Council with veto rights.

Russia has close ties with its neighbor and major trading partner – Belarus. In 1997 the two countries formed a supranational entity, the Union of the Russian Federation and the Republic of Belarus. After several years of inactivity, in 2021 discussions of potential further integration resumed.

## 1.5 Economy

Western sanctions have had a negative effect on the Russian economy: the ruble has been falling against the dollar and euro, and GDP has declined. In 2022, the economy fell by 2.1% on the back of Western sanctions, import restrictions and the weaker ruble. The Russian Government has taken various measures to stabilize the economy and prevent capital outflow. For instance, in order to reduce the impact of the volatility of oil prices, the Russian government adopted a budget rule whereby all revenue earned above the budgeted price of U.S. \$44.20 per barrel of Urals oil is diverted to a special National Fund as a cushion for potential economic shocks. In November 2022, the president approved a new version of the rule, which does not provide for the base price of Urals oil.

Western sanctions, which prohibited loans to some of the major Russian companies, resulted in a major reduction of debts to foreign lenders.

Prior to 2022 the Russian Federation took steps to develop business and improve the investment climate, as well as improve its self-sufficiency in telecommunications, agriculture, food processing, pharmaceuticals and the power industry.

Western sanctions (the ban on imports of technological goods, microchips, military products, rejection of Russian energy resources) are expected to slow down Russia's economic development.

The sanctions are aimed at the financial, energy and transport industries, the supply of goods, logistics, technologies and equipment. A number of large Russian banks have been disconnected from the SWIFT payment system, the operation of MasterCard and Visa payment systems have been suspended. Many Western companies announced their exits from Russia and stopped new investments. The United States and some of its partners decided to terminate normal trade relations with Russia. The EU countries have imposed restrictions on the price of Russian oil.

In response to Western sanctions, Russia adopted a number of Presidential Decrees on special economic measures with regard to "unfriendly actions of foreign states". They concern currency regulation, corporate law, real estate and international commercial transactions. Dividend payments and loan repayments to persons from unfriendly states, as well as sale of Russian companies by owners from such states, were prohibited without a special government commission approval (for additional information see Sections 3 ("Promoting Foreign Investment in Russia"), 8 ("Sanctions"), 10 ("Property Rights")). As one of the measures, Russian authorities allowed parallel imports of goods from foreign states that have banned the export of goods to Russia - the importation of goods without the consent of the manufacturer or copyright holder (for additional information see Section 8 ("Sanctions")).

## 2. Judicial System

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

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

The Constitutional Court of the Russian Federation generally resolves issues relating to compliance with the Constitution of the Russian Federation, federal laws, and some regional laws and regulations if they are related to issues within the competence of the federal authorities. The Constitutional Court of the Russian Federation is also empowered to review the enforceability of foreign and international court judgments and arbitral awards, and the decisions of interstate bodies, to ensure their compliance with the constitutional system of the Russian Federation.

In lieu of the constitutional courts of constituent entities, which ceased to exist as of January 2023, the law provides for the constituent entities' right to establish constitutional (statutory) councils that would function under the auspices of the legislative bodies of the respective constituent entity.

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

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

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

Legal representatives of parties in courts must have a higher legal education or a degree in law (except for proceedings at district and magistrates' courts).

A group of persons can file a class action for the defense of violated or challenged rights and legal interests. Such actions are considered by a court if at least twenty persons have joined the claim at the time of its filing.

Courts of general jurisdiction have four levels:

- trial courts
- courts of appeal
- courts of cassation appeal (two levels of cassation courts)
- courts of supervisory appeal

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

Generally, trial courts are district (city) courts (for some minor cases, magistrates' courts). In certain cases, the courts of a higher level, that is, courts of Russia's constituent entities (the Supreme Court of a republic, regional courts, Moscow City Court and St. Petersburg City Court as courts of cities of federal importance and courts of an autonomous



region and autonomous area) are competent to act as trial courts. As such, these courts hear cases for the recognition and enforcement of foreign court decisions and foreign arbitral awards, challenges to regional regulatory acts, etc.

The Supreme Court resolves as a trial court in administrative cases where regulatory and non-regulatory acts of the President of the Russian Federation, the Government of the Russian Federation, and those of certain other state authorities and organizations are challenged. The Supreme court also resolves economic disputes between federal authorities and those of Russia's constituent entities, between the highest state authorities of different constituent entities, etc.

Before submitting a claim with a court of general jurisdiction, a party may have to comply with a pre-claim or other pre-trial dispute resolution procedure, if this is provided for in the federal law for this category of disputes.

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

Courts of appeal are:

- district (city) courts — for decisions of magistrates' courts
- courts of Russia's constituent entities — for decisions of district (city) courts
- appellate courts (interregional competence) — for those decisions of courts of Russia's constituent entities where they acted as first instance courts
- appellate panel of the Supreme Court — for decisions of other panels of the Supreme Court

Decisions of a court of appeal (and a trial court's judgments) may be further appealed at a cassation court within three months of becoming

effective. As a rule, a review by a court of cassation appeal is only possible after a review by a court of appeal. The decisions of a trial court that were not subject to appellate proceedings may only be appealed in a court of cassation appeal if the appeal was dismissed without prejudice for failure to comply with the submission deadline and the deadline was not restored.

Courts of cassation appeal are:

- cassation courts (first stage) — for decisions of magistrates' courts, district (city) courts and courts of Russia's constituent entities
- the Civil Panel of the Supreme Court (second stage) — for decisions of cassation courts

Cassation review consists of two stages. At the first stage, a cassation appeal is reviewed by a cassation court of general jurisdiction that has competence over several regions of Russia. The decision of such cassation court can be appealed at a panel of the Supreme Court for the second stage cassation review within three months from its issuance.

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

A court of cassation appeal may only set aside or modify court resolutions if it finds material violations of substantive or procedural law rules that have affected the outcome of the case.

Decisions of a court of cassation appeal become effective immediately upon issuance.

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

The court of supervisory appeal may set aside or modify a decision of lower courts if it finds that the decision has violated:

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

All documents may be submitted to the court on paper and electronically, including via the federal information system "Unified portal of state and municipal services"<sup>1</sup> or an information system identified by the Supreme Court, the Judicial Department of the Supreme Court, or via electronic document exchange systems of the parties to the proceedings with the use of a unified system of inter-agency electronic document flow. If the documents are submitted electronically, as above, they must be in the form of an electronic document signed with an electronic signature as regulated by Russian law.

### 2.3 What is the procedure for resolving disputes in arbitrazh (state commercial) courts?

The title "arbitrazh court" is not related to arbitration tribunals, but originates from an old Soviet tradition whereby disputes between state enterprises were heard before the so-called State Arbitrazh. In the USSR, it was assumed that under a planned economy no disputes could arise between socialist enterprises (since all enterprises ultimately had the same owner) and any differences that did arise could be settled by an intermediary — the State Arbitrazh — which was a quasi-judicial government institution.

Since then, arbitrazh courts have evolved into an independent branch of the court system, and mainly deal with commercial disputes.

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<sup>1</sup> <https://www.gosuslugi.ru/>.

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

Traditionally, Russian arbitrazh courts favor written documentary evidence rather than examining witnesses, hearing experts or using audio or video recordings.

A specialized court, part of Russia's system of arbitrazh courts, deals with intellectual property (the "IP") disputes. The Court of Intellectual Property Rights is a court of first instance in disputes over the establishment and validity of IP rights and challenges to regulatory and nonregulatory acts in the IP field. The decisions issued in such cases are effective immediately and can be appealed to the Presidium of the Court of Intellectual Property Rights for cassation review.

A panel of judges of the Court of Intellectual Property Rights, as the court of cassation instance, and not the court's presidium, reviews IP infringement cases.

Arbitrazh courts have four levels:

- trial courts (arbitrazh courts of Russia's constituent entities)
- courts of appeal (arbitrazh courts of appeal)
- courts of cassation appeal (arbitrazh courts of cassation and an economic panel of the Supreme Court)
- courts of supervisory appeal (the Presidium of the Supreme Court of the Russian Federation)

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

### 2.3.1 What are the peculiarities of procedures at the trial court?

The maximum state fee for filing a claim is limited to RUB 200,000. The trial period in Russian arbitrazh courts is relatively short. Proceedings start with a statement of claim. Under current regulations, a court must consider cases within three months of receiving a statement of claim. The judge may request an extension of up to six months for complex cases or cases involving a considerable number of parties. In practice, this period may be longer but regular cases are reviewed within these deadlines. A judgment is announced immediately after the final hearing.

A judgment from a trial court may be appealed within one month of being rendered; otherwise, it comes into force upon expiration of the month. The basis for an appeal can be mistakes either in establishing the factual circumstances of a case or in the application of the law.

### 2.3.2 What are the peculiarities of procedures at the court of appeal?

In most cases, an oral hearing takes place one to two months after filing an appeal with a court of appeal. Before the hearing, all parties to a case are allowed to provide the court with written responses to the appeal. The hearing in the court of appeal can be seen as a limited retrial of the case, and both the application of the law and the facts of the case can be reviewed by the court of appeal. The resolution of a court of appeal comes into force as soon as the full text of the decision is made.

### 2.3.3 What are the peculiarities of procedures at the court of cassation appeal?

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

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

Any party may appeal decisions of the court of cassation appeal and relevant lower courts with the panel of the Supreme Court within two months of the effective date of the last court act rendered in the case, which is subject to challenge.

Cassation review at the Supreme Court is a two-tier process. A Supreme Court judge, within two to three months, first resolves whether there are grounds for the review of the cassation appeal at a court session of the Supreme Court's panel. If transferred to the panel, the cassation appeal must be considered within two months of the ruling on such transfer. A refusal to transfer the case for such review may be challenged via the Supreme Court's chair or deputy chair. If the challenge is successful, the cassation appeal is transferred for review at a court session of the Supreme Court's panel.

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

### 2.3.4 What are the peculiarities of supervisory reviews at the Supreme Court?

A supervisory review is a two-tier process. Before the appeal is actually heard on its merits, a Supreme Court judge, within two to three months, resolves whether there are grounds for the review of the cassation appeal at a court session of the Presidium of the Supreme Court of the Russian Federation. If transferred to the presidium, the supervisory appeal must be considered within two months of the ruling on such transfer. A refusal to transfer the case for such review may be challenged via the Supreme Court's chair or deputy chair. If the challenge is successful, the supervisory appeal is transferred for review at a court session of the Presidium of the Supreme Court of the Russian Federation.

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

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

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

Certain formalities must be followed for a person to appear as a legal representative in court. The Arbitrazh Procedure Code (the "**APC**") provides that a general director or another person acting pursuant to a power of attorney may represent a legal entity. The general director of the company or another person duly authorized under the law and the constituent documents must sign the power of attorney and should bear the corporate seal (if there is one).

Moreover, a representative acting under a power of attorney may perform certain procedural actions only if such actions are expressly stated in their power of attorney. These actions include the right to sign a statement of claim, a statement of defense, and appeals, applications to amend the subject matter or grounds of a claim, applications for provisional measures, acceptance or withdrawal of claims, transfer of the case to arbitration, concluding an amicable agreement and agreement on facts, and delegation, as well as the right to sign applications for review based on new or newly discovered facts, to challenge court acts, and to receive awarded funds or other property.

With a few exceptions, legal representatives that represent parties in arbitrazh (state commercial) courts must have a higher legal education or a degree in law.

An arbitrazh court must serve a party by sending it first ruling on the case. The relevant information is also placed on the court's website.<sup>2</sup> Thereafter, the parties should obtain further information regarding the pending proceedings themselves.

Submissions are filed either on paper, with the personal signatures of authorized representatives, or electronically, via the federal information system "Unified portal of state and municipal services"<sup>3</sup> or via an

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<sup>2</sup> <http://rad.arbitr.ru/>; <http://kad.arbitr.ru/>.

<sup>3</sup> <https://www.gosuslugi.ru/>

information system identified by the Supreme Court, the Judicial Department of the Supreme Court or via electronic document exchange systems of the parties to the proceedings with the use of a unified system of interagency electronic document flow. Where the documents are submitted electronically, as above, they must be signed by a simple electronic signature in accordance with Russian laws and the procedure determined by the Supreme Court, or the Judicial Department of the Supreme Court, unless the APC provides for the use of an enhanced electronic signature. Applications for interim measures, applications for securing evidence, applications for securing property interests, for suspension of enforcement, etc., may only be filed by signing with an enhanced electronic signature.

The APC introduces the possibility of settlement proceedings through negotiations, mediation and court reconciliation. Court reconciliation is a completely new institution where former judges are involved in the settlement of disputes.

### 2.3.6 What are the peculiarities of summary proceedings?

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

The peculiar features of summary proceedings include the following:

- no preliminary or main hearing; the case is resolved based on written submissions and evidence only
- examination of the case files and all filings in the case is done electronically. An individual access code is sent to the parties together with a ruling on the initiation of the summary proceedings
- a fixed term for filing submissions and evidence is established by the court. The court does not consider any filings made after



such date unless a party can prove it was unable to comply with the term for reasons beyond its control

- no minutes are kept
- the postponement of proceedings is not possible

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

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

### 2.3.7 What are the peculiarities of writ proceedings?

Writ proceedings are a procedure where a judge, sitting alone, resolves cases based on the applications for the recovery of funds or movable property from the debtor, filed by the applicant and without summoning either the applicant or the debtor. The proceedings end with the issuance of a judicial writ, which is, at the same time, an executory document enforceable as per the procedure for the execution of court judgments. The writ is issued within 10 days of filing an application with the court.

A list of disputes subject to writ proceedings is provided in the law and includes small-size contractual claims (below RUB 500,000) that are substantiated by documents and admitted by the debtor; claims of the same amount that are based on notaries' protests of bills for nonpayment, non-acceptance and for failure to date acceptance; and claims for the recovery of mandatory payments and penalties below RUB 100,000.

### 2.3.8 When does a Russian arbitrazh (state commercial) court have personal jurisdiction over foreign respondents?

Russian arbitrazh courts have jurisdiction over foreign respondents if the following apply:

- the respondents or their assets reside or are located in the Russian Federation
- the management body or a branch or representative office of the foreign party is located in the Russian Federation
- the dispute arose out of a contract, the performance of which should have taken place, or actually took place, in the Russian Federation
- the claim arose out of damage caused to assets by an act or other event that occurred in the Russian Federation, or upon the onset of harm in the Russian Federation
- the dispute arose out of unjust enrichment that took place in the Russian Federation
- the claimant files an action for the protection of its business reputation and it is located in the Russian Federation
- the dispute arose out of a relationship connected with the circulation of securities that were issued in the Russian Federation
- the applicant, in a case to establish a fact of legal relevance, claims that such fact occurred in the Russian Federation
- the dispute arose out of a relationship connected with the state registration of names and other assets and the provision of services via the internet in the Russian Federation
- cases where the disputed legal relationship is closely linked with the Russian Federation

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

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

- disputes relating to state property, including privatization disputes and takeovers of private property for public needs
- disputes relating to title and other registered rights to real property located in the Russian Federation
- disputes connected with the registration in the Russian Federation of patents, trademarks, designs or utility models, or registration of other rights over the results of intellectual activity
- disputes involving the establishment, liquidation or registration of legal entities and self-employed entrepreneurs in the Russian Federation
- bankruptcy proceedings with respect to a Russian debtor
- corporate disputes with regard to a Russian legal entity
- disputes arising over administrative and other public law relationships with the Russian Federation or Russian state agencies
- disputes involving entities subject to restrictive measures or claims based on restrictive measures (under Article 248.1 of the APC) with certain carve-outs available for foreign-seated international arbitration and prorogation agreements

Based on the latter ground, which was introduced in June 2020, Russian parties now increasingly invoke the exclusive jurisdiction based on

restrictive measures despite the agreed foreign forum in their contracts. The provisions enable a party to disregard the agreed dispute resolution (DR) clause providing for a foreign court or foreign-seated arbitration where the said DR clause is unenforceable as a result of sanctions imposed against a party to the dispute, creating obstacles in its access to justice. According to recent court practice, the imposition of restrictive measures is enough for the state court to find there are obstacles in the access to justice and accept jurisdiction over the dispute. In one case known to us, the court found exclusive jurisdiction where no restrictive measures were imposed but the foreign forum was in an unfriendly state.

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

## 2.4 What are the procedural rules for administrative judicial proceedings?

Procedural rules regulating administrative judicial proceedings are contained in the Code of Administrative Proceedings (the "CAS"),<sup>4</sup> the APC<sup>5</sup> and the Code of Administrative Offenses.

### 2.4.1 What types of disputes are resolved under the CAS?

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

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<sup>4</sup> The CAS was adopted in 2015 and became effective on 15 September 2015 (except for certain provisions). Given its scope of application, it is intended to replace the provisions of the Civil Procedural Code on resolving cases out of public law relations, as well as those of certain special laws.

<sup>5</sup> Section III of the APC continues to be applicable to cases arising from public legal relations that are within the competence of arbitrazh (state commercial) courts.

- challenges to regulatory legal acts in part or in full
- challenges to acts of clarifying legislation of a legal nature
- challenges to decisions and actions (inaction) of governmental authorities, other state authorities, military authorities, municipal authorities, public officials and state and municipal officers
- the awarding of compensation for violation of conditions of detention, detention in a correctional facility;
- challenges to decisions and actions (inaction) of noncommercial organizations vested with certain state or public authority, including self-regulated organizations
- challenges to decisions and actions (inaction) of qualification boards of judges
- challenges to decisions and actions (inaction) of the Highest Qualifying Examination Commission and examination commissions of the Russian Federation constituent territories holding qualification exams for judges
- the defending of electoral rights and the rights of citizens of the Russian Federation to take part in a referendum
- awarding compensation for the violation of the right to judicial process within a reasonable term (within the competence of general jurisdiction courts) and the right to the execution of a general jurisdiction court act within a reasonable term
- the termination of activities of the mass media
- the restriction of access to an audiovisual service
- the establishing information in data communication networks, including internet, which is prohibited for dissemination in Russia
- the recognition of information materials to be extremist, etc.

## 2.4.2 What are the peculiarities of procedures under the CAS?

In addition to the joinder of parties in administrative proceedings, the CAS introduces the possibility of filing collective administrative claims to defend violated or challenged rights and the legal interests of a group of persons in administrative proceedings. Such actions are considered by a court if at least 20 persons have joined the claim at the time of its filing.

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

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

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

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

The general term for a challenge in appeal proceedings is one month. However, shortened terms of five to 10 days are stipulated for certain types of cases.<sup>6</sup>

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<sup>6</sup> Article 298 of the CAS.

An administrative statement of claim, an application, complaint and other documents may be submitted to the court on paper and electronically, including in the form of an electronic document signed by an electronic signature as regulated by Russian law. An administrative statement of claim filed electronically that contains a motion for provisional relief is to be signed by enhanced electronic signature.

### 2.4.3 What disputes under the Code of Administrative Offenses should be resolved by the courts?

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

Article 23.1 of the CAO stipulates the competence of courts in resolving administrative cases by listing the types of administrative offenses subject to the jurisdiction of courts (either federal general jurisdiction courts, magistrates' courts or arbitrazh (state commercial) courts) (Part 1 of Article 23.1) as well as those disputes that may be referred to courts pursuant to a decision from a competent body and/or official (Part 2 of Article 23.1).

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

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

Magistrates' courts resolve the majority of the remaining disputes falling under the jurisdiction of the courts.

The code specifies cases where disputes regarding administrative offenses are referred to district courts for resolution. First, these are particular administrative offenses that are expressly listed as falling under the jurisdiction of district courts, such as violation of the rules for public meetings, violation of the rules regarding cultural heritage objects, failure to perform an order from a supervisory authority responsible for

cultural heritage objects, some public safety and public order offenses, etc. Second, district courts resolve disputes where an administrative enquiry has been made, as well as administrative cases entailing certain administrative penalties, such as administrative deportation from the Russian Federation, administrative stay of activity and disqualification of state officials.

Please note that anti-corruption cases initiated based on Article 19.28 of the CAO ("Illegal remuneration on behalf of a legal entity") are heard by magistrates if the administrative offense has been committed in the Russian Federation. Anti-corruption cases with an administrative offense committed outside the Russian Federation, where such offense entails administrative liability under the CAO, are heard by district courts.

## 2.5 What is international arbitration?

As an alternative to state arbitrazh courts, foreign investors may refer disputes to a private arbitration tribunal, including ad hoc and institutional arbitration tribunals located either in the Russian Federation or abroad.

### 2.5.1 What disputes may be referred to international arbitration?

Non-arbitrable disputes are listed in Article 33(2) of the APC and they include the following types:

- bankruptcy disputes
- disputes on the refusal to register legal entities and individual entrepreneurs or the evasion of state registration
- disputes regarding the protection of IP rights involving organizations that exercise the management of copyright and related rights, as well as disputes within the jurisdiction of the Court of Intellectual Property Rights at first instance (involving the challenge of regulatory and nonregulatory legal acts, invalidation of patents, early termination of the legal protection of a trademark, identifying a patent holder, etc.)



- disputes arising out of administrative cases and other public law relations
- disputes on establishing legally significant facts
- disputes on compensation for the breach of rights to a timely adjudication
- class actions
- certain types of corporate disputes
- disputes regarding privatization of state/municipal property
- disputes arising out of public procurement<sup>7</sup>
- disputes arising out of relations connected with compensation for environmental harm
- other disputes when expressly stipulated by federal law

There are a number of conditions imposed on the arbitrability of corporate disputes in relation to a Russian legal entity.

Among the conditions is the requirement that such disputes are to be resolved in institutional arbitration proceedings by arbitral institutions that have obtained a license.<sup>8</sup>

In addition, for most types of arbitrable corporate disputes the seat of arbitration is in Russia, except for disputes listed in subparagraphs 2 and 6 of Article 225.1(1) of the APC,<sup>9</sup> such as disputes related to the ownership of shares, stakes in the charter (contributed) capital of business entities and partnerships, ownership of participation interests of cooperative members encumbering the same and exercising rights thereunder, disputes arising out of the sale and purchase agreements of shares and stakes in charter (contributed) capital of business entities and partnerships, etc.

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<sup>7</sup> Such disputes are non-arbitrable until a federal law takes effect that sets out the procedure for determining a permanent arbitral institution that is entitled to administer disputes out of such relations.

<sup>8</sup> See below in Section 2.5.2.

<sup>9</sup> See Article 225.1(3) of the APC.

For certain arbitrable corporate disputes, there is an additional requirement to apply special rules for the arbitration of such disputes.<sup>10</sup>

## 2.5.2 What legal rules apply to international arbitration in Russia?

International arbitration in Russia is governed by the Federal Law "On International Commercial Arbitration" (the "**ICA Law**"), enacted on 7 July 1993 and based on the provisions of the UNCITRAL Model Law. The parties may agree to submit disputes to international arbitration arising out of civil law relationships in the course of engaging in foreign trade and other types of international economic activities, if the following is situated outside Russia: (a) the place of business of at least one party; (b) any place where a substantial part of the obligations of the commercial relationship is to be performed; or (c) the place with which the subject matter of the dispute is most closely connected. The parties may also submit to international arbitration disputes that arise in connection with making foreign investments in the territory of the Russian Federation or Russian investments abroad.<sup>11</sup>

Certain provisions of the law on domestic arbitration in Russia, Federal Law No. 382-FZ "On Arbitration (Arbitration Proceedings) in the Russian Federation" dated 29 December 2015 (the "**Domestic Arbitration Law**"), also apply to international arbitration proceedings seated in Russia.<sup>12</sup>

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

Arbitral institutions must have a license to be able to administer arbitrations in Russia. The applicable requirements are established in

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<sup>10</sup> See Article 225.1(3) and Article 225.1(4) of the APC.

<sup>11</sup> Article 1(3) of the ICA Law.

<sup>12</sup> For example, provisions on licensing requirements for arbitral institutions and provisions regarding the arbitration of corporate disputes. See Article 1(2) of the Domestic Arbitration Law.

the Domestic Arbitration Law.<sup>13</sup> Foreign arbitral institutions have fewer requirements, namely, they need to prove they possess a reputation that is recognized worldwide.<sup>14</sup> As of March 2023, the list of foreign licensed arbitral institutions includes the Hong Kong International Arbitration Centre (HKIAC),<sup>15</sup> the Vienna International Arbitral Centre (VIAC),<sup>16</sup> the International Court of Arbitration (ICC)<sup>17</sup> and the Singapore International Arbitration Centre (SIAC).<sup>18</sup> These institutions are able to administer international arbitration proceedings seated in Russia.<sup>19</sup> According to amendments, there is an additional requirement to establish a branch of the foreign arbitral institution or its founding organization in case the institution intends to administer domestic arbitrations in Russia.<sup>20</sup>

As of March 2023,<sup>21</sup> the following Russian arbitral institutions are operational: the ICAC<sup>22</sup> and the MAC<sup>23</sup> at the Chamber of Commerce and Industry of the Russian Federation, the Arbitration Center at the Russian Union of Industrialists and Entrepreneurs,<sup>24</sup> the Russian Arbitration Center at the Russian Institute of Modern Arbitration,<sup>25</sup> the National Centre of Sports Arbitration at Sports Arbitration Chamber ANO,<sup>26</sup> the Arbitral institution at the All-Russian Industrial Association of Employers' "Russian Engineering Union,"<sup>27</sup> and the Arbitral Institution at the Autonomous Non-Commercial Organization "National Institute of Developing Arbitration in the fuel and energy sector."<sup>28</sup>

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<sup>13</sup> See Article 44(8) of the Domestic Arbitration Law. It also applies to international commercial arbitrations seated in Russia as per Article 1 of the Domestic Arbitration Law.

<sup>14</sup> See Article 44(12) of the Domestic Arbitration Law.

<sup>15</sup> <https://www.hkiac.org/>.

<sup>16</sup> <https://www.viac.eu/en/>.

<sup>17</sup> <https://iccwbo.org/dispute-resolution-services/icc-international-court-arbitration/>.

<sup>18</sup> <https://siac.org.sg/>.

<sup>19</sup> <https://minjust.gov.ru/ru/activity/directions/961/#section-materials>.

<sup>20</sup> See Article 44(12) as amended by Federal Law No. 531-FZ dated 27 December 2018.

<sup>21</sup> <https://minjust.gov.ru/ru/pages/deponirovannye-pravila-arbitrazha/>.

<sup>22</sup> International Commercial Arbitration Court (ICAC) at the Chamber of Commerce and Industry of the Russian Federation, <https://mkas.tpprf.ru/en/>.

<sup>23</sup> Maritime Arbitration Commission (MAC) at the Chamber of Commerce and Industry of the Russian Federation, <https://mac.tpprf.ru/en/>.

<sup>24</sup> <https://arbitration-rspp.ru/>.

<sup>25</sup> <https://centerarbitr.ru/en/main-page/>.

<sup>26</sup> <https://sportarbitrage.ru/>.

<sup>27</sup> <https://arbitr.soyuzmash.ru/>

<sup>28</sup> <https://www.arbitration-niratec.ru/>

According to changes made in November 2020 to the Russian Criminal Code, there is now a separate crime of commercial bribery in the context of arbitration proceedings<sup>29</sup> providing for the transfer to/receipt of a commercial bribe by an arbitrator for actions (inaction) within their authority or where they, due to such authority, can facilitate the said actions. Liability occurs in cases where the bribe was transferred/received in Russia irrespective of the seat of arbitration. For bribes transferred/received abroad, liability can occur where such actions resulted in infringement of the rights of a Russian legal entity or a Russian citizen.

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

The state bailiff service enforces judgments from Russian courts of general jurisdiction and Russian arbitrazh courts.

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

Russia is a party to the Kyiv Treaty on the Procedure for Resolving Disputes Relating to Business Activities (the "**Kyiv Treaty**") and the Convention on Legal Assistance and Legal Relations in Civil, Criminal and Family Matters (the "**Minsk Convention**"). According to the Kyiv Treaty, judgments rendered by state courts of certain CIS nations are enforceable in the Russian Federation. The Minsk Convention provides for recognition and enforcement of judicial decisions in civil and family disputes, including settlement agreements confirmed by the court and notarial acts regarding financial obligations, as well as criminal court's judgments for compensation of damages. The Russian Federation is also a party to a number of bilateral agreements containing provisions on the recognition and enforcement of court judgments. Based on the above agreements, Russia has arrangements for enforcement with the following countries: Albania, Algeria, Argentina, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Czech Republic, Croatia, Cyprus, Estonia, Greece, Hungary, China, Cuba, Egypt, Georgia, India, Indonesia, Israel, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Malaysia, Mexico, Moldova, Monaco, Montenegro, Myanmar, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Switzerland, Taiwan, Tajikistan, Thailand, Turkey, Ukraine, United Kingdom, United States, Uzbekistan, Vietnam, and Yemen.

Iran Iraq, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Montenegro, North Korea, North Macedonia, Poland, Romania, Slovakia, Slovenia Spain, Serbia, Tajikistan, Tunisia, Turkmenistan, Ukraine, Uzbekistan, Vietnam, Yemen. Arbitral awards rendered by arbitration tribunals located in the Russian Federation or abroad are executed by the bailiff service after such awards are recognized and ordered to be enforced by Russian courts. As a rule, Russian courts may not review any foreign arbitral award on its merits. The grounds for refusing to recognize and enforce foreign arbitral awards are generally the same as those set forth in the New York Convention.

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

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

The Federal Law "On an Alternative Procedure for Dispute Resolution with the Participation of an Intermediary" dated 27 July 2010 regulates dispute resolution procedures involving the assistance of a mediator on the basis of the voluntary consent of the parties.

The mediation procedure may be applied to disputes arising out of civil law, administrative and other public legal relations, including those in connection with commercial and entrepreneurial activities, labor disputes (except for collective employment disputes) and family law disputes. However, mediation is not possible if they affect the public interest or the rights and legitimate interests of third parties that are not participating in the mediation procedure. From the start of mediation, the limitation period is suspended.

When the parties have concluded a mediation agreement following a mediation procedure after the dispute has been referred to a state court or arbitration, the court or arbitration tribunal may approve the mediation agreement as a decision on agreed terms.

A mediation agreement concluded by the parties following a mediation procedure that was conducted without referring the dispute to a court or an arbitration court, if notarized, can be the basis for enforcement.

Mediators and other intermediaries assisting the parties in settling the dispute may not be questioned as witnesses in state courts on matters that came to their knowledge in the course of performing their duties.

## 2.8 What changes to the Russian judicial system are anticipated in the near future?

A draft law with changes to simplified dispute resolution procedures, such as summary proceedings and writ proceedings, is pending.<sup>30</sup> The purpose of the draft law is to broaden the scope of disputes subject to simplified procedures, namely by increasing the monetary thresholds for submitting the dispute to summary proceedings and writ proceedings.

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<sup>30</sup> Draft Law No. 237135-8 "On amendments to the Arbitrazh Procedure Code of the Russian Federation," available at: <https://sozd.duma.gov.ru/bill/237135-8>.

### 3. Promoting Foreign Investment in Russia

#### 3.1 What is the legal framework for foreign investment?

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

Foreign investments in Russia are regulated by the Law "On Foreign Investments in the Russian Federation" (the "**Foreign Investments Law**"),<sup>31</sup> which guarantees foreign investors the right to invest and to receive revenues and profits from such investments, and sets forth the general terms for foreign investors' business activities.

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

The Foreign Investments Law permits foreign investment in most sectors of the Russian economy: government securities, stocks and bonds, direct investment in new businesses, the acquisition of existing Russian-owned enterprises, joint ventures, etc. Importantly, the Foreign Investments Law does not apply to the investment of foreign capital in banks and other credit organizations, insurance companies, mass media outlets, broadcasting organizations and air carriers, as well as noncommercial organizations. Foreign investments in these entities are subject to specific Russian legislation.

Certain restrictions on foreign investments are imposed by the Law "On the Procedures for Foreign Investments in Companies of Strategic Significance for National Defense and Security" (the "**Strategic Companies Law**").<sup>32</sup> The Strategic Companies Law is designed to regulate the acquisition of control over Russian strategic companies by foreign investors or by groups that include a foreign investor.

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<sup>31</sup> Federal Law No. 160-FZ dated 9 July 1999.

<sup>32</sup> Federal Law No. 57-FZ dated 29 April 2008.

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

In March 2022, the Russian Government introduced a list of "unfriendly" jurisdictions (i.e., countries and territories that have imposed sanctions against the Russian Federation, Russian legal entities and individuals<sup>33</sup> in connection with events in Ukraine (the "**List of Unfriendly Jurisdictions**"). The List of Unfriendly Jurisdictions includes, among others, the USA, the EU countries, the UK, Canada, Japan, etc. Jurisdictions not included in the List of Unfriendly Jurisdictions are considered "friendly."

The regulatory regime that applies to foreign investments from "friendly" jurisdictions is described in more detail in other paragraphs in this Section (the "**General Regulatory Regime**").

In addition to the General Regulatory Regime, transactions (actions) of persons from "unfriendly" jurisdictions are subject to the following special limitations and restrictions imposed by Decrees of the President of the Russian Federation:

- incorporation by a non-Russian entity or individual from an "unfriendly" jurisdiction of a JSC or an LLC requires prior approval by the Russian Government Commission on Control over Foreign Investments (the "**Government Commission**")<sup>34</sup>
- any transactions (operations) relating to the establishment, change or termination of ownership rights, use and/or disposal, in each case whether directly or indirectly, of the participation interests in an LLC or any other controlling rights with respect to an LLC between (i) a non-Russian entity or individual from "unfriendly" jurisdictions (or any entity controlled by such non-Russian entity or individual) and a Russian resident; or (ii) two non-Russian entities or individuals from "unfriendly" jurisdictions (or entities controlled by them); or (iii) a non-Russian entity or individual from "unfriendly" jurisdictions (or any entity controlled

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<sup>33</sup> Resolution of the Government of the Russian Federation No. 430-r dated 5 March 2022 "On Approval of the List of Foreign States and Territories that Have Undertaken Unfriendly Actions against the Russian Federation, Russian Legal Entities and Individuals."

<sup>34</sup> Decrees of the Russian President No. 618 dated 8 September 2022 and No. 737 dated 15 October 2022.



by such non-Russian entity or individual) and a non-Russian entity or individual from a "friendly" jurisdiction, requires prior approval by the Government Commission<sup>35</sup>

- transactions (operations) relating to the transfer of title to *securities* and *real estate* between Russian residents and a non-Russian entity or individual connected with an "unfriendly" jurisdiction or persons under its control, requires prior approval by the Government Commission<sup>36</sup>
- transactions (operations) relating to the establishment, change or termination of ownership rights, use and/or disposal, in each case whether directly or indirectly, of shares in a JSC or any other controlling rights with respect to a JSC between (i) a non-Russian entity or individual from "unfriendly" jurisdictions; or (ii) a non-Russian entity or individual from an "unfriendly" jurisdiction and a non-Russian entity or individual from a "friendly" jurisdiction, requires prior approval by the Government Commission<sup>37</sup>
- if the amount of distributable profits/dividends payable by an LLC or JSC to its foreign shareholder connected with an "unfriendly" jurisdiction exceeds RUB 10,000,000 per month or an equivalent amount in any foreign currency calculated at the Russian Central Bank official exchange rate on the first day of the respective month, such payment shall be made only in Russian rubles to a special S-type account opened with a Russian authorized bank. Funds from such S-type account can be used only for a limited number of operations and it is not possible to extract them from Russia. Payment of distributable profits/dividends to a different account requires prior approval of the Russian Ministry of Finance.<sup>38</sup>

Please see also Sections 14 ("Intellectual Property") and 10 ("Property Rights") for further details relating to additional limitations and

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<sup>35</sup> Decree of the Russian President No. 618 dated 8 September 2022.

<sup>36</sup> Decree of the Russian President No. 95 dated 5 March 2022.

<sup>37</sup> Decree of the Russian President No. 737 dated 15 October 2022.

<sup>38</sup> Decrees of the Russian President No. 95 dated 5 March 2022 and No. 254 dated 4 May 2022.

restrictions on the transfer of real estate and royalty payments involving persons from "unfriendly" jurisdictions.

### 3.2 What is the legal definition of a foreign investor?

The Foreign Investments Law defines foreign investors as:

- foreign entities not controlled by Russian entities and individuals
- foreign individuals unless they are also Russian citizens
- foreign states and international organizations, as well as entities under their control

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

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

### 3.3 Does Russian law provide for a stabilization clause?

Russian law provides for stabilization clauses under the Foreign Investments Law and other regulatory regimes.

#### 3.3.1 Stabilization clause under the Foreign Investments Law

The Foreign Investments Law sets forth a stabilization clause (the "**Grandfather Clause**"). The Grandfather Clause prohibits increasing the rates of certain federal taxes until initial investments have been recouped (up to a maximum of seven years, unless this period is extended by the Russian Government). The Grandfather Clause also protects from applying prohibitions or limitations related to foreign investments during the same period if these prohibitions or limitations are introduced after the first investments to the project are made.

This clause applies to: (i) foreign investors that are implementing priority investment projects; (ii) Russian companies with more than 25% foreign equity ownership; and (iii) Russian companies with foreign participation

that are implementing priority investment projects, regardless of the percentage of foreign participation in the company.

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

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

### 3.3.2 Stabilization clauses under other regulatory regimes

Investors making certain capital investments, as well as parties to special investment contracts (the "**SPIC**") and investment protection and promotion agreements (the "**SZPK**"),<sup>39</sup> or residents of special economic zones (the "**SEZ**"), may enjoy regulatory stabilization in respect of their investment projects.

The basic regulatory stabilization issues relating to such regimes are outlined below. For more details concerning SZPK, SPIC and SEZ please refer to Section 3.4 of this guide.

#### 3.3.2.1 Capital investment activities

The Law "On Investment Activity in the Russian Federation in the Form of Capital Investments"<sup>40</sup> provides for a stabilization clause similar to the Grandfather Clause under the Foreign Investments Law.

Investors may enjoy this stabilization clause in priority investment projects involving capital investments in Russia, provided that the project is included in a list of projects approved by the Russian Government.

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<sup>39</sup> In Russian: соглашения о защите и поощрении капиталовложений (СЗПК).

<sup>40</sup> Federal Law No. 39-FZ dated 25 February 1999.

### 3.3.2.2 SZPK

SZPK may include a stabilization clause ranging from six to twenty years depending on the amount of investments and the industries in which a given project is implemented. The term may be extended up to six years subject to additional investment commitments.

The stabilization clause protects from negative regulatory changes that may affect the project, including:

- changes in rates and payment terms of taxes and similar charges, as well as the introduction of new taxes and similar charges
- increase in import customs duties effective 1 January 2022
- increase in the negative environmental impact charge and other environmental charges
- changes in the rules on granting and using land plots, as well as implementation of urban development
- changes to certain administrative procedures

### 3.3.2.3 SPIC

SPIC may provide for a general stabilization clause with regard to protection from laws and regulations limiting or prohibiting the implementation of rights granted to an investor under SPIC.

SPIC may also provide for a tax stabilization clause with regard to amendments to a tax law increasing or abolishing reduced tax rates established for investors under SPIC. A tax stabilization clause under SPIC may apply to taxation of corporate profits, property, land tax and transport.

### 3.3.2.4 SEZ

The Federal Law "On Special Economic Zones"<sup>41</sup> establishes a tax stabilization clause for SEZ residents during the validity period of their

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<sup>41</sup> Federal Law No. 116-FZ dated 22 July 2005.

agreements with the SEZ administration. Such clause does not apply to taxes payable for excised goods such as alcohol, gasoline, tobacco, cars and others.

### 3.4 What are the main incentives for attracting foreign investment in Russia?

In recent years, the Russian Government has been actively promoting investments in certain industries with a view to greater localization, development and deployment of innovations, broader economic diversification, and accelerating the development of specific territories.

To do so, federal, regional and municipal authorities establish territories with a special status, execute various investment promotion and public-private partnership (the "PPP") agreements, offer tax benefits and subsidies, grant preferential access to public procurement and run various government-sponsored programs.

Generally, such incentives apply irrespective of whether the investments are of domestic or foreign origin. However, most of them require the establishment of a Russian legal entity.

#### 3.4.1 Territories with special status

There are a number of special zones (territories) established within Russia that provide their residents with a variety of incentives. Depending on the particular territory, such incentives may include tax and customs benefits, simplified procedures for leasing state or municipal land and hiring foreign personnel, reduced administrative barriers, access to certain unique infrastructure, etc. The most noteworthy types of such territories include:

- **the Skolkovo Innovation Center**, a flagship government project aimed at promoting research and development activities in the fields of energy efficiency, information technologies, biomedicine, cutting-edge manufacturing, and nuclear and space technologies
- **the Moscow International Medical Cluster** (the "MIMC"), a medical, scientific and educational center designed to develop

advanced healthcare in Russia, MIMC welcomes the world's best clinics to open branches and engage foreign specialists

- **Innovation Science and Technology Centers (also referred to as technological valleys)**, such as Vorobyovy Gory (Moscow), Mendeleev Valley (Moscow), Quantum Valley (Nizhniy Novgorod), Nuclear and Medical Technologies Park (Kaluga Oblast), Intellectual Electronics — Valdai (Valdai, Novgorod Oblast), Composite Valley (Tula Oblast), Russkiy (Vladivostok) and Sirius (Sochi)
- **SEZs** designed to attract investments into priority sectors of the Russian economy; there are currently 50 SEZs established across Russia of which:<sup>42</sup>
  - 31 specialize in **industrial manufacturing** — such as Alabuga in Tatarstan, Titanium Valley in Sverdlovsk Oblast and Krasnoyarsk Technological Valley
  - seven specialize in **technology development** — such as Innopolis in Tatarstan, Technopolis Moscow and St. Petersburg
  - 10 specialize in **recreation** — such as Elbrus, Arkhyz and several others in North Caucasus, Gate of Baikal in Irkutsk Oblast and Turquoise Katun in Altai Krai
  - two specialize in **port** infrastructure — namely, Olya in Astrakhan Oblast (near the Caspian Sea) and one in Ulyanovsk Oblast
- **territories with unique status** (generally comparable to SEZs) such as the free port of Vladivostok, special zones in Kaliningrad and Magadan Oblasts, and major territories of the Arctic Zone of the Russian Federation (AZRF)
- **territories of advanced social and economic development** (the "ADTs") aimed at incentivizing investment into certain (often

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<sup>42</sup> According to Russian Ministry of Economic Development's website <[https://www.economy.gov.ru/material/directions/regionalnoe\\_razvitie/instrumenty\\_razvitya\\_territoriy/osoby\\_e\\_ekonomicheskie\\_zony/](https://www.economy.gov.ru/material/directions/regionalnoe_razvitie/instrumenty_razvitya_territoriy/osoby_e_ekonomicheskie_zony/)> (accessed on 16 March 2023).

depressed) regions. More than 100 ADTs have been established across Russia, most of which are located in the so-called mono-cities (one-factory towns) and in Russia's Far East<sup>43</sup>

On 9 March 2023 the Russian Government published the Draft Federal Law on several international ADTs (the "**IADTs**").<sup>44</sup> The core objective of the IADTs is to incentivize foreign investments into the manufacturing of high-tech or other products with high added value. The list of such products will be determined by the Russian Government. The scope of IADTs incentives are planned to be more generous as compared to other ADTs. Several regions of Russia's Far East announced their intent to establish such IADTs.

In addition, the Russian City Planning Code entitles investors to enter into an agreement with state or municipal authorities for integrated territorial development (the "**IDT**"). Pursuant to such agreement, investors undertake to carry out construction and territorial development activities in exchange for simplified land use-related administrative procedures. IDT projects may involve the construction of new buildings and infrastructure facilities in unbuilt areas, or the renovation of old buildings and infrastructure. By way of example, the Moscow authorities initiated several such projects aiming to renovate more than 130 locations with a total of almost 2,000 hectares, which is expected to mobilize about RUB seven trillion in investments.<sup>45</sup>

### 3.4.2 Investment agreements with state and municipal authorities

Russian law allows investors to execute various types of investment agreements with federal, regional and municipal authorities. Such agreements may entitle investors to regulatory regime stabilization (as detailed in Section 3.3 above), tax benefits, subsidies (grants), preferential access to state or municipal land, public procurement and some other incentives.

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<sup>43</sup> According to Russian Ministry of Economic Development's website <[https://www.economy.gov.ru/material/directions/regionalnoe\\_razvitie/instrumenty\\_razvitiya\\_territoriy/tor/](https://www.economy.gov.ru/material/directions/regionalnoe_razvitie/instrumenty_razvitiya_territoriy/tor/)> (accessed on 16 March 2023).

<sup>44</sup> Federal portal of regulations drafts <<https://regulation.gov.ru/projects/List/AdvancedSearch#npa=136561>>.

<sup>45</sup> According to Industrial Quarters website of the Moscow government <<https://iquarters.ru/>> (accessed on 16 March 2023).

### 3.4.2.1 SZPK

Investors may enter into SZPKs with the Russian Federation, its constituent entities and municipalities to ensure regulatory stability for the implementation of major investment projects (stabilization clause), obtain additional incentives, and resolve SZPK related disputes with authorities under arbitration rules.

The types of activities envisaged by SZPK projects may include construction, modernization and subsequent operation of industrial facilities, intellectual property development and use, and environmental efficiency improvement.

SZPKs are relevant for various industries, with certain exceptions such as gambling, tobacco, oil and gas extraction (except for liquefied natural gas), retail, construction or modernization of business centers and shopping malls (except for terminals), and household and finance.

The SZPK law provides a number of eligibility criteria for projects in healthcare, the digital economy, airports, public transportation, environmental protection, agriculture, tourism, logistics centers, education, culture and other fields. For instance, a digital economy project must result in construction or upgrade of IT infrastructure or contribute to objectives of the national project Digital Economy (see item (g) below).

Minimum investment thresholds vary depending on the type (industry sector) of the project:

- **RUB 10 billion** — most of the industries
- **RUB 4.5 billion** — manufacturing, airports, public transportation and logistics centers
- **RUB 1.5 billion** — digital economy, environment, agriculture, tourism, food and processing industries
- **RUB 750 million** — healthcare, education, culture and sports, residential buildings construction in accordance with the IDT
- **RUB 200 million** — regional projects



Both equity and debt finance may be accounted for the above investment thresholds.

SZPK participants may be entitled to tax benefits (such as investment tax deduction)<sup>46</sup> and/or a subsidy (grant) to reimburse 20 to 100%<sup>47</sup> of certain project-related expenses such as those incurred:

- to build or upgrade maintenance or auxiliary infrastructure
- to repay interest under loans or bonds used to finance such auxiliary infrastructure-related activities, as well as to finance the demolition, construction or upgrade of certain facilities or the development of intellectual property
- to conduct R&D resulting in the creation of new technology
- to dismantle facilities in military towns (as part of residential construction)

In 2020-2021, 36 SZPKs were executed with total envisaged investments of RUB 1.28 trillion. Since then, Russia has suspended the SZPK mechanism until September 2022. From September 2022 to March 2023, six SZPKs were executed with total envisaged investments of RUB 408 billion.<sup>48</sup>

The authorities consider the SZPK as the core instrument to incentivize major investments. They continue to fine-tune it<sup>49</sup>, including in terms of its operation in conjunction with other regulatory incentives.

### 3.4.2.2 SPIC

Under a SPIC, a private investor undertakes to develop and implement the production of high-tech industrial products, while the Russian federal and regional governments, as well as municipal authorities, acting jointly, assume the obligation to provide the private investor with certain benefits and incentives (e.g., a stable and preferential tax regime) to

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<sup>46</sup> In June 2022, the Russia Tax Code amended with Federal Laws No. 225 and No. 226.

<sup>47</sup> Depending on the particular type of expense.

<sup>48</sup> Kommersant, Investments fail to keep up with agreements (13 March 2023) <<https://www.kommersant.ru/doc/5873576?from=main>>.

<sup>49</sup> For instance, relaunched SZPK regulation entitles investors to use debt finance for SZPK activities.

facilitate the implementation of the investment project. SPIC is concluded for a maximum term of 15 years (if the total project investment amount does not exceed RUB 50 billion or 20 years (if the threshold is reached)).

SPIC legislation was significantly revised in 2019. New SPICs are commonly known as "SPIC 2.0." The key change under the SPIC 2.0 regime is the requirement to introduce and implement **modern technologies** under the investment project. Modern technologies are to be used as a basis for the mass production of industrial products that are globally competitive. The Russian Government approves the list of such modern technologies. Currently, several companies have signed contracts under the SPIC 2.0 regime.

Prior to 2019, several notable contracts were executed under the SPIC 1.0 regime in industries such as pharmaceuticals, automotive, chemicals, healthcare, the manufacture of renewable energy equipment and other machinery, and electronics.

#### 3.4.2.3 Regional investment projects (the "**RIPs**")

Another example of investment incentives are RIPs. Participants in RIPs undertake to invest in the production of goods within a certain territory and, in turn, are granted corporate profits tax benefits. Initially, RIPs were designed to promote investments in the economies of the Russian Far East and Eastern Siberia. Currently, investors may implement RIPs in any Russian region that has introduced this regime in its territory.

#### 3.4.2.4 Priority investment projects (the "**PIPs**")

Both federal and regional authorities use the mechanism of PIPs to support certain types of projects.

At the federal level, the Russian Government has approved several lists of PIPs such as those in forestry and projects in the Russian Far East region. Participants in federal PIPs may be entitled to a stabilization clause in respect of tax or other payments, as well as access to public funds.

Russian regions may also award PIP status to significant investment projects, which are then included in regional PIP lists. The scope of

incentives under regional PIPs depends on regional legislation. Generally, such incentives may include regional tax benefits, subsidies and simplified procedures to lease state or municipal land.

### 3.4.2.5 Concessions and PPP

In order to attract private investments into public infrastructure and other areas such as IT, Russian authorities are making significant efforts to develop PPP mechanisms.

PPP implies the cooperation of a public and private partner, based on a coalition of resources and risk sharing. The goal of the public partner is to attract private investment to the economy, ensure availability of goods, work and services, improve their quality, and develop socially critical infrastructure. The private partner gets to benefit from operating the PPP facility.

Until 2015, the only PPP mechanism available at the federal level was the concession agreement. The concession model implies that ownership title to a facility remains with the public partner. This drawback limited the possibility for implementing internationally recognized PPP models and hindered the expansion of concession agreements in Russia, forcing Russian regions to develop their own more sophisticated PPP legislation.

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

Nevertheless, concession agreements are still commonly used in many industries such as utilities, waste and power.

### 3.4.3 Tax incentives and subsidies

Russian law permits a number of tax incentives either for specific industries, such as information technology, or types of activities (investments), such as capital expenditures or R&D. For further details on the Russian tax system, please refer to Section 6 of this guide.

Russian-established entities operating in some industries may apply for certain types of subsidies or grants. By way of example, various authorities may subsidize:

- automakers with localized production
- major industrials implementing so-called best available technologies (the "**BAT**") and issuing green bonds to finance BAT implementation<sup>50</sup>
- artificial intelligence projects
- manufacturers of priority industrial or agricultural products (for instance, hydrogen or ammonia)<sup>51</sup> through low-interest loans

### 3.4.4 Regulatory sandboxes

In July 2020, Russia adopted the law on experimental legal regimes for digital innovations (regulatory sandboxes (the "**ELR**")). The law came into effect in January 2021.

ELR aims to incentivize companies to develop, test or implement "digital innovation" in fields such as:

- healthcare and pharmaceuticals, including telemedicine, technologies for collection and processing health-related data
- transportation, including unmanned vehicles and aircraft
- industrial manufacturing
- agriculture
- construction
- financial markets
- e-commerce

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<sup>50</sup> Please see Section [20.2.2.4] for further details on BAT and for details on green bonds.

<sup>51</sup> Please see the List of priority products for import support purposes adopted by the Decree of the Russian Ministry of the Trade and Industry No. 3041 dated 21 July 2022.

- state and municipal services

Companies awarded the ELR status may be exempted from certain laws and regulations (such as licensing requirements) that would have been applicable to given activities in the absence of ELR status.

Specific regulatory exemptions are established in accordance with a specific ELR program. Such programs are to be approved by the Russian Government or the Bank of Russia (in respect of financial market-related activities). The default term of an ELR is three years, and may be extended.

### 3.4.5 Preferential public procurement

According to some estimates,<sup>52</sup> just in the first half of 2022, state and municipal procurement (including state corporations and similar regulated entities) in Russia accounted for about RUB five trillion which is 10% more than the same period in the previous year. Access to public procurement is of vital importance for many industries.

#### 3.4.5.1 Benefits for Russian-made goods

Default provisions of Russian law rules restrict public procurement of certain types of foreign goods such as various types of software, light or machinery tools and industry goods.

When both foreign and Russian goods are proposed for public procurement, a 15% price handicap applies to the goods of Russian origin.

From 2021, Russian authorities and state-controlled entities also have to ensure a minimum share of procured goods with Russian origin, with respect to certain types of goods, such as computer hardware.

Producers of goods with the "made in Russia" status enjoy preferential access to public procurement. To obtain such status, they have to demonstrate compliance with certain localization levels for a given type of goods.

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<sup>52</sup> Civil Control of Public Procurement. The volume of public procurement in the first half of the year increased by 10%, to five trillion rubles (2 August 2022) <<https://gkgz.ru/obem-goszakupok-v-i-polugodii-vyros-na-10-do-5-trln-rublej/>>.

Manufacturers that are parties to a SPIC may enjoy a simplified procedure to confirm the localization level.

### 3.4.5.2 Offset agreements

Public procurement law entitles regional authorities to execute reciprocal investment agreements (offset agreements) with investors that are Russian legal entities.

Offset agreements provide for an investor's obligations to build or renovate certain production facilities or to set up production of certain goods (offset goods) on the territory of the region executing the agreement. In exchange for the investments, regional authorities register the investor as a sole vendor of the offset goods. Such status entitles the public buyers within the respective region to purchase the offset goods without tendering, as opposed to default public procurement procedures. Effective from 1 July 2022, offset agreements will be available for execution in respect of services.

The respective investments should be no less than RUB one billion. The term of such agreements can be up to 10 years.

The city of Moscow executed six offset agreements envisaging RUB 13.1 billion of investments in the manufacturing of medical supplies, pharmaceutical goods and certain food products.<sup>53</sup> In addition, Moscow approved 11 contracts for more than 9.8 billion of investments to be executed in 2023.<sup>54</sup>

## 3.4.6 Special administrative areas (the "SARs")

### 3.4.6.1 SAR concept and objectives

In December 2018, SARs were established in Kaliningrad Oblast and Primorsky Krai.

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<sup>53</sup> According to the Moscow mayor's official website <https://www.mos.ru/news/item/93672073/> and [https://www.mos.ru/news/item/119736073/?utm\\_source=search&utm\\_term=serp](https://www.mos.ru/news/item/119736073/?utm_source=search&utm_term=serp).

<sup>54</sup> According to the Moscow mayor's official website <https://www.mos.ru/news/item/117654073/>.

SAR legislation introduced the concept of redomiciliation, i.e., the relocation of foreign companies to Russia. Residents of a SAR (redomiciled foreign companies) receive the status of international companies.

Conceptually, SARs aim to incentivize companies to redomicile to Russia while maintaining some of the benefits traditionally offered in offshore jurisdictions.

Attention to SARs have materially grown in 2020-2021 in view of the Russian Government's assertive renegotiation or termination of double tax treaties (the "DTT") with Cyprus, Luxembourg, Malta, the Netherlands and possibly several other jurisdictions, such as Switzerland, Singapore and Hong Kong. In March 2023 Russian Ministries of Finance and Foreign Affairs proposed to withdraw from DTTs with the "unfriendly states."<sup>55</sup>

In 2022-2023 the number of companies with Russian origin moving to SARs have drastically increased following massive sanctions against Russian businesses.

### 3.4.6.2 International companies

In order to apply for registration in a SAR as an international company, a foreign company must meet the following requirements:

- be a commercial corporate holding entity that carries out its activities in several states, including Russia (whether on its own account, or through directly or indirectly controlled entities or branches/representative offices)
- be registered in a member state or observer state of FATF,<sup>56</sup> Moneyval,<sup>57</sup> EAG,<sup>58</sup> APG,<sup>59</sup> ESAAMLG,<sup>60</sup> GAFILAD,<sup>61</sup> MENAFATF,<sup>62</sup> CFATF,<sup>63</sup> GIABA<sup>64</sup> or GABAC<sup>65</sup>

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<sup>55</sup> States that joined sanctions targeting Russian individuals, companies and state. List of such states is determined by the Russian Government.

<sup>56</sup> Financial Action Task Force, global money laundering and terrorist financing watchdog.

<sup>57</sup> Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism of the Council of Europe.

<sup>58</sup> Eurasian Group on Combating Money Laundering and Financing of Terrorism.

<sup>59</sup> Asia/Pacific Group on Money Laundering.

- be entitled to domicile under its personal law and constituent documents and apply to the management company of a SAR to be registered as a participant of a SAR
- undertake to invest in Russia at least RUB 50 million within one year following registration in a SAR

International companies enjoy tax benefits and a special currency regime. The authorities are considering fine-tuning the SAR regime, including in terms of tax benefits.

### 3.4.6.3 International funds

In addition to international companies, the concept of international funds was introduced in November 2019 to provide SAR benefits to nonprofit entities. The rationale behind this change was that important sectors of the Russian economy, such as healthcare or education, are often financed through nonprofit organizations.

An international fund is defined as a noncorporate organization established by a participant(s) of a SAR for managerial, social and other nonprofit functions. The founder of an international fund may not be an individual, credit institution, noncredit financial institution, payment system operator or a payment infrastructure service operator.

An international fund may be registered in a SAR either by way of redomiciliation of a foreign entity or incorporation of a new entity in a SAR, and is subject to the following requirements:

- the fund (in case of redomiciliation) or the founders (in case of incorporation) will apply to the management company of a SAR to be registered as a participant of a SAR
- the book value of the assets of the founder(s) of the international fund will be at least RUB 50 million

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<sup>60</sup> Eastern and Southern Africa Anti-Money Laundering Group.

<sup>61</sup> Financial Action Task Force of Latin America.

<sup>62</sup> Middle East and North Africa Financial Action Task Force.

<sup>63</sup> Caribbean Financial Action Task Force.

<sup>64</sup> Inter-Governmental Action Group against Money Laundering in West Africa.

<sup>65</sup> Task Force on Money Laundering in Central Africa.



- in case of redomiciliation, the foreign entity will be registered in a member state or observer state of FATF, Moneyval, EAG, APG, ESAAMLG, GAFILAD, MENAFATF, CFATF, GIABA or GABAC
- the goals of the international fund will not be at variance with the public order of the Russian Federation

### 3.4.7 Governmental programs highlighting Russia's strategic development goals that may be relevant for investors

Russian authorities run a number of so-called national projects and other strategic initiatives that indicate governmental priorities and aim to open the door for investments in certain areas.

#### 3.4.7.1 National projects 2024 and national development objectives 2030

In May 2018, the Russian President signed the Decree on National Goals and Strategic Objectives of Russian Development until 2024 (the so-called May Decree). Pursuant to the May Decree, the Russian Government developed 13 national projects.

Each national project supports several specific federal programs that are effectively road maps to achieving specific development targets in fields such as:<sup>66</sup>

- **safe and high-quality roads** — aimed at major construction and renovation of roads, deployment of advanced road technologies and renovation of the passenger vehicles fleet
- **environment** — aimed at developing waste utilization infrastructure, significant industrial emission reductions and various water and forestry related activities
- **integrated backbone infrastructure modernization and expansion** — aimed at building and renovating railways,

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<sup>66</sup> Based on the national projects information gateway operated by Tass <https://futureussia.gov.ru/>.

airports, sea ports, the Northern Sea Route, inland waterways and the power sector

- **digital economy** — aimed at advancing digitalization across multiple industries, and developing data centers, communication networks and cyber security
- **healthcare** — aimed at renovating medical facilities; supporting special treatments for cancer, cardiovascular and other diseases; and setting up national medical R&D centers and smart healthcare
- **housing and urban habitat** — aimed at materially expanding housing construction and various urban improvements
- **international cooperation and export** — aimed at boosting industrial and agricultural export
- **tourism and hospitality management** — aimed at boosting tourism infrastructure, internal tourism and export of tourism services
- **other socially focused areas** — demography, education, science, small and medium entrepreneurship and culture (art)

In July 2020, the President of the Russian Federation signed the Decree "On National Development Goals until 2030" which aims to reshape the national projects and to integrate them into more ambitious goals through 2030.

### 3.4.7.2 Governmental initiatives 2030

In October 2021, the Russian Government approved 42 initiatives of Russia's development through 2030, grouped into six core areas: Technological Breakthrough, Digital Transformation, Construction, Environment, Government for Citizens and Social Affairs.

By way of example, the Technological Breakthrough area kicked off several federal programs including Clean Power (hydrogen and renewables), Electric and Hydrogen Vehicle, LNG Markets Breakthrough and Unmanned Logistics Corridors.

The Environment area kicked off the programs Circular Economy, Low-Carbon Development Policy and "Major Clean-up."

### 3.4.7.3 National technological initiative 2035 (the "NTI")

NTI is a program run by the Agency of Strategic Initiatives aiming to procure Russia's leadership in disruptive technologies by 2035, including in power, fintech, autonomous transport, food, health and neuro tech. The NTI Foundation supports the project through research grants and subsidies on implementation costs.

### 3.4.7.4 Latest developments.

In 2021, the Russian Government started developing an integrated plan to adapt the Russian economy to the transition taking place in global energy. For further details on Russia's broader climate, environmental and cleantech policy, please see Section 20 of this guide.

In 2022, the authorities kicked off multiple efforts to incentivize the national economy's shift towards the Asia-Pacific market, boost the internal market, improve infrastructure and achieve technological independence in critical technologies.

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

There are certain restrictions on foreign investors acquiring control over companies that are of strategic value to Russia (so-called strategic companies). In addition, foreign investments in certain industries, including insurance and mass media, are also subject to certain limitations. Please refer to the Sections 18 ("Insurance in Russia") and 19 ("Telecommunications") for further details.

The acquisition of shares (participation interests), fixed assets or control rights, as well as the establishment of a joint venture and certain other transactions may be subject to merger control. Please see the Section 25 ("Competition Protection Law") for further details.

There are also certain restrictions on foreign investors acquiring land plots in areas adjoining the borders of Russia, land plots located within

the boundaries of seaports, and agricultural lands. Please see the Section 10 ("Property Rights") for further details.

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

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

Please see the Section 8 ("Sanctions") for further details with respect to sanctions.

### 3.6 What restrictions apply to foreign investments in strategic companies?

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

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

The competent authorities are the Government Commission (regarding preliminary transaction approval) and the FAS (regarding both preliminary transaction approval and post-transaction notifications).

### 3.8 How is a strategic company defined?

The Strategic Companies Law provides a list of 50 activities that constitute strategic activities in Russia. Any company engaged in such activities is viewed as a strategic company.

From the standpoint of foreign investment, it is crucial to verify all activities the target company is engaged in (particularly, those activities it is licensed to engage in) to assess whether it qualifies as strategic and, therefore, would be subject to the restrictions outlined above. Strategic activities include, among others, the following:

- operations affecting geophysical processes, as well as hydrometeorological processes and events
- activities involving the use of infectious agents
- activities related to the nuclear industry
- activities related to encryption (cryptography)
- activities related to the detection of electronic bugging devices (unless performed for a legal entity's internal purposes) and to the manufacture and sale of such devices by commercial entities
- activities involving military weapons and equipment, including components and ammunition
- the manufacture and sale of explosive materials for industrial purposes
- activities related to aviation equipment and security
- space activities
- activities involving television or radio broadcasting that covers a territory where more than half of a Russian constituent entity's population resides
- services provided by companies in the fields specified in Federal Law No. 57-FZ dated 17 August 1995 "On Natural

Monopolies," including oil and gas transportation, rail transportation, services in transport terminals, marine terminals and airports, etc. (excluding generally accessible telecommunications and postal services, services for heat energy and power transmission via distribution systems, and harbor services)

- subsoil exploration and extraction activities involving strategic deposits (see the Section 16 ("Natural Resources"))
- fishing of aquatic biological resources
- commercial printing, provided that the monthly output exceeds 200 million printed sheets
- activities performed by editorial boards and publishers, provided that the annual circulation of publications exceeds certain thresholds specified by law depending on publication frequency
- other activities set out in the Strategic Companies Law

In July 2017, Russia enacted new rules strengthening government control over transactions involving foreign investors with respect to Russian companies. From 30 July 2017, any acquisitions by foreign investors of shares in any Russian company (not only companies engaged in the above strategic activities) may require the prior approval of the Government Commission if the chair of the Government Commission (i.e., the Prime Minister of Russia) decides that such transaction may threaten national defense and state security. In this case, FAS, within three days from the date of receiving such decision taken by the Prime Minister, will notify the foreign investor that it must submit an application for preliminary approval of the transaction by the Government Commission.

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

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

- With respect to companies engaged in strategic activities other than the use of strategic subsoil plots and/or fishing of aquatic biological resources — transactions where a foreign investor or group of persons acquires:
  - direct or indirect control over more than 50% of the total number of votes attached to voting shares
  - the right to appoint (a) the chief executive officer, and/or (b) more than 50% of the members of a collegial executive body (i.e., management board) of a strategic company
  - the unconditional ability to elect more than 50% of the members of the board of directors (supervisory council) or other collegial governing body of a strategic company
- with respect to companies using strategic subsoil plots and/or fishing of aquatic biological resources — transactions where a foreign investor or group of persons acquires:
  - direct or indirect control over 25% or more of the total number of votes attached to voting shares
  - the right to appoint (a) the chief executive officer, and/or (b) 25% or more of the members of a collegial executive body of a strategic company
  - the unconditional ability to elect 25% or more of the members of the board of directors (supervisory council) or other collegial governing body of a strategic company
- with respect to companies using strategic subsoil plots and/or fishing of aquatic biological resources — transactions aimed at a foreign investor's acquisition of direct or indirect control over shares (participation interests) if the foreign investor already has direct or indirect control over more than 25%, but less than 75%, of the total number of votes attached to voting shares (except for a foreign investor's acquisition of shares (participation interests), which does not lead to an increase in the foreign investor's equity interest)

- transactions pursuant to which a foreign investor assumes the role of an external manager or external managing company of a strategic company or obtains the possibility to otherwise determine its corporate decisions, including those regarding the business of such strategic company
- transactions pursuant to which a foreign investor or a group of persons acquire control with respect to a strategic company as a result of: (i) any transactions with respect to third parties controlling, directly or indirectly, a strategic company; (ii) other cases of the acquisition of shares (participation interests), including but not limited to the buyout of shares of a Russian public joint-stock company as a result of a mandatory offer being made to other shareholders following the acquisition of more than 30% of voting shares in such company; and (iii) a change in the ratio of votes attributable to voting shares (participation interests) in a strategic company
- transactions aimed at the acquisition by a foreign state, international organization and a foreign investor that fail to disclose information about its beneficial owners and controlling persons to FAS, or about entities under their control, of the right to directly or indirectly control more than:
  - 25% of the total number of votes attached to voting shares or other means of blocking decisions of the governing bodies in companies engaged in strategic activities other than the use of strategic subsoil plots and/or fishing of aquatic biological resources
  - 5% of the total number of votes attached to voting shares in companies using strategic subsoil plots and/or fishing of aquatic biological resources
- transactions of an organization controlled by a foreign state that result in the establishment of control by such organization over (A) a strategic company (i) that is recognized as such exclusively due to its (a) engagement in activities involving the use of infectious agents (except for such use for drug manufacturing purposes) and/or (b) provision of services by natural monopolies (with respect to water supply and disposal



services using centralized systems, public utility infrastructure systems) and (ii) for which such activities are not its main activities, provided that (iii) the book value of such strategic company's assets used for such activities for three years preceding the date of filing an application for preliminary approval from the Russian Government does not exceed one percent (1%) of the total book value of the assets of such strategic company as at the latest reporting date for each completed reporting year; or (B) a company that is not strategic but that controls such strategic company

- Transactions aimed at a foreign investor's acquisition of a strategic company's main production facilities if their value is equal to or exceeds 25% of the company's book asset value

### 3.10 Who is responsible for securing preliminary transaction approval?

The foreign investor is responsible for securing transaction approval.

### 3.11 How does one obtain a preliminary transaction approval?

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

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

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

### 3.12 How long does an application review take?

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

### 3.13 How much discretion do the authorities have when rendering a decision after an application review?

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

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

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

### 3.15 When is a post-transaction notification required?

The Strategic Companies Law requires the post-transaction notification of FAS in the following cases:

- acquisition by foreign investors of at least 5% of the shares (whether voting or not) in any strategic company and completion by foreign investors of the transactions and other actions for which preliminary approval has been obtained
- obtainment by citizens of the Russian Federation of another citizenship or residence permit in any foreign state, cancellation of a decision to grant Russian citizenship to foreign persons, withdrawal from Russian citizenship by foreign persons, in each case provided that such citizens or persons hold at least 5% of

the shares in any strategic company and does not control such strategic company

### 3.16 What are the exemptions to the Strategic Companies Law?

The Strategic Companies Law does not apply, among other things, to the following:

- acquisitions of strategic companies by entities under the control of the Russian Federation, its constituent territories or citizens of the Russian Federation that qualify as Russian tax residents<sup>67</sup> (except for individuals with double citizenship), provided that such entities have submitted information to FAS about their beneficiaries, beneficial owners and controlling persons
- investments in a strategic company (other than those using strategic subsoil plots and/or fishing of aquatic biological resources) by a foreign investor, provided that: (i) such foreign investor already, directly or indirectly, controls more than 50% of the votes attached to voting shares in that strategic company; and/or (ii) such foreign investor and such strategic company are controlled by the same person (so-called intragroup exemption)
- investments in a strategic company using strategic subsoil plots and/or fishing of aquatic biological resources by a foreign investor if the Russian Federation had a right to control more than 50% of voting shares in such strategic company before the transaction and such a right still remains with the Russian Federation after the transaction is closed

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

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

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<sup>67</sup> Generally, a Russian tax resident is an individual that can prove their physical presence in the territory of Russia for no less than 183 days during 12 consecutive months.

transaction notification to FAS in case of the acquisition, directly or indirectly, of five percent (5%) or more of shares in a strategic company, a court may rule to deprive the foreign investor of voting rights at the shareholders' meeting.

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

- failure to obtain preliminary transaction approval, submission of misleading information to FAS, or breach of the terms and procedures of filing an application may lead to a fine of up to RUB one million for a legal entity, up to RUB 50,000 for an executive officer of the infringing legal entity and up to RUB 5,000 for an individual
- failure to submit a post-transaction notification (information) to FAS, submission of a knowingly misleading post-transaction notification (information) or breach of the terms and procedures of submitting a post-transaction notification (information) may lead to a fine of up to RUB 500,000 for a legal entity, up to RUB 30,000 for an executive officer of the infringing legal entity and up to RUB 3,000 an individual
- failure to provide FAS with information required by law, including additional requested information, may lead to a fine of up to RUB one million for a legal entity, up to RUB 50,000 for an executive officer of the infringing legal entity and up to RUB 5,000 for an individual

### 3.18 Are there special rules for investments made by foreign states, international organizations and investors not providing information?

Investments of foreign states and international organizations, as well as of entities under their control, in any Russian company, whether strategic or not, are subject to additional clearance requirements under the Foreign Investments Law. Any transaction that gives the above person(s) the right to directly or indirectly control more than 25% of the total number of votes attached to voting shares in any Russian company, or otherwise block decisions of a Russian company's

governing bodies, requires preliminary clearance with the Russian Government and FAS.

Furthermore, pursuant to the Strategic Companies Law, foreign states, international organizations and foreign investors that fail to disclose information about their beneficial owners and controlling persons to FAS, as well as entities under their control (the "**Restricted Investors**"), must obtain preliminary transaction approval when acquiring more than:

- 25% of the total number of votes attached to voting shares or other means of blocking decisions of the governing bodies for companies engaged in strategic activities other than the use of strategic subsoil plots and/or fishing of aquatic biological resources
- 5% of the total number of votes attached to voting shares of companies using strategic subsoil plots and/or fishing of aquatic biological resources

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

- with respect to strategic companies engaged in strategic activities other than the use of strategic subsoil plots and/or fishing of aquatic biological resources:
  - acquisition by a Restricted Investor of direct or indirect control over more than 50% of the total number of votes attached to voting shares
  - acquisition by a Restricted Investor of the right to appoint (a) the chief executive officer, and/or (b) more than 50% of the members of a collegial executive body of a strategic company
  - acquisition by a Restricted Investor of the unconditional ability to elect more than 50% of the members of the board of directors (supervisory council) or other collegial governing body of a strategic company

- appointment of a Restricted Investor as an external managing company of a strategic company
- acquisition by a Restricted Investor of the right to direct the management of a strategic company on the basis of a contract or otherwise
- with respect to the strategic companies using strategic subsoil plots and/or fishing of aquatic biological resources:
  - acquisition by a Restricted Investor of direct or indirect control over 25% or more of the total number of votes attached to voting shares
  - acquisition by a Restricted Investor of the right to appoint (a) the chief executive officer, and/or (b) 25% or more of the members of a collegial executive body of a strategic company
  - acquisition by a Restricted Investor of the unconditional ability to elect 25% or more of the members of the board of directors (supervisory council) or other collegial governing body of a strategic company
  - appointment of a Restricted Investor as an external managing company of a strategic company
  - acquisition by a Restricted Investor of the right to direct the management of a strategic company on the basis of a contract or otherwise

## 4. Establishing a Legal Presence

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

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

#### 4.1 Representative office or branch of a foreign legal entity

##### 4.1.1 Is a branch or a representative office considered a Russian legal entity?

No — neither a branch nor a representative office of a foreign company are considered a Russian legal entity but are, rather, a subdivision of a foreign parent company.

##### 4.1.2 What are the differences between a branch and a representative office?

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

As opposed to a representative office, a branch may engage in any functions that the parent company engages in pursuant to its corporate documents, as long as this is provided for in the branch's regulations and is permitted under Russian law. This broad scope of permitted activities is the primary advantage for forming a branch in Russia. In contrast, a representative office that engages in commercial activities would technically be violating the terms of its accreditation. From a purely legal perspective, violation of Russian law is a ground for the termination of a representative office's termination upon a decision of the accreditation authority (i.e., Interdistrict Tax Inspectorate No. 47 of

the Federal Tax Service located in Moscow). However, in practice, violations by representative offices of permitted activities generally only trigger difficulties with the renewal of accreditation in Russia.

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

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

Following accreditation, the representative office or branch must carry out a number of post-accreditation procedures to become fully operational, including registering with the Russian statistics authorities, the Russian Pension Fund and the Russian Social Insurance Fund, and opening bank accounts.

### 4.2 Forming a Russian legal entity

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

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

- general and limited partnerships
- business partnerships
- production cooperatives
- limited liability companies (the "**LLCs**")
- joint-stock companies (the "**JSCs**")

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



#### 4.2.2 What is the regulatory framework for Russian companies?

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

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

#### 4.2.3 How are Russian companies classified?

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

Public companies are JSCs:

- whose shares, or other securities convertible into shares, have been publicly placed
- whose shares, or other securities convertible into shares, are publicly traded at a stock exchange
- which declare their public company status in the charter

All other JSCs and LLCs are deemed to be nonpublic.

#### 4.2.4 What are the main differences between public and nonpublic companies?

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

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

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

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

An LLC is the most common corporate form of a private business in Russia, particularly for wholly owned subsidiaries and certain joint ventures. Nonpublic JSCs are used less frequently. This is mainly because LLCs are easier to establish, are cheaper to maintain, and are not subject to formalized securities legislation.

Foreign investors rarely use other types of Russian legal entities.

#### 4.2.6 What are the main differences between LLCs and nonpublic JSCs?

The main differences between LLCs and nonpublic JSCs are described in the table below:

LLCs	Nonpublic JSCs
<p>The charter capital of an LLC is divided into participation interests and shareholders are referred to as participants.</p>	<p>The charter capital of a nonpublic JSC is divided into shares which are deemed securities for the purposes of Russian securities regulations. In addition to registering with the tax authorities, JSCs are subject to various additional procedural requirements and must register their shares with the Russian securities market regulator — the Central Bank of Russia. These will apply upon the initial registration of a JSC and on an ongoing basis, particularly in the event of a share capital increase.</p>
<p>The charter may allow a participant to withdraw from the company at any time (receiving the actual value of its participation interest from the company).</p>	<p>A shareholder has no statutory right to withdraw from the company (except by selling its shares to third parties or to the company, in certain instances provided by law).</p>
<p>Information on the participants is reflected in the Russian Unified State Register of Legal Entities (the "<b>USRLE</b>"), which is maintained by the Russian tax authorities.</p>	<p>A licensed registrar for a fee must maintain a shareholders' register.</p>
<p>Information on the participants is contained in the USRLE, which is publicly available.</p>	<p>Information on the shareholders is contained in the shareholders' register, which is not available to the public (save for information on the initial founder(s), which is also reflected in the USRLE).</p>

<p>Title to a participation interest passes when the transfer is state registered with the USRLE; the participation interest sale and purchase agreement is subject to certification by a notary.</p>	<p>Transfer of title to shares is effected by making the respective entry on the account in the shareholders' register (or depo account, if shares are transferred to a depository).</p>
<p>A notary need not certify decisions made in general participants' meetings (save for decisions on the increase of the charter capital, which must be certified by a notary); these decisions may be certified as provided in the charter (adopted by a decision certified by a notary), for example, by signing by participants.</p>	<p>The registrar or a notary must certify decisions made in general shareholders' meetings.</p>
<p>Transfer of a participation interest is limited by law and may be additionally limited by the charter and/or corporate agreement.</p> <p>By virtue of law, the participants of an LLC have a preemptive right to purchase participation interests of the LLC offered for sale by other participants to third parties. The above is a mandatory provision of Russian legislation. The charter may also provide for such right for the LLC itself.</p> <p>In addition, the charter of an LLC may totally prohibit the transfer of participation interests to third parties or provide for the transfer of participation interests to other participants and third parties, subject to the prior consent of other</p>	<p>Transfer of shares is not limited by law, but may be limited by the charter and/or shareholders' agreement.</p> <p>The charter of a nonpublic JSC may provide for the preemptive right of shareholders and the nonpublic JSC to purchase shares offered for sale by other shareholders to third parties.</p> <p>In addition, the charter of a nonpublic JSC may provide for the prior consent of shareholders with respect to the transfer of shares to third parties. The term of such limitation will be stipulated in the charter and it may not exceed five years from the date of incorporation of the nonpublic JSC or state registration of relevant</p>

<p>participants or the LLC itself (for an unlimited term).</p> <p>However, if the LLC's charter prohibits the transfer of participation interests to third parties and other participants of the LLC refuse to purchase the relevant participation interests, or the LLC's charter requires the consent of other participants or the LLC itself for the transfer of participations interests to third parties and the other participants and the LLC itself refuse to provide such consent, a participant of an LLC may demand that the LLC buy out its participation interest.</p>	<p>changes to the charter providing for such limitation.</p>
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#### 4.2.7 What is the procedure for establishing a Russian company?

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

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

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

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

#### 4.2.9 What is the so-called 1-1-1 restriction or Matryoshka rule?

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

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

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

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

#### 4.2.11 What statutory documents do Russian companies have?

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

The charter of an LLC must include the following information:

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

The charter of a JSC must include the following information:

- name and location of the JSC
- size of the JSC charter capital
- quantity, nominal value and categories (common or preferred) of shares, as well as the classes of preferred shares issued and distributed by the JSC
- rights of the holders of shares of each category
- structure and competence of the JSC's governing bodies and their decision-making procedures
- procedure for preparing and holding general shareholders' meetings, including a list of issues requiring either unanimous consent or a resolution adopted by a qualified majority of votes
- information about the existence of any special right of participation in the management of the company held by the Russian Federation, a constituent entity of the Russian Federation or a municipality of the Russian Federation (a golden share)
- other provisions required by law

The charter of an LLC and a JSC may include other provisions, provided that they do not contradict applicable Russian legislation.

#### 4.2.12 What types of shares may be issued by a JSC?

A JSC issues ordinary shares and may issue several classes of preferred shares. A nonpublic JSC may issue its shares as digital financial assets in accordance with Russian legislation on digital financial assets and digital currency. Different classes of preferred shares may have different nominal values, while all ordinary shares must have equal nominal values. The total value of a JSC's preferred shares may not exceed 25% of its charter capital.

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

In contrast to ordinary shares, preferred shares do not carry voting rights, except when voting on certain key issues (reorganization, liquidation, restricting the rights of the owners of such preferred shares, etc.) or where the preferred shares have a fixed dividend and such dividend is not paid when due. The holders of preferred shares have priority in receiving dividends (the amount of which may be set as either a fixed sum or a formula) or liquidation proceeds over holders of ordinary shares or preferred shares of a subordinate class. A preferred share with a fixed dividend gains a voting right if such fixed dividend is not paid when due.

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

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

The charter capital of LLCs and nonpublic JSCs may not be less than RUB 10,000. The charter capital of a public JSC may not be less than RUB 100,000.

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

#### 4.2.14 What is the deadline for paying the initial charter capital?

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

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



#### 4.2.15 Is it possible to pay charter capital in kind?

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

In-kind contributions may be made with movable and immovable property, shares (participation interests) in other commercial entities, state and municipal bonds, and intellectual property rights (exclusive rights and licenses), but not other rights such as leases and accounts receivable. The charter of a company may provide for additional restrictions on the type of assets accepted as in-kind contributions.

#### 4.2.16 What are the governing bodies for Russian companies?

There are two models of corporate governance for Russian companies:

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

Nonpublic JSCs with less than 50 shareholders and LLCs need not have a board of directors. For nonpublic JSCs with 50 or more shareholders and public JSCs, a board of directors is mandatory.

#### 4.2.17 What is the role of the general meeting?

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

The competence of the general meeting typically includes, among other things, the following issues:

- amendment of the company's charter
- reorganization and liquidation of the company

- formation of the company's board of directors, appointment of its members and their dismissal
- approval of an increase in the company's charter capital
- approval of the annual report and annual financial statements
- decisions on the distribution of dividends
- decisions on the admission of third parties into a company
- approval of major transactions if the value of the transaction exceeds 50% of the total book value of the company's assets
- approval of interested party transactions if the value of the transaction exceeds 10% of the total book value of the company's assets (provided that such approval is required under applicable legislation)
- approval of key internal company documents that address corporate governance issues
- other issues prescribed by law or the company charter

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

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

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

#### 4.2.18 What is the role of the board of directors?

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

The competence of the board of directors usually includes, among other things, the following issues:

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

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

#### 4.2.19 What are the executive bodies of a Russian company?

A Russian company may have the following executive bodies, which are responsible for its day-to-day management:

- sole executive body (often referred to as general director)
- sole executive body and the collegial executive body (the "**Management Board**")

Every Russian company must have a sole executive body. Establishing a Management Board is optional for both public and nonpublic companies except for banks, which are legally required to have a Management Board.

#### 4.2.20 What is the competence of the sole executive body?

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

#### 4.2.21 Is it possible to appoint two or more sole executive bodies? Does Russian law allow the implementation of a two-signature rule?

Yes — it is possible to: (i) create several sole executive bodies, which may act independently from each other; or (ii) provide the authority of the sole executive body to several persons acting jointly — the so-called two-signature rule.

#### 4.2.22 What is the role of the Management Board?

The Management Board is a collegial executive body of the company responsible for its day-to-day management. If a Management Board is established in a company, the sole executive body acts as the chair of the Management Board.

The Management Board's competence may not coincide with the competence of the company's other governing bodies. In nonpublic

companies, most issues pertaining to the competence of the general meeting and board of directors may be transferred to the Management Board, except for certain key issues (such as the reorganization or liquidation of the company and amendments to the charter).

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

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

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

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

An internal auditor (or internal audit commission) (the "**Internal Audit Commission**") is responsible for supervising the company's financial activities and business operations. The formation of an Internal Audit Commission is optional.

The Internal Audit Commission performs audits of the company's financial activities and business operations, either annually or when it deems necessary. The Internal Audit Commission is entitled to request any officer of the company (including the general director) to provide information, comments and clarifications. The Internal Audit Commission will have access to all of the company's documents.

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

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

#### 4.2.25 Does Russian law provide for mandatory audits of Russian companies?

Public JSCs are subject to mandatory audits, i.e., an independent external auditor must audit their annual accounts.

With regard to LLCs and nonpublic JSCs, they are not generally subject to mandatory audits. Russian law sets out several cases where external audits are mandatory for LLCs and JSCs, for example, if an LLC or JSC conducts certain types of activities (e.g., banking or insurance activities), if the amount of an LLC's or JSC's profits for the previous accounting year (determined in accordance with the tax legislation of the Russian Federation) exceeds RUB 800 million, or if the book value of its assets exceeds RUB 400 million as of the end of the previous accounting year.

## 5. Corporate Compliance

### 5.1 What are the key provisions of anti-bribery laws in Russia?

Russian anti-corruption legislation includes Federal Law No. 273 "On Combating Corruption," the Criminal Code (that defines corruption crimes and applies to individuals), the Code of Administrative Offenses (the "CAO") (that defines corruption offenses and applies to legal entities) and certain other legal acts.

Russian criminal law prohibits public and private, domestic and foreign, and active and passive bribery. Aiding and abetting bribery and minor bribery are also crimes to be aware of (please see Section 5.3 below).

While individuals can be held criminally liable for bribery-related offenses, legal entities are only subject to administrative liability (please see Section 5.2 below). Administrative fines for legal entities depend on the amount of the bribe, and can reach significant amounts. In some cases, the fine could reach up to 100 times the amount of the bribe. These provisions are vigorously enforced; however, certain steps including the introduction of corporate compliance programs could help mitigate the risks of liability. From January 2019, a legal entity can incur liability when the person handing over the bribe was acting in the interests of a related entity (a subsidiary, affiliated company, etc.). This amendment expanded the scope of a legal entity's liability and increased the risks of such liability, especially since a legal entity may lack sufficient control over the actions of its related entities. In addition, legal entities under investigation for committing an administrative offense can have their assets attached to ensure the enforcement of an administrative fine in case they are found guilty.<sup>68</sup>

Russian law imposes tough restrictions with regard to gifts to public officials. While it is the public officials themselves who are mostly subjects to these restrictions, companies should also be aware of them in order to avoid unethical conduct and suspicions of bribery (please see Section 5.4 below).

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<sup>68</sup> See Article 27.20 of the CAO.

Pending regulatory changes in the area of corruption are provided in Section 5.5.

## 5.2 What liability does a legal entity incur for corrupt conduct?

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

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

Article 19.28 of the CAO provides for administrative liability for a legal entity for unlawful provision, offer or promise, by anyone acting in the name or in the interests of a legal entity or in the interests of a related legal entity, of anything of pecuniary value to a Russian or foreign public official, an official of a public international organization, or officers in a commercial company (or to another individual or a legal entity upon request of the aforementioned officials) for any act or omission in the interests of this legal entity or its related legal entity.

In addition, a legal entity incurs administrative liability for a bribe given on its behalf when monies, securities or other property (or property rights) are transferred, offered or promised, or services are provided **upon request of the bribe recipient** (who may be a manager of a commercial or another organization, a public official of a foreign state or an official of a public international organization) to **another individual or legal entity**.

Definitions of a Russian public official, a foreign public official, an official of a public international organization and a person performing managerial functions in a commercial or other organization are the same as for the corresponding criminal offenses (see Section 5.3.4 "What actions are prohibited as active and passive commercial bribery").

### 5.2.2 What defenses may a legal entity raise to avoid liability?

First, as provided for in the law, companies may be released from administrative liability for domestic bribery on their behalf if they have



contributed to the detection of the offense (e.g., by disclosing information); assisted in the conduct of the administrative investigation, detection, prosecution or investigation of the related crime; or if the bribe has been extorted from the legal entity.<sup>69</sup> For the defense to apply, under Article 19.28(5) of the CAO, a legal entity has to provide evidence that it has contributed to the detection of the offense or assisted in the conduct of an administrative investigation, or provide evidence confirming that it has been an extortion from this legal entity. As confirmed by enforcement practice, a decision on the use of Note 5 can be taken by the prosecutor when deciding on initiating the proceedings under Article 19.28 or by a court.<sup>70</sup>

Second, a defense that may be used based on the enforcement practice is confirmation that the company has taken anti-corruption measures to avoid the offense in question. Ultimately, this is an issue about the compliance program adopted by the respective company.

For legal entities and individuals in Russia, administrative liability is fault based. Article 2.1 of the CAO defines the fault of a legal entity as the failure to take all measures within its power to comply with the law, including those recommended by Article 13.3 of Federal Law No. 273 "On Combating Corruption." Therefore, a legal entity may raise the measures it has taken to prevent bribery on its behalf as a defense.

The measures under Article 13.3 of Federal Law No. 273 "On Combating Corruption," may include (but are not limited to):

- designating departments and structural units and officers who will be responsible for the prevention of bribery and related offenses
- cooperating with law enforcement authorities
- developing and implementing standards and procedures designed to ensure ethical business conduct

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<sup>69</sup> See Note 5 to Article 19.28 of the Code of Administrative Offenses.

<sup>70</sup> Baker McKenzie publication "Russia: Corporate Anti-Corruption Enforcement Trends," p. 9, available at: <https://www.bakermckenzie.com/en/insight/publications/2020/12/russia-corporate-anti-corruption-enforcement>.

- adopting a code of ethics and professional conduct for all employees
- establishing the means for identifying, preventing and resolving conflicts of interest
- preventing the creation and use of false or altered documents

The Russian Ministry of Labor and Social Protection publishes the following official guides on how legal entities should take these measures:

- Recommendations for Organizations on Developing and Implementing Measures for Preventing and Combating Corruption<sup>71</sup> (2013, amended in 2014)
- Measures for Preventing Corruption in Organizations<sup>72</sup> (2019)
- Memorandum on Establishing the Duties of Employees for Preventing Corruption, Employee Liability and Incentive Programs<sup>73</sup> (2019)
- Recommendations on the Procedure for Assessing Corruption Risks in Organizations<sup>74</sup> (2019)

Research on corporate anti-bribery enforcement reveals a significant growth in cases where courts reviewed companies' corporate compliance programs for the purposes of establishing guilt or releasing companies from liability.

Third, in circumstances where companies are held liable for bribes given by third parties in their interests, a potential defense for these companies could be their reference to the outcomes of internal investigations.

In an Overview of enforcement practice under Article 19.28 of the CAO<sup>75</sup> the Russian Supreme Court clarified the grounds for liability of a legal

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<sup>71</sup> <https://mintrud.gov.ru/ministry/programms/anticorruption/015/0>.

<sup>72</sup> <https://mintrud.gov.ru/uploads/magic/ru-RU/Ministry-0-106-src-1568817692.8748.pdf>.

<sup>73</sup> <https://mintrud.gov.ru/uploads/magic/ru-RU/Ministry-0-106-src-1568817742.8173.pdf>.

<sup>74</sup> <https://mintrud.gov.ru/uploads/magic/ru-RU/Ministry-0-106-src-1568817604.7941.pdf>.

entity for the unlawful actions of an individual. Thus, for a legal entity to be held liable, the individual is either to be its representative by virtue of the law, the company charter, a power of attorney, etc., or, where no connection of the legal entity with the individual exists, the individual's actions are to be authorized, approved or known to those individuals who are authorized to act on the legal entity's behalf. In any case, for the legal entity to be found liable, its economic or other (e.g., reputational) interests in the actions sought from the bribe's recipient are to be established.<sup>76</sup>

Based on the court's guidance, companies should consider pleading as their defense the lack of economic or other benefits from the bribery, and/or the absence of authorization, approval or knowledge of the bribery. The results of a thorough internal investigation might be used to support the defensible case.

### 5.2.3 What are the sanctions for the offense?

The sanctions under Article 19.28 of the CAO vary depending on the amount of the unlawful remuneration, i.e., the bribe. The minimum sanction for a bribe up to RUB one million is a fine of up to three times the amount of the bribe, but not less than RUB one million. The maximum sanction for a bribe over RUB 20 million is a fine of up to 100 times the amount of the bribe, but not less than RUB 100 million. In all cases, the bribe or its equivalent value may be confiscated.

A legal entity may be held liable under Article 19.28 of the CAO irrespective of the liability of a particular individual involved in the giving of a bribe. Additionally, courts are entitled to freeze the property of companies that are under bribery investigations. The value of the arrested property could reach up to the maximum amount of a potential fine. Courts are also entitled to freeze the bank accounts of a suspected company if they believe it does not have enough property to pay the potential fine. The freezing requests of prosecutors are to be considered without notifying the suspect (that will subsequently receive a copy of the court order). The accounts will remain frozen until the company is found not guilty, or until it pays the fine.

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<sup>75</sup> The Supreme Court's overview of court enforcement practice under Article 19.28 of the CAP, available at: <http://www.supcourt.ru/documents/all/29109/>.

<sup>76</sup> Item 1 of the Supreme Court's overview of court enforcement practice under Article 19.28 of the CAO.

An administrative fine for the offense under Article 19.28 of the CAO is to be paid within seven days from the entry into force of the ruling imposing the fine.<sup>77</sup>

Where a company is found liable for the offense under Article 19.28 of the CAO, this will have adverse consequences for its business, and in addition it will have to pay a substantial administrative fine. Such companies will not be eligible for participation in state procurement tenders for a period of two years after being held liable for the offense.<sup>78</sup> The information is included into the Unified Procurement Register at <https://zakupki.gov.ru> and is publicly available.<sup>79</sup> Therefore, liability under Article 19.28 of the CAO creates reputational risks for the business.

In recent years, we have seen a number of prosecutors' actions and court cases in connection with inspections of Russian entities for noncompliance with the requirements to adopt anti-corruption measures. Though there are no sanctions in the law for failure to comply with the obligation of taking measures to prevent corruption, failure to comply with a prosecutor's instructions to adopt anti-corruption measures (as issued following these inspections) is punishable and may even include administrative suspension of operations by up to 90 days.<sup>80</sup>

#### 5.2.4 Can Article 19.28 be applied to extraterritorial conduct?

The Russian authorities will have jurisdiction over any legal entity if a bribe is directed at a foreign official or an official of a public international organization, if the offense was aimed against the interests of the Russian Federation, as well as in instances stipulated by the international treaty of the Russian Federation, unless this legal entity

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<sup>77</sup> See para. 1.4 of Article 32.2 of the CAO.

<sup>78</sup> See para. 7.1 of Article 31(1) of Federal Law No. 44-FZ "On the Contract System of Procurement of Goods, Works and Services for Public and Municipal Needs" dated 5 April 2013.

<sup>79</sup>

<https://zakupki.gov.ru/epz/main/public/document/view.html?searchString=&sectionId=2369&strictEqual=false>.

<sup>80</sup> See Article 17.7 of the CAO.

has already been held criminally or administratively liable for the same actions in a foreign state.<sup>81</sup>

To the best of our knowledge, these cases are extremely rare and we are aware of only one such case related to bribery in Belarus.

The CAO stipulates that where a request for legal assistance in administrative cases is warranted for conducting procedural actions on the territory of a foreign state, the term for an administrative investigation can be extended by up to 12 months.

### 5.2.5 Does the law provide for liability of legal successors?

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

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

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

#### 5.3.1 What actions are prohibited as active bribery of public officials?

The Criminal Code prohibits the provision of a bribe to Russian public officials, foreign public officials and officials of public international organizations, directly, through intermediaries or if a bribe upon the instructions of a public official is provided to another individual or legal entity. A bribe can take the form of anything of pecuniary value (monies, securities, other property, the illegal provision of property-related services or granting property rights) that is provided for an act or omission by the relevant official in connection with their official duties for the benefit of a bribe-giver or the persons who they represent.

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<sup>81</sup> See Article 1.8(3) of the CAO.

Russian public officials are defined in Article 285 of the Criminal Code as persons who permanently, temporarily or pursuant to a specific authorization perform the function of a representative of state power as well as persons who perform organizational or administrative functions in the state and municipal bodies, state or municipal institutions, state corporations, state and municipal unitary enterprises and in the Russian military and other armed forces. From 7 March 2021, the definition of a public official for crimes under Chapter 30<sup>82</sup> of the Criminal Code also covers individuals with administrative and managerial functions at public law companies, companies where Russia, its constituent entities or municipalities is entitled to dispose of over 50% of votes or appoint the sole executive body or 50% of collegial bodies, joint-stock companies with special participation rights of the Russian Federation, its constituent entities or municipalities. This will enable such individuals to become liable, among others.

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

### 5.3.2 What are the sanctions for active bribery of public officials?

The sanctions under Article 291 of the Criminal Code vary depending on: (a) whether the person giving the bribe acted alone or in conspiracy with others; (b) whether the bribe was given for the commission of a lawful or an unlawful act (omission); and (c) the amount of the bribe.

The minimum sanction — for minor public bribery<sup>83</sup> (up to RUB 10,000) — includes a fine of up to RUB 200,000 or the salary or other income of the convicted person for up to three months, or correctional labor for up to one year, or limitation of freedom for up to two years, or imprisonment for up to one year.

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<sup>82</sup> Chapter 30: Crimes against the public order, interests of state and municipal service, it includes such crimes as abuse of authority, bribery, negligent performance of duty, forgery by a public official, etc.

<sup>83</sup> Article 291.1 of the Criminal Code of Russian Federation.

The maximum sanction for a bribe exceeding RUB one million is a fine from RUB two million to RUB four million, or in the amount of the salary or other income of the convicted person for a period of two to four years, or of 70 to 90 times the amount of the bribe with or without the prohibition from holding certain positions or engaging in certain professional activities for up to 10 years, or imprisonment for a period of eight to 15 years with or without a fine of up to 70 times the amount of the bribe and with or without the prohibition from holding certain positions or engaging in certain professional activities for up to 10 years.

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

### 5.3.3 When is confiscation possible?

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

According to Article 104.2 of the Criminal Code, a court may decide to confiscate the value of the criminally obtained property if, by the time the court issues a judgment, confiscation of this property as such becomes impossible due to this property having been used, sold or for other reasons. Where such funds are absent or their amount is insufficient, the court may decide to confiscate other property that is equivalent or comparable in value to the criminally obtained property (except for property that is exempt from any levy of execution).

### 5.3.4 What actions are prohibited as active and passive commercial bribery?

Article 204 of the Criminal Code defines commercial bribery as the unlawful provision of anything that has pecuniary value (including property rights, services, etc.) to a person who performs managerial functions in a commercial or other organization, or upon the instructions of such person to another individual or legal entity, for an act or omission in connection with such person's job position in the interests of the provider or other persons, if such acts or omissions fall within the range of the authority of such person or if such person can, by reason of their job position, foster such acts or omissions.

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

Moreover, the same conduct may be prosecuted under Article 201 of the Criminal Code, which prohibits abuse of authority, i.e., the use by a person who performs managerial functions in a commercial or other organization, other than those specified in Article 285 of the Criminal Code, as well as a noncommercial organization that is not a state or municipal body or an institution, of their authority contrary to the lawful interests of the organization for the purpose of obtaining an advantage not only for themselves but also for other persons, as well as for the purpose of causing damage to other persons.

A person who performs managerial functions, according to Article 201 of the Criminal Code, can be an individual executive officer or a person who is a member of a collective executive body or the board of directors. In addition to the top management, relevant persons include those who perform organizational or administrative functions, i.e., engage in the management of at least some personnel or at least some property of the organization. As a practical matter, it should be noted that Article 204 of



the Criminal Code also covers conspiracies to engage in commercial bribery, which expands the reach of this article beyond persons with managerial functions.

There is a separate crime of commercial bribery in the context of arbitration proceedings<sup>84</sup> providing for the transfer to/receipt of a commercial bribe by an arbitrator for acts/inaction within their authority or where they, due to such authority, can facilitate these actions. Liability occurs in cases where the bribe was transferred/received in Russia irrespective of the seat of arbitration. For bribes transferred/received abroad, liability can occur where such actions resulted in infringement of the rights of a Russian legal entity or a Russian citizen.

### 5.3.5 What are the sanctions for active and passive commercial bribery?

The sanctions for active commercial bribery under Article 204 of the Criminal Code vary depending on whether the person giving a commercial bribe has acted alone or in conspiracy with others, as well as whether the commercial bribe is given for the commission of a lawful or unlawful act (omission).

The minimum sanctions — for minor commercial bribery<sup>85</sup> (up to RUB 10,000) — include a fine of up to RUB 150,000 or the salary or other income of the convicted person for up to three months, or mandatory labor for up to 200 hours, or correctional labor for up to one year, or limitation of freedom for up to one year.

The maximum sanctions for active commercial bribery (for a commercial bribe exceeding RUB one million) are a fine from RUB one million to RUB 2.5 million, or in the amount of the salary or other income of the convicted person for a period of one year to two-and-a-half years, or 40 to 70 times the amount of the commercial bribe with or without the prohibition from holding certain positions or engaging in certain professional activities for up to five years, or imprisonment for four to eight years with or without a fine of up to 40 times the amount of the commercial bribe and with or without the prohibition from holding certain positions or engaging in certain professional activities for up to five years.

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<sup>84</sup> Article 200.7 of the Criminal Code: Commercial bribery in respect of an arbitrator.

<sup>85</sup> Article 204.2 of the Criminal Code of Russian Federation.

The sanctions for passive commercial bribery under Article 204 of the Criminal Code vary depending on whether the person receiving the bribe acted alone or in conspiracy with others, whether the commercial bribe was received for the commission of a lawful or unlawful act (omission) and whether the commercial bribe was extorted.

The maximum sanctions for receiving a commercial bribe exceeding RUB one million are a fine from RUB two million to RUB five million, or in the amount of the salary or other income of the convicted person for a period of two to five years, or 50 to 90 times the amount of the commercial bribe, with the prohibition from holding certain positions or engaging in certain professional activities for up to six years, or imprisonment for seven to 12 years with or without a fine of up to 50 times the amount of the commercial bribe and with or without the prohibition from holding certain positions or engaging in certain professional activities for up to six years.

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

### 5.3.6 Is aiding and abetting public bribery a criminal offense?

Article 291.1 of the Criminal Code makes aiding and abetting public bribery a separate criminal offense. Aiding and abetting is defined as the physical giving of a bribe on the instructions of a person either giving or receiving a bribe, as well as any other assistance to either of these persons in reaching or executing an agreement between them to give and take a bribe. This article applies only to bribes with a value exceeding RUB 25,000. This article also applies to offers or promises of assistance in aiding and abetting public bribery regardless of the value of the bribe. The sanctions for aiding and abetting public bribery are comparable to those for active public bribery.

### 5.3.7 Is aiding and abetting commercial bribery a criminal offense?

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

### 5.3.8 What is the lowest amount of the bribe?

There is no lowest amount for a criminal offense.

## 5.4 What restrictions in respect of gifts exist in Russia?

At present, Article 575 of the Russian Civil Code prohibits gifts, among others things, to state and municipal officials in connection with their office or the discharge of their duties of office, except for simple gifts of a value below RUB 3,000. However, such gifts are not to be provided with an illegal purpose. Strictly speaking, there is no limit to the value of the bribe under the Criminal Code and, thus, a gift of a value below the above threshold can be considered a bribe.

Gifts to state and municipal officials exceeding the above threshold are considered federal or constituent entities or municipal property and shall be handed over by the official to the state authority where the official is employed.

Certain legal acts establish strict requirements for public officials related to their state service, including requirements to report about their profits, property and gifts received in the course of their service. In 2018, reporting requirements were extended to additional categories of public officials, as well as former public officials and members of their families.

- Federal Law No. 230 "On Control over the Correlation Between the Expenses and Earnings of Public Officials" dated 3 December 2012 establishes a legal and organizational basis for exercising control over the expenses of public officials, former public officials and members of their families

- Federal Law No. 79 dated 7 May 2013 prohibits public officials (and their family members) from owning property or having funds in bank accounts outside of Russia. A sequence of governmental decrees, issued in accordance with this law, envisage more stringent reporting procedures for the profits and ownership of public officials
- Government Decree No. 10 dated 9 January 2014 introduced detailed procedures on reporting gifts received by public officials, evaluating such gifts and the possible repurchase of such gifts by public officials.<sup>86</sup> In 2020, the Ministry of Labor and Social Protection issued clarifications on particular issues in relation to applying the provisions of the above Government Decree<sup>87</sup>
- according to the changes made to the Law on Combatting Corruption in March 2022, a procedure has been established to recover in court monies exceeding the aggregate income of a public official for the reporting period and the preceding two years, received on the bank account of the public official, their spouse and under-age children, for which no valid substantiation of their legality has been provided<sup>88</sup>

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

On 15 February 2023 Russia withdrew from the Criminal Law Convention on Corruption of the Council of Europe.<sup>89</sup> However, Russia continues to be party to a number of international instruments against corruption, such as the UN Convention against Corruption of October 31, 2003, the UN Convention against Transnational Organized Crime of

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<sup>86</sup> Government Decree No. 10 dated 9 January 2014 approving model regulations on communicating the receipt of a gift related to protocol events, business trips and other official events attended in connection with performing official duties, the handing over and evaluation of the gift, its repurchase and transfer of the resulting funds.

<sup>87</sup> Clarifications on particular issues in connection with the receipt of gifts by public officials and their registration, available at <https://mintrud.gov.ru/ministry/programms/anticorruption/9/18>.

<sup>88</sup> See Federal Law dated 6 March 2022 No. 44-FZ "On Amending Article 26 of the Federal Law "On Banks and Banking Activities" and Federal Law "On Combatting Corruption."

<sup>89</sup> Federal Law No. 42-FZ dated 28 February 2023.

November 15, 2000 and the OECD Convention on Combating Bribery of Foreign Public Officials in International Commercial Transactions.

There are a number of pending draft laws on anti-corruption that are worth mentioning. A draft law that passed its first reading in March 2021<sup>90</sup> aims at introducing grounds for releasing public officials from liability for failure to comply with obligations that are established by anti-corruption laws and other federal laws where these actions/inactions are caused by circumstances beyond their control. Among such circumstances the draft law includes prohibitory or restrictive measures adopted by state authorities (including those of foreign states) as well as municipal authorities.

A draft law introducing criminal liability for unlawful enrichment where the value of a public official's assets substantially exceeds their lawful income<sup>91</sup> is currently being heard at first reading.

Among pending draft laws on the issues of corruption there is also a draft law providing for submitting the documents of the inspections of state civil servants' income declarations to the prosecutor's office in case of their termination.<sup>92</sup>

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<sup>90</sup> See Draft Law No. 1078992-7 "On amending particular legal acts of the Russian Federation to improve liability measures for corruption offenses," available at: <https://sozd.duma.gov.ru/bill/1078992-7>.

<sup>91</sup> See Draft Law No. 757818-7 "On amending the Criminal Code and the Code of Criminal Procedure of the Russian Federation by introducing unlawful enrichment and other measures against corruption," available at: <https://sozd.duma.gov.ru/bill/757818-7>.

<sup>92</sup> See Draft Law No. 297964-8 "On amending Federal Law on Combatting Corruption and other regulatory acts," available at: <https://sozd.duma.gov.ru/bill/297964-8>.

## 6. Taxation

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

The main legal act governing the Russian tax system is the Tax Code of the Russian Federation (the "**Russian Tax Code**"). Part I of the Russian Tax Code sets forth the general tax rules in the country: (i) key taxation principles and term definitions; (ii) rights and obligations of taxpayers and the Russian tax authorities; (iii) tax registration and tax control procedures; (iv) liability for tax violations; (v) transfer pricing rules; (vi) controlled foreign company (the "**CFC**") rules; (vii) codified general anti-tax avoidance (GAAR) rules; and (viii) tax reporting requirements. Part II of the Russian Tax Code provides an exhaustive list of taxes effective in Russia at the federal, regional and municipal levels and detailed regulations on each of these taxes.

Regional and municipal tax laws may be adopted only within the limits allowed by the Russian Tax Code. These laws may only enact regional and municipal taxes and establish certain elements of such taxes. Apart from that, regional tax laws may provide for reduced profits tax rates for certain categories of taxpayers, e.g., qualifying investors.

The Russian Government and the Russian Ministry of Finance may issue subordinate acts on tax matters in cases provided for by the Russian Tax Code. Typically, such acts govern technical and procedural issues and may not provide additional requirements for taxpayers apart from those stipulated in the Tax Code. The forms of tax returns and other documents used in communications between the Russian tax authorities and taxpayers are adopted by the Federal Tax Service of Russia.

### 6.2 What are the main recent changes in the Russian tax system?

Most major changes in the Russian tax system in 2022 and the first half of 2023 have resulted (and may further result) from the tectonic changes in the political and economic landscape in February 2022. The following key developments may be of especial importance for businesses:

- emergency "anti-crisis" tax measures
- introduction of the unified tax account
- re-negotiation, denunciation or suspension of bilateral tax treaties
- potential introduction of "emergency taxes" starting with the "windfall tax" expected in 2024

### 6.2.1 Emergency "anti-crisis" tax measures

During 2022 Russia adopted a number of emergency tax measures aimed at mitigating the financial consequences of the economic turmoil for Russian taxpayers:

- Russian transfer pricing rules were relaxed. The threshold for cross-border controlled transactions was increased by two times, certain transactions were removed from the remit of the transfer pricing rules and the 40% penalty for transfer pricing violations was suspended for transactions under which income or expenses were recognized in the period of 2022-2023
- Russian safe-harbor rules for interest deductibility covering the periods of 2022-2023 were relaxed as well
- income resulting from debt forgiveness by a foreign creditor was relieved from corporate profits tax in 2022 with respect to loan agreements concluded prior to March 1, 2022 and to some other types of transactions
- special rules for recognition of FX differences were introduced for 2022-2024 to mitigate the effects of the extreme volatility of the Russian ruble in 2022. Corporate taxpayers were permitted not to recognize interim positive FX differences as taxable income until the moment of settling or terminating the relevant obligations
- late payment interest for corporate taxpayers was temporarily reduced. During the period from 9 March 2022 to 31 December 2023 the late payment interest is calculated as 1/300 (instead of 1/150) of the effective key rate of the Russian Central bank per

day for the entire period of delay. Further to that, due to a temporary bankruptcy moratorium, no late payment interest on tax arrears accrued in the period from April 1 to September 30, 2022

- certain tax reliefs were established to enable the relocation into Russia of the assets of controlled foreign corporations and to allow Russian individuals to buy out shares and property from foreign companies leaving the Russian market at reduced prices
- the notorious Russian B2B ESS VAT regime was abolished as of October 1, 2022. Foreign vendors providing electronically supplied services to Russian customers exclusively in the B2B sector are no longer required to tax register in Russia and directly report and pay Russian VAT. Russian B2B purchasers are now responsible for payment of this VAT in the capacity of tax agents
- a simplified and expedited procedure for obtaining VAT refunds was introduced
- additional tax benefits, including a temporary 0% corporate profits tax rate, were provided to accredited Russian IT companies to stimulate the development of the Russian IT industry and mitigate the consequences of major IT multinationals withdrawing from the country. The Federal Tax Service suspended field tax audits of IT companies until March 3, 2025 (except for audits specially agreed with the Federal Tax Service)
- from March 9, 2022, the Russian tax authorities have suspended the filing of bankruptcy petitions. Assistance in debt restructuring became a priority in the work of the tax authorities

## 6.2.2 Introduction of the unified tax account

As of 2023, Russia has implemented the concepts of a unified tax account (the "**UTA**") and a unified tax payment (the "**UTP**"), which significantly changed the tax payment procedure.<sup>93</sup> The new payment

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<sup>93</sup> See Federal Law No. 263-FZ dated 14 July 2022.



system ran from 1 July to 31 December 2022 on a voluntary basis, and became mandatory as of 1 January 2023.

The adoption of the UTA entailed the following key changes to the tax payment procedure:

- taxpayers should pay all taxes and social security contributions to the UTA as a lump sum without dividing payments separately into taxes, fees, penalties, etc.
- the tax authorities themselves offset the UTP against current tax liabilities (separate out the lump sum received on the UTA into each type of liability)
- in case of a negative opening balance, payments made to the UTA first cover the outstanding liability, and only then will the current tax liabilities be paid
- the deadline for submission of tax returns and calculations (the reporting date) has been unified – the 25th day of the relevant month)
- a unified date for payments of taxes and social security contributions has been introduced – the 28th day of the relevant month
- taxpayers have an unlimited period for filing an application to offset/refund the amount of taxes that "directly" form a positive balance on the UTA, however, the 3-year period remains in force if an amended tax return is filed

### 6.2.3 Re-negotiation, denunciation or suspension of bilateral tax treaties

Historically, Russia could boast a wide network of bilateral tax treaties allowing substantial tax incentives for investing into the country. However, starting from 2020, this network started eroding, which process unfortunately drastically accelerated in 2022.

- in 2020, Russia announced that it will battle abuse of treaty benefits by businesses from countries that Russia considers

"transit jurisdictions." Within the framework of this work, Russia has re-negotiated double tax treaties with Cyprus, Malta and Luxembourg to introduce higher withholding tax rates on dividends and interest. The double tax treaty with the Netherlands was denounced as of 2022 after the parties failed to reach a compromise solution acceptable to both the Russian and Dutch governments. Negotiations have started with Switzerland and a few more jurisdictions, but all were suspended in 2022

- in 2022, double tax treaties with Latvia and Ukraine were denounced
- in March 2023, the Russian Ministry of Finance and Foreign Affairs Ministry suggested that the President temporarily suspend tax treaties with countries that have imposed sanctions against Russia. If the Presidential decrees such "temporary suspension," approximately 40 tax agreements may temporarily cease to apply in Russia. For corporate and individual taxpayers this might mean a substantial increase in their tax burden in Russia and potentially abroad without any grace period
- the treaty suspension / denunciation process is being carried out not only from the Russian side. In April 2023, the Parliament of Denmark announced the commencing of the process of denunciation of the double tax treaty with Russia. If Denmark duly notifies Russia on denunciation by 30 June 2023, the treaty may be terminated as of 1 January 2024<sup>94</sup>
- also, based on publicly available information, Austria, Estonia, Germany, Latvia, Lithuania, Poland, Slovakia, Slovenia, Switzerland, United States, United Kingdom, Isle of Man and Channel Islands (Guernsey and Jersey) were reported to have suspended tax information exchange with Russia (both under the Convention on Mutual Administrative Assistance in Tax Matters and double tax treaties) in 2022

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<sup>94</sup> Information on the draft law is available at:  
<https://www.ft.dk/samling/20222/almindel/sau/bilag/119/index.htm>.

## 6.2.4 Potential introduction of "emergency taxes" starting with a "windfall tax" expected in 2024

Starting from the COVID pandemic in 2020, Russia has adopted several changes to its mineral extraction tax rules to collect higher tax proceeds from its core oil, gas and mining industries. However, in light of the unprecedented challenges faced by the Russian economy, the Russian Government is now considering the possibility of introducing the concept of "emergency taxes" into the Russian tax legislation.

- based on news and public comments available as of May 2023, the Tax Code is likely to be supplemented with the concept of "emergency taxes" that could be enacted by separate laws rather than incorporated into the Tax Code
- the first "emergency tax" to come could be a so-called "windfall tax." This tax, if enacted, would be levied on all major Russian businesses, including both Russian companies irrespective of their ownership and Russian permanent establishments of foreign companies. A business would fall under the expected new rules if its average taxable profit in the years 2021-2022 exceeds one RUB billion
- the "windfall tax" is expected to be levied on the difference between the average taxable profit of the taxpayer in years 2018-2019 and in years 2021-2022. Certain businesses (mainly, the already heavily taxed companies in the mineral extraction industry) and certain types of profit would be exempt from the new rules
- the "windfall tax" should have a one-off nature and may become payable in 2024. However, the proposed introduction of the general concept of "emergency taxes" into the Russian Tax Code implies that various similar measures might follow in future

Apart from the codified tax changes, the Russian authorities have de-facto enacted a so-called "exit tax." Foreign owners from "unfriendly jurisdictions" that want to sell their Russian businesses must obtain special authorization from the Russian authorities. This authorization is granted only on condition of paying a so-called "voluntary contribution" to the Russian budget in the amount of up to 10% of the market value of

the sold assets. The relevant regulatory framework is discussed in detail in Sections 8 ("Sanctions"), 10 ("Property Rights"), 14 ("Intellectual Property").

The new rules substantially change the way businesses operate in Russia, require a review of holding, financing and licensing structures from abroad into Russia, affect most of the wealth management and private holding structures for Russia and mean that immediate review and action may be required.

### 6.3 What types of tax comprise the Russian tax system?

Russia has a centralized tax system that formally comprises three levels of taxation: federal, regional, and local.

- federal taxes include VAT, excise taxes, profits tax, individual income tax, mineral extraction tax and tax on additional income from mineral extraction, state duty, special tax regimes, social security contributions, and several other taxes
- currently there are only three regional taxes: corporate property tax, transportation tax, and gambling tax. Likewise, only three local taxes exist: land tax, individual property tax, and the trade levy. Both regional and local taxes are heavily governed at the federal level. Federal legislation sets forth an exhaustive list of taxes that may be enacted by Russian regions and municipal territories, as well as key elements of such taxes (taxpayers, object of taxation, tax base, reporting period, upper or lower limits for tax rates, etc.). Regional and local legislation may set the applicable tax rates, tax payment procedure, and timing and tax benefits, but only within the framework established at the federal level, which accounts for the relatively low tax diversity among Russian regions
- there are five types of special tax regimes that may be applicable to certain activities and/or categories of taxpayers: single agriculture tax, simplified system of taxation, taxation of production sharing agreements, the patent system of taxation and tax on professional income. From 1 January 2021, it is no longer possible to apply the single tax on imputed income. Tax on professional income was introduced as a new experimental

regime in 2019. As of 1 January 2020, it applies in all regions of Russia. Special tax regimes have the status of federal tax and may provide exemptions from certain federal, regional and local taxes

#### 6.4 What types of tax audits do the Russian tax authorities conduct?

The Russian tax authorities may conduct chamber and on-site tax audits of taxpayers. The tax authorities may audit several different taxes simultaneously as part of an on-site tax audit. However, except in cases of a liquidation or reorganization, or when a higher tax authority inspects the activities of a lower tax authority that conducted an on-site audit, or when a taxpayer files an amended tax return claiming a lower level of taxation, a tax for a given period may only be audited once. From 1 July 2021, the tax authorities are also entitled to conduct a repeated tax audit if a taxpayer files an amended tax return increasing the amount of VAT or excise tax declared for refund, or increasing the amount of incurred loss. The taxpayer may also be subject to a tax audit for the same tax period upon a decision by the head of the Federal Tax Service of Russia. In the event that during a repeated tax audit the tax authorities find an underpayment that was not found during a previous tax audit, a penalty for such underpayment would not be applied to the taxpayer, except in cases where the undetected violation resulted from a conspiracy between the taxpayer and the tax authorities.

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

The tax authorities may collect outstanding taxes, late payment interest and penalties unilaterally without a court decision (except against individuals). Late payment interest is to be limited to the amount of

underpaid taxes (this rule applies to the underpaid tax amount formed starting from 27 December 2018). If the amount on the UTA is not enough to settle the tax liabilities of a taxpayer (if they amount to a criminal offense) within 75 business days from the date of entry into force of the decision on bringing charges for committing a tax offense, the tax authorities are required to forward the file to the investigating authorities for review. In certain circumstances, the amount of outstanding taxes (that the taxpayer failed to pay within a three-month period) may be collected from the taxpayer's affiliated companies. This may be possible if the taxpayer, instead of paying the outstanding tax amounts, made payments to the bank accounts of such affiliated companies.

A special department in the Federal Tax Service performs transfer pricing audits separately from the regular tax audit process. The audits will be performed in-house only and may not be performed as part of on-site regular tax audits. A transfer pricing audit may be initiated within two years after the tax authorities receive the notification of the controlled transaction and cover the three calendar years preceding the year when the audit was initiated.

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

## 6.5 How may taxes be paid in Russia?

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

## 6.6 Does Russia have a tax monitoring regime?

Yes, certain major Russian taxpayers are permitted to apply for a tax monitoring regime conducted by the Russian tax authorities.

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

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

- the total annual amount of VAT, excise taxes, corporate profits tax, mineral extraction tax, individual income tax and social security contributions payable to the federal budget for the previous calendar year is not less than RUB 100 million
- the total annual income for the previous calendar year according to the accounting records is not less than RUB one billion
- the total value of assets as of 31 December of the year preceding the year of application according to the accounting records is not less than RUB one billion

The application to switch to the monitoring regime must be submitted before 1 September of the year preceding the year of tax monitoring.

Taxpayers applying the special tax monitoring regime have the opportunity to discuss the tax implications of proposed transactions (and past transactions) with the Russian tax authorities and to obtain a tax ruling that is binding for both the taxpayer and the Russian tax authorities. The taxpayer retains the right to challenge the tax ruling by filing an objection with the Russian tax authorities.

## 6.7 What transfer pricing rules does Russia apply?

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

Section V.1 of the Tax Code introduced new transfer pricing rules, which came into force on 1 January 2012. These rules require taxpayers to notify the tax authorities of controlled transactions that are performed in a given calendar year. Controlled transactions include any transactions between related parties (domestic or cross-border). Among other criteria, parties are considered related if one directly or indirectly owns more than 25% of another, or can control the formation of at least 50% of the board of directors or the executive body of such other party. The courts may also determine that parties are related if the relationship between the parties could affect the results of transactions between them or their economic activities even in the absence of the statutory criteria. In addition, the following transactions are subject to transfer pricing control, if the total revenues under these transactions exceed RUB 120 million in total in a given calendar year:

- starting from 1 January 2019, cross-border transactions between related parties (prior to 1 January 2019, there was no threshold for such transactions)
- cross-border transactions with oil and gas products, ferrous and non-ferrous metals, mineral fertilizers, precious metals and stones
- cross-border transactions with foreign entities registered in certain low-tax jurisdictions according to a list established by the Russian Finance Ministry. The list of low-tax jurisdictions is the same as the one currently established by the Russian Finance Ministry for use for the dividend participation exemption (Cyprus, Malta and Hong Kong have been removed from this list)

From 1 January 2019, domestic transactions between related parties are subject to transfer pricing control if the parties to the transaction apply different tax rates on profits or special tax regimes, provided that such transactions exceed RUB one billion in aggregate with a given related entity in a given calendar year. Prior to 1 January 2019, domestic



transactions between related parties not exceeding RUB one billion in aggregate in a given calendar year were not subject to transfer pricing control.

In addition, the following domestic transactions between related parties are also subject to transfer pricing control if they exceed RUB 120 million prior to 2019 and RUB one billion from 2019 in aggregate in a given calendar year:

- transactions with commodities subject to the mineral extraction tax payable on an *ad valorem* basis where one party is the payer of this tax
- transactions where one of the parties is a resident of Skolkovo Innovation Center, which is exempt from Russian profits tax
- transactions between related parties where one of the parties is a taxpayer under one of the special tax regimes (unified agricultural tax regime or unified tax on imputed income for certain activities regime), applies the investment tax deduction for profits tax purposes (this provision does not apply if income/expenses under the transaction are recognized during the period from 1 January 2022 until 31 December 2024, regardless of the date of the relevant agreement), or is an operator or a license holder of a new offshore hydrocarbon deposit with third parties

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

- transactions where both parties are registered and conduct all operations in the same region and do not have tax losses, including loss carryforward
- interest-free loans between Russian related parties and sureties (guarantees) between Russian non-bank organizations

Russian taxpayers forming a consolidated taxpayer group are not subject to transfer pricing control for profits tax purposes (however, the consolidated taxpayer group regime has been set for repeal and effectively abolished).

Foreign trade transactions with goods constituting the main export items of the Russian Federation are recognized as controlled irrespective of whether they constitute world trade goods (oil and gas products, ferrous and non-ferrous metals, mineral fertilizers, etc.). A new provision applies to transactions the economic results of which (income and/or expenses) are recognized from 1 January 2022, regardless of the date of the transaction.

Moreover, from 17 March 2021, transactions conducted with the participation of an agent acting on their own behalf, but on the instructions of the principal, are considered as transactions conducted directly between the principal and a third party.

The rules provide for five transfer pricing methods (comparable uncontrolled price, resale, cost-plus, comparable profits and profit splits). The comparable uncontrolled price method is the primary method to be applied. In certain cases (e.g., resale of goods purchased from a related entity to third parties), the resale-minus method applies. In all other cases, the best method rule generally applies, however, the hierarchy of methods still applies.

The rules provide detailed guidance on selecting and adjusting comparables. There is a broad list of permitted data sources on comparables. The rules prohibit the tax authorities from using any outside comparables if the taxpayer has comparable transactions with unrelated parties. Adjustments are permitted with respect to the following taxes: profits tax, VAT (if one of the parties does not pay VAT), mineral extraction tax (if paid on an *ad valorem* basis) and individual income tax (if paid by individual entrepreneurs). In certain cases, taxpayers are permitted to make true-up adjustments for previous tax periods. Corresponding adjustments (i.e., if a transfer pricing adjustment is made to another party of a controlled transaction) are allowed for Russian corporate taxpayers only. In a cross-border context, such adjustments are not allowed for the foreign party. If a party of a controlled transaction (providing that income and expenses for the transaction are determined according to Chapter 25 of the Tax Code) filed a tax return with an adjustment and received documents confirming the fulfillment of tax obligations, another party to this transaction may make a corresponding adjustment in its tax return.

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

Taxpayers with controlled transactions (with certain exceptions) are required to maintain transfer pricing documentation and provide it to the tax authorities within 30 days of the relevant request. The transfer pricing documentation may be requested no earlier than 1 June of the year following the calendar year in which the relevant transactions took place. The transfer pricing documentation and notification requirements and transfer pricing audit rules apply regardless of the total value of controlled transactions with a given party.

From 1 January 2018, Russia enhanced the transfer pricing rules for multinational groups of companies with one or more Russian tax residents or companies acting through Russian permanent establishments (multinational enterprises (the "**MNEs**")) to allow the use of global transfer pricing documentation and implement provisions of the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports. The Country-by-Country reporting includes Master File, Local File and Country-by-Country Report (the "**CbCR**").

A taxpayer-participant of an MNE with a Russian parent company with an annual consolidated group revenue of less than RUB 50 billion in the financial year immediately preceding the reporting financial year is exempt from filing the Master File, Local File and CbCR. If the parent entity of an MNE is a foreign entity, the threshold established in the relevant jurisdiction (if any) applies.

## 6.8 Do Russian transfer pricing rules provide for advance pricing agreements (the "APAs")?

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

Starting from March 2021, if a taxpayer applied to the Russian Federal Tax Service for concluding an APA in respect of a controlled transaction, the tax authorities will not be entitled to conduct a tax audit to control prices in such a transaction. In addition, the maximum term for consideration of an application for an APA with participation of the competent authority of a foreign state is extended from nine to 27 months.

## 6.9 What is the standard Russian corporate profits tax rate?

The maximum corporate profits tax rate is 20%, which is currently payable at a rate of 3% to the federal budget and 17% to regional budgets. From 1 January 2019, reduced tax rates can be established by regional laws only if expressly provided for by the Tax Code (e.g., for residents of special economic zones). Reduced tax rates introduced by regional laws under the old rules prior to September 2018, will cease to apply after 1 January 2025.

For taxpayers participating in investment projects, the corporate profits tax rate may be reduced for a certain stability period (down to 0% in certain cases). Chapter 25 of the Tax Code also provides for special tax rates on income earned from Russian state securities and on the profits of the Central Bank of Russia (the "**Bank of Russia**").

## 6.10 Are there any specific corporate profits tax rates for dividend income?

The corporate profits tax rate on dividends received from Russian and foreign companies by Russian shareholders is 13%. Certain dividends payable by foreign and Russian entities to Russian companies are subject to a zero tax rate if, on the day the corporate decision to pay the dividends is taken, the following three criteria are met:

1. the recipient of the dividends has held the shares continuously for no less than 365 days
2. the recipient of the dividends owns no less than 50% of the shares in the company paying the dividends

3. the company paying dividends is not located in a jurisdiction included in a blacklist of offshore jurisdictions adopted by Order No. 108n of the Russian Ministry of Finance, dated 13 November 2007 (the blacklist includes most offshore low-tax jurisdictions and territories — Hong Kong is excluded from the list as of 1 January 2018)

Foreign companies that voluntarily recognize themselves as Russian tax residents are not allowed to apply the zero tax rate even if all above-mentioned requirements are satisfied (certain exemptions apply until 31 December 2023).

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

From 1 January 2019, dividend tax treatment is clearly confirmed with regard to liquidation proceeds and payments upon exit from a Russian subsidiary exceeding charter capital contribution, where previously they could be taxed at higher ordinary profits tax rates. Any losses incurred upon such liquidation (exit) should be tax deductible.

### 6.11 Are there any other participation exemptions?

Prior to 1 January 2021, Russian companies were entitled to a full tax exemption on income from the sale or redemption of shares in Russian companies, provided that:

- the Russian company has continuously held those shares for more than five years (known as the "holding period")
- the income has been derived from the sale or redemption of participation interests or shares in Russian companies, provided that (a) the shares have not been publicly traded on a securities market during the holding period, or (b) the shares are publicly traded shares in a Russian company and the company derives less than 50% of its value (directly or indirectly) from real property located in Russia

An additional full tax exemption on income from the sale or redemption of shares in Russian companies applied, provided that:

- a Russian company has continuously held those shares for more than one year (known as the "shorter holding period")
- the income has been derived from the sale or redemption of participation interests or shares in Russian companies, provided that the participation interests or shares are of a publicly traded Russian company operating in the high-tech (innovative) sector of the economy throughout the shorter holding period

From 1 January 2021, Russian companies receive a full tax exemption on income from the sale or redemption of shares or participation interests in Russian and/or foreign companies, provided that:

- the holding period is more than five years
- the income has been derived from the sale or redemption of participation interests or shares in Russian and foreign companies whose assets, as reported in their financial statements as of the last day of the month preceding the month of sale, derive less than 50% of their value (directly or indirectly) from real property located in Russia

An exemption applies to shares and participation interests of a foreign company if such company is not located in a jurisdiction included in the blacklist of offshore jurisdictions adopted by Order No. 108n of the Russian Ministry of Finance, dated 13 November 2007.

If shares of the Russian entities are traded on the market as of the date on which they are sold and are classed as shares in the high-tech (innovation) sector of the economy, a zero rate applies regardless of the structure of the assets of such Russian companies.

Until 1 January 2023, special rules that are more preferential applied to shares in the high-tech (innovation) sector. Under these rules, full tax exemption on income from the sale or redemption of shares in Russian companies applies, provided that a Russian company has continuously held those shares for more than one year (known as the "shorter holding period"), and either:

- the income has been derived from the sale or redemption of shares in Russian companies, provided that such shares are of a publicly traded Russian company operating in the high-tech

(innovative) sector of the economy throughout the shorter holding period

- the income has been derived from the sale or redemption of shares in Russian companies, provided that such shares are not publicly traded on a securities market as of the day of their acquisition by the taxpayer, and are publicly traded shares of a Russian company operating in the high-tech (innovative) sector of the economy as of the day of the sale or redemption of the shares by the said taxpayer

As of 2021, it is also provided that in the event of the sale or redemption of shares of Russian and/or foreign companies received as a result of reorganization by the successor taxpayer, the holding period is calculated from the date of their acquisition by the reorganized company.

## 6.12 How is taxable profits calculated?

Taxable profit is defined as income less deductible expenses. A taxpayer is generally permitted to deduct economically justified and documentarily confirmed business expenses. However, deduction of certain types of expenses is subject to restriction (e.g., certain advertising and representational costs, including business entertainment and travel costs). Expenses on research and development (including those that failed to yield a positive result) included on the list approved by Decree of the Russian Government No. 988 dated 24 December 2008, are deductible in the reporting period at a rate of 150% of their actual amount.

## 6.13 Does the Tax Code provide for a tax consolidation regime?

The tax consolidation rules came into force on 1 January 2012. The tax consolidation regime allows qualifying Russian groups to use the losses of a member against the profits of other group members in a manner similar to that available to branches of a Russian company. Moreover, transactions between the members of a consolidated group of taxpayers are exempt from transfer pricing control. Importantly, consolidation only applies for profits tax purposes and may not be used with respect to other tax obligations of the taxpayer (such as VAT).

Currently, the tax consolidation regime is set for repeal. The relevant amendments to the tax consolidation regime were adopted in August 2018. The Russian tax authorities are no longer registering new tax consolidation agreements. Tax consolidation agreements registered by the Russian tax authorities in 2018 are considered unregistered. Tax consolidation agreements that were registered before the amendments entered into force are valid until the expiration date set forth in the agreement, but no later than 2023.

#### 6.14 Are there any other special corporate profits tax regimes?

The Tax Code provides for a special corporate profits tax regime for taxpayers that are operators or license holders of new offshore hydrocarbon deposits. The new regime provides separate rules for calculating the tax base and for a separate 20% tax rate. The special corporate profits tax is payable to the Russian federal budget with no regional component.

#### 6.15 Are there any special interest deductibility rules?

With regard to interest deductibility limitations, the Tax Code applies transfer pricing rules and, at the taxpayer's choice, safe harbor interest rates that are mostly based on the Bank of Russia's key rate (currently 7.5%). The refinancing rate (CBR) is presumed to be equal to the Bank of Russia's key rate; the Bank of Russia does not fix an independent refinancing rate.

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

Currency	Safe harbor range for interest rates on debt obligations between related parties	
	Minimum	Maximum
RUB (for loans granted from 1 to 31 December 2014)	0%	3.5% of CBR (28.875%)



Currency	Safe harbor range for interest rates on debt obligations between related parties	
	Minimum	Maximum
RUB (for 2015)	0% <sup>95</sup> of the key rate	180% of the key rate
	75% <sup>96</sup> of CBR	
RUB (as of 2016)	0% <sup>97</sup> /75% of the key rate	125%/180% <sup>3</sup> of the key rate
EUR	0% <sup>3</sup> / €STR + 4%	€STR + 7%
CNY	0% <sup>3</sup> /SHIBOR + 4%	SHIBOR + 7%
GBP	0% <sup>3</sup> /SONIA + 4%	SONIA + 7%
CHF	0% <sup>3</sup> /SARON + 2%	SARON + 5%
JPY	0% <sup>3</sup> /TONAR + 2%	TONAR + 5%
USD and other currencies	0% <sup>3</sup> /SOFR + 4%	SOFR + 7%

Interest-free loans between Russian related parties are exempt from Russian transfer pricing rules.

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

<sup>95</sup> 0% of the key rate — applicable to ruble loans concluded between related Russian entities.

<sup>96</sup> 75% of the CBR — applicable to ruble loans concluded with related foreign entities or offshore companies.

<sup>97</sup> Specific safe harbor limitations for loan agreements concluded in 2020 and 2021.

## 6.16 Does Russia apply thin capitalization rules?

Thin capitalization rules apply to Russian companies with respect to the following loans:

- from a foreign related party, i.e., an individual or a company (previously only loans from corporations counted) that (i) owns directly or indirectly (via other companies) 25% or more of a Russian borrower (previously 20%), or (ii) owns more than 50% consecutively in each preceding company in a direct holding chain of a Russian borrower (the "**Foreign Participant**")
- from a person (either foreign or Russian) related to the Foreign Participant (including direct or indirect participants, subsidiaries and sister companies) (the "**Related Person**")

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

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

The Tax Code introduces a 12.5 to 1 debt-to-equity ratio limit for banks and leasing companies and a 3 to 1 debt-to-equity ratio limit for all other companies. Interest on debt in excess of the limitation is nondeductible, and is also deemed to be a dividend payment to the foreign shareholder, and is subject to a 15% withholding tax, unless the latter is reduced by an applicable tax treaty. The limitation is recalculated at the end of each quarter.

Due to the drastic ruble devaluation in 2014-2015, many Russian borrowers with foreign currency denominated loans from related parties faced thin capitalization issues, even on loans that were previously within the 3 to 1 debt-to-equity ratio and were extended on arm's length terms. The Russian authorities responded with a quick and temporary

solution by fixing an artificial ruble exchange rate. The fixed ruble exchange rate applies (and no exchange rate differences are considered) for calculating deductible interest accrued in the period from 1 July 2014 to 31 December 2019 on loans concluded before 1 October 2014, provided that the term of the loan agreement is not changed. The ruble exchange rates for thin capitalization purposes are based on the Bank of Russia's rates set on 1 July 2014 (USD 1 = RUB 33.8434; EUR 1 = RUB 46.1827).

For interest deduction under thin capitalization rules in 2020 and 2021 the exchange rate should not exceed the CBR exchange rate of 28 February 2020 for the purposes of calculating the controlled debt under non-ruble loans provided before 1 January 2020. Similarly, for the years 2022 and 2023 the exchange rate should not exceed the CBR exchange rate of 1 February 2022 for non-ruble loans provided before 1 March 2022.

Loans from an unrelated bank guaranteed or otherwise secured by a Foreign Participant of the debtor or its Related Person are exempt from thin capitalization rules if there has been no payment on such guarantee or security.

There are also additional exemptions from the controlled debt definition:

- loans from a Russian Related Person, provided that such a person does not have a comparable (based on amount and term) loan from a Foreign Participant or its Related Person
- loans from foreign special purpose vehicles — issuers of Eurobonds that are residents in tax treaty countries

From 1 January 2019, an intercompany loan is not counted as controlled debt if: (1) the loan funds an investment project in Russia; (2) there are no payments under the loan for at least five years; (3) the lender owns directly or indirectly 35% or less of the shares (participation interest) in the Russian borrower; and (4) the foreign lender is incorporated (tax resident) in a tax treaty jurisdiction. An investment project is considered construction of new (put into operation after 1 January 2019) production facilities in Russia for the production of goods (provision of services).

## 6.17 What are the Russian asset depreciation and loss carry forward rules?

Assets with a value exceeding RUB 100,000 (for fixed assets introduced before 2016 the value threshold is RUB 40,000) and a useful life of more than 12 months are subject to depreciation starting from the first day of the month following the month this asset was put into operation. Chapter 25 of the Tax Code allows taxpayers to split assets into 10 groups, depending on the type of asset and its useful life, and to apply accelerated depreciation rates, for example, the useful life for buildings is 30 years. Under Chapter 25 of the Tax Code, taxpayers are able to choose between a linear method and a nonlinear method and can change the method only once every five years. The depreciation of assets under the nonlinear method is performed by groups of assets (rather than on a stand-alone basis for each individual asset) and under a formula prescribed by the Tax Code. Effectively, taxpayers can deduct approximately half of the depreciation value of assets over 25% of their useful lifetime (certain limitations on the application of the nonlinear method must be observed). Land, subsoil and natural resource assets are not subject to depreciation and, hence, do not reduce the tax base for profits tax.

A lump-sum deduction of 10% of the initial book value of newly acquired fixed assets is allowed for profits tax purposes in the period when the fixed assets were acquired. For capital assets with a useful life of more than three and up to 20 years, this special investment incentive is increased from 10% to 30%. A clawback rule applies to recapture the investment incentives deduction if the taxpayer alienates any capital asset to a related party during the first five years of its use. This provision applies both to the 10% and 30% investment incentive deductions. From 1 January 2018, taxpayers may opt for an investment tax deduction instead of depreciation (subject to certain conditions and if enacted by regional tax laws).

Losses may be carried forward indefinitely, if incurred after 1 January 2007. For tax years 2017-2024, the amount of losses carried forward should not exceed 50% of the corporate profits tax base calculated for the relevant tax year. There are separate tax baskets for certain expenses, e.g., for expenses on the acquisition of certain securities. Otherwise, there should be no limit on the amount of taxable profit that

can be reduced by a loss carryforward in a particular year. In addition, capital losses may be offset against operating income; this deduction, however, must be evenly spread over the residual useful life of the capital asset for which the loss was incurred.

## 6.18 Does Russia apply any corporate profits tax investment benefits?

Regional authorities may reduce their regional profits tax rate in cases provided for by the Tax Code under the special tax regimes for investors.

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

A set of Federal Laws Nos. 290-FZ-294-FZ dated 3 August 2018 (as amended), introduced a special regime for so-called international companies registered in special administrative regions (the "**SAR**") in Kaliningrad Oblast and Primorsky Krai (the islands Russky and Oktyabrsky). A participant of the SAR can be a Russian or a foreign legal entity (excluding credit institutions, non-credit financial institutions, operators of payment systems and operators of payment infrastructure services, and entities registered in certain offshore jurisdictions) that: (1) enters into an agreement with the management company of the SAR; and (2) is registered as an international company that has redomiciled to Russia and was included by the management company in the register of

participants of the SAR. Additional requirements for obtaining the status of an international company may apply.

An international company may obtain international holding company status that provides the following tax benefits in Russia for the company and its shareholders:

- 0% tax rate for dividends received (in case of holding at least 15% of a distributing company for at least 365 days if it is not registered in a jurisdiction from the Russian blacklist of offshore jurisdictions and territories)
- 0% tax rate for income from the realization or other alienation of shares of foreign and Russian companies in certain cases
- for the tax periods prior to 1 January 2029: a 5% withholding tax rate for dividends distributed by public international holding companies to foreign residents and the exemption of CFC profits from Russian taxation
- for the tax periods from 1 January 2023 until 1 January 2036: a 5% tax rate for dividends, interest and royalties received by an international holding company and 10% withholding tax rate for dividends, interest and royalties provided that the recipient is the beneficial owner of income and is not registered in a jurisdiction from the Russian blacklist of offshore jurisdictions and territories

Federal Law No. 69-FZ "On Protection and Promotion of Capital Investments in the Russian Federation" dated 1 April 2020, introduced a new option to be grandfathered from future tax increases for investors implementing large-scale projects in Russia. If an investor enters into an "investment protection and promotion agreement" with the Russian Federation, this grandfather clause will protect the taxpayer from corporate profits tax increases. Such protection may extend up to 20 years, depending on the investment amounts.

## 6.19 What are the specifics of foreign companies' taxation in Russia?

Russian legislation taxes profits derived from a permanent establishment in Russia, as well as certain other types of income

derived without a permanent establishment in Russia. Importantly, whether a permanent establishment exists under Russian tax law is unrelated to whether a foreign company's office has been registered in Russia. A permanent establishment may exist even if the office is not registered and the existence of a registered office may not necessarily give rise to a taxable permanent establishment. Profit derived by foreign legal entities from their permanent establishments in Russia is generally taxed at the same profits tax rates applicable to Russian taxpayers. From 1 January 2012, a new rule was included in the Tax Code requiring that the income of a permanent establishment be determined after taking into account the functions performed in Russia, the assets used and commercial risks assumed, which is generally in line with the approach of the Organization for Economic Cooperation and Development (the "**OECD**").

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

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

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

authorities by 25 March of the year following the close of the taxable year.

## 6.20 Does Russia apply any CFC rules?

Yes, on 24 November 2014, the President of the Russian Federation signed Federal Law No. 376-FZ (the "**Deoffshorization Law**") introducing new rules on the taxation of profits of CFCs in Russia (the CFC rules mentioned above). These rules affect most wealth management and private holding structures for Russia.

Under the current rules, the Tax Code provides for an obligation of Russian tax residents (individuals and legal entities) to assess, report and pay taxes on undistributed profits of foreign companies and foreign unincorporated structures (unincorporated vehicles — funds, partnerships, trusts and other forms of collective investment vehicles — that may engage in business activities on behalf of their partners/beneficiaries) if certain requirements are met. A Russian tax resident is considered a controlling person of a foreign company if they own, directly or indirectly (through other Russian or foreign companies), (1) more than 25% of the shares, or (2) more than 10% of the shares if Russian persons in total own more than 50%, or which they otherwise control in their own interest or in the interest of their family (spouse or minor children), subject to certain exemptions and temporary rules. The founder of a foreign unincorporated structure is by default treated as a controlling person. A person, other than a founder, will be considered a controlling person of the foreign unincorporated structure if they exercise control over the structure, are the beneficial owner of income received from the structure, have a right to dispose of the assets of the structure, or may obtain possessions of the structure in case of its liquidation.

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



Russian CFC rules are very broad and cover not only companies in traditional low-tax jurisdictions (e.g., the British Virgin Islands and Panama), but also companies in tax treaty jurisdictions (Cyprus, Luxembourg and the US) whose effective tax rate is less than three-quarters of the weighted average Russian corporate profits tax rate (composed of 20% standard rate and 13% rate for dividends based on the structure of the CFC's income). The rules could also cover certain types of trusts and other popular wealth management tools.

On 28 October 2022, the Russian Federal Tax Service adopted a revised list of states and territories that either do not exchange information for tax purposes with Russia or exchange information that does not meet Russian expectations (the blacklist). The blacklist is effective as of 1 January 2023. The blacklist contains 89 states and 16 territories (Canada, the Cayman Islands, the Isle of Man and Guernsey were included and Andorra, Barbados, Bahrain, Colombia, Costa Rica, Nigeria, Pakistan, Saint Lucia, Uruguay, Ecuador, Gibraltar, the Faroe Islands and Macao were excluded in the new edition) and is separate from the existing blacklist of offshore states issued by the Russian Ministry of Finance in 2007. The blacklist is subject to annual review by the Russian Federal Tax Service, so states may be regularly added or removed.

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

Russian taxpayers that are controlling persons are required to report a pro rata share of the CFC's profits in their tax returns by the end of the year following the year for which the CFC prepared its financial statement (i.e., the first reporting campaign was for 2016). CFC profits are subject to ordinary tax rates in Russia: 13%/15% for individuals and 20% for legal entities.

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

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

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

The taxpayer, at its own decision, may determine the CFC's tax base under the Russian tax rules, i.e., Chapter 25 of the Tax Code. A CFC's profits are reduced by the amount of interim and annual dividends distributed by the CFC and related to the period of the financial statement. A foreign tax credit for the amount of foreign and Russian taxes paid on the CFC's profits is available. Dividends paid to a CFC by a Russian entity, the beneficial owner of which is a controlling person, are not treated as income in the profits tax base of the CFC.

Importantly, Russian tax residents are not taxed on CFC profits of active business companies, i.e., companies with no more than 20% of income being passive income. Passive income is broadly defined to include dividends, interest, royalties, capital gains, leases, certain services, etc. The profits of foreign active holding and sub-holding companies will not be attributable to its controlling persons. As another exemption, Russian tax residents are not taxed on the profits of small CFCs: from 1 January 2017, the threshold is RUB 10 million, RUB 30 million for 2016 and RUB 50 million.

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

- notification on owning shares in foreign companies — this must be filed within three months of the acquisition date
- notification on participation in CFCs (must be submitted even when a CFC reported a loss) — this is due by 20 March for legal entities and by 30 April for individuals of the year following the year for which the CFC's profits are included in the tax base of the controlling person (i.e., the first notification for a CFC's tax year ending 31 December 2015 was due by 20 March 2017)

The CFC rules provide an exemption from tax penalties arising in connection with tax underpayments on a CFC's profits for 2015-2017. There is an exemption from criminal liability for 2016-2018, provided that all tax amounts (including tax assessed and late payment interest) are paid to the budget.

Failure to file a notification on owning shares in foreign companies is subject to penalties of RUB 50,000 for each company. Penalties for failure to file a notification on participation in CFCs (also for each company) are RUB 100,000 for periods until 8 December 2020 (inclusive) and RUB 500,000 from 9 December 2020. The fine for not providing the information required for the calculation of tax on CFC profits is increased to RUB one million for periods from 9 December 2020.

Instead of determining the tax on a CFC's profits based on its financial statements, Russian tax resident individuals have the option to pay tax on an imputed "fixed" income of RUB 38.46 million for 2020, and RUB 34 million from 2021 (the fixed amount). This results in an annual imputed tax of RUB five million, regardless of the number of CFCs or their financial performance.

To apply the new tax regime from 1 January of the next calendar year, an individual should file a special notification with the Russian tax authorities by 31 December of the current year. The individual will need to apply the new regime for at least five years (at least three years if the new regime is applied as of 2020 or 2021).

Upon switching to the new regime, individuals are not required: (i) to file CFC financial statements; (ii) to determine the CFC's profits using adjustments set forth in the Tax Code; and/or (iii) to pay individual

income tax on the CFC's profits. The Russian tax authorities are not able to request the CFC's financial statements for the period when the new regime is applied. At the same time, the new regime does not eliminate the obligation to file notifications on the CFCs by 30 April.

In contrast to the general CFC profits tax regime, which exempts from taxation the dividends subsequently distributed by the CFC, under the new regime individuals pay both the tax on the fixed amount and 13%/15 % individual income tax on the dividends received.

## 6.21 Are there any specific tax residency rules for foreign companies?

Foreign companies may be recognized as Russian tax residents (and become fully taxable in Russia on their worldwide income) if they are effectively managed in Russia. A company is deemed effectively managed in Russia if at least one of the following criteria is met: (1) management of the day-to-day activities takes place in Russia; or (2) the executive bodies' management decisions are made in Russia.

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

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

A foreign company, domiciled in another country but conducting activity through a branch unit in Russia, may voluntarily claim Russian tax resident status following the procedure and format established by the Federal Tax Service. In this case the company should provide the branch unit with documents serving as a basis for calculation and payment of relevant taxes. The self-proclaimed foreign company is not

considered to be under the control of the CFC rules until it complies with the provisions of the Tax Code and Russian legislation concerning tax residents of Russia.

## 6.22 Does Russia apply beneficial ownership rules?

The Russian Deoffshorization Law introduced the concept of beneficial ownership into the domestic tax legislation from 1 January 2015. It is drafted broadly (and focuses more on anti-conduit company rules) and seems to be more onerous than the latest accepted OECD interpretation. Withholding tax exemptions or reduced tax rates under tax treaties concluded with Russia are only available to beneficial owners of income (exercising functions and risks with respect to such income and determining its economic fate), and should not be provided to foreign companies with limited authority to dispose of income and exercising intermediary functions. Russian tax agents are required to obtain additional beneficial owner status confirmations from recipients. Foreign recipients are required to confirm beneficial ownership for each dividend distribution and for each group of other payments under a contract. The form of such confirmation remains unclear, which is likely to result in more uncertainty and tax risks for many cross-border payments. Conservatively, the beneficial ownership requirement may apply even if a particular tax treaty does not contain a beneficial ownership clause. There is a simplified beneficial ownership confirmation if a company is a tax resident in a treaty jurisdiction and more than 25% of its shares are publicly traded on a foreign stock exchange in an OECD member state.

Federal Law No. 424-FZ dated 27 November 2018, slightly relaxed Russia's beneficial ownership criteria for applying tax treaty benefits. Foreign companies that are not direct recipients can claim that they are beneficial owners of different types of Russian source income through a chain of distributions of income and apply tax treaty rates and exemptions (the so-called look-through approach). The amendments apply retroactively covering payments made starting from 1 January 2018.

Russian companies were previously allowed to use the look-through approach and apply 0% corporate profits tax rate to Russian source dividends received from foreign companies by claiming beneficial ownership of such dividends. From 1 January 2021, the application of

0% dividend tax rate under the look-through approach has been abolished and a 13% dividend rate applies. It is possible to apply the 0% rate in the transitional period (2021-2023), but with additional conditions as compared to the current participation exemption.

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

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

- securities with mandatory centralized custody (e.g., bonds) of the Russian Government, federal subjects and municipalities of Russia
- corporate securities with mandatory centralized custody (e.g., bonds) issued after 1 January 2012
- other issuable securities of Russian companies (except for corporate securities with mandatory centralized custody issued before 1 January 2012 and shares in Russian joint-stock companies)<sup>98</sup>

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

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<sup>98</sup> The exemption for dividends on Russian shares applies from 1 January 2015.

### 6.23 Is there any additional reporting for foreign companies that have a presence in Russia?

Starting from 20 May 2021, foreign companies and unincorporated vehicles (including trusts, partnerships, funds, etc.) that have a branch, a representative office, Russian real property or tax registration in Russia (apart from registration as vendors of electronically supplied services) must now annually, by March 28, report to the Russian tax authorities:

- all direct shareholders
- indirect shareholders having more than 5% participation that are:
  - publicly listed companies
  - individuals
- the founders, beneficiaries and trustees/managing bodies of unincorporated vehicles

The annual report must reflect the shareholding information as of the end of the calendar year and should be filed with the local Russian tax inspectorate in electronic form or in a hard copy. Failure to provide the report in a timely fashion may trigger a penalty of RUB 50,000.

The new rule extends the disclosure requirement that previously applied only to foreign owners of Russian real estate to all foreign companies registered for tax purposes in Russia. The new report captures an even wider scope of shareholders compared to the AML reporting currently collected by Russian companies (that only covers individuals - ultimate beneficiaries owning more than 25% in a company).

### 6.24 How many double taxation treaties has Russia signed and ratified as of 1 January 2022?

Russia has signed 89 double taxation treaties (although, of these, seven tax treaties have not yet entered into force), which can provide for the reduction of the withholding tax rate on dividend income to as low as 5% and generally provide for a 0% withholding rate on other income (e.g., interest, royalties and capital gains). For example, the 1996 Russia-Germany Double Taxation Treaty provides for a 0% withholding tax rate

on interest, royalties, capital gains and other income not related to a permanent establishment; a 5% withholding tax rate on dividends payable to German shareholders who have contributed over EUR 80,000 into the charter capital of a Russian subsidiary responsible for paying out these dividends; and a 15% withholding tax rate on dividends payable to all other German shareholders. Many other tax treaties still provide for similar withholding tax rates (please see the charts below).

However, on 25 March 2020, the Russian President announced an increase in the withholding tax rate to 15% on dividends and interest payable under double taxation treaties with certain jurisdictions used for transiting funds. Russia has already signed and ratified protocols amending double taxation treaties with Cyprus and Luxembourg for 15% withholding tax on dividends and interest instead of 5% on dividends and 0% on interest (providing for certain exceptions). A similar protocol amending a double taxation treaty with Malta has also been signed and ratified. New rates under the Cyprus and Malta protocols apply from 1 January 2021. The Luxembourg protocol entered into force on 1 January 2022 as Luxembourg official authorities only ratified it in February 2021.

On 26 May 2021 Russia denounced the Double Tax Treaty with the Netherlands. The Russia-Netherlands Tax Treaty was terminated as of 1 January 2022. On 26 September 2022 the Russian President signed a decree suspending the Double Tax Treaty with Latvia, which was further denounced on 22 February 2023. The Russian Ministry of Finance clarified that the provisions of the treaty ceased to apply as of 26 September 2022. Russia also terminated the Double Tax Treaty with Ukraine, which ceased to apply as of 1 January 2023.

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

In case of dividend payments from shares of Russian joint-stock companies, tax withholding agents (i.e., Russian depositories) may only



apply ordinary withholding tax rates based on aggregate information (e.g., a 15% rate on dividends under the Russia-Germany Double Taxation Treaty), not considering reduced tax rates imposing additional requirements (e.g., investment thresholds). Effectively, Russian tax agents would over-withhold taxes and foreign investors would need to claim refunds for tax overpayments from the Russian budget according to the procedure set forth in the Tax Code.

Russia ratified the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters. The convention entered into force on 1 July 2015 for the Russian Federation and has effect for administrative assistance related to taxable periods beginning on or after 1 January 2016.

The Russian Federation is a signatory to the Common Reporting Standard Multilateral Competent Authority Agreement. Russian national legislation regarding the Common Reporting Standard was implemented on 1 January 2018. The list of jurisdictions for exchange of information was adopted by the Federal Tax Service and it includes 85 jurisdictions and 11 territories.<sup>99</sup>

Russia has also signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports, which allows the automatic exchange of CbCRs among signatories. Russian national legislation has been implemented from 1 January 2018. The list of jurisdictions that exchange CbCRs was adopted by the Federal Tax Service and it includes 67 jurisdictions and eight territories.<sup>100</sup>

On 7 June 2017, Russia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS) (the "**Multilateral Instrument**" or "**MLI**"). The MLI entered into force in Russia on 1 October 2019. Russia has notified the OECD that the MLI provisions apply in Russia from 2021-2023 with regard to 68 double taxation treaties (the actual number of treaties subject to MLI provisions would be 65 due to the denunciation of treaties with the Netherlands, Ukraine and Latvia). Specific effective dates depend on each particular jurisdiction.

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<sup>99</sup> Order of the Federal Tax Service No. ED-7-17/986@ dated 28 October 2022.

<sup>100</sup> Order of the Federal Tax Service No. ED-7-17/1226@ dated 20 December 2022.

Russia has entered into the following bilateral treaties for the avoidance of double taxation, which are currently in force:

No.	Country <sup>101</sup>	Dividends		Interest <sup>102</sup>	Royalties
		Individual companies	Qualifying companies		
1.	Albania	10	10	10	10
2.	Algeria	15	5 <sup>103</sup>	15	15
3.	Argentina	15	10 <sup>104</sup>	15	15
4.	Armenia	10	5 <sup>105</sup>	10	0
5.	Australia	15	5 <sup>106</sup>	10	10
6.	Austria	15	5 <sup>107</sup>	0	0
7.	Azerbaijan	10	10	10	10

<sup>101</sup> Unless stated otherwise, the application of a reduced tax rate requires provision of a tax residency certificate and a written confirmation of beneficial owner title to the distributed income.

<sup>102</sup> Many treaties provide an exemption for certain types of interest, e.g., interest paid to local state authorities, central bank export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.

<sup>103</sup> The rate applies if the recipient company (other than a partnership) directly owns at least 25% of the capital in the company paying the dividends.

<sup>104</sup> The rate applies if the recipient company directly owns at least 25% of the capital in the company paying the dividends.

<sup>105</sup> The rate applies if the recipient company directly owns at least 25% of the capital in the company paying the dividends.

<sup>106</sup> The rate applies if the recipient company (other than a partnership) directly owns at least 10% of the company paying the dividends, if the value of the holding is at least AUD 700,000, and the dividends to be paid by the Russian company are exempted from Australian taxes.

<sup>107</sup> The rate applies if the recipient company directly owns at least 10% of the capital in the Russian company and the value of the holding exceeds USD 100,000.

No.	Country <sup>101</sup>	Dividends		Interest <sup>102</sup>	Royalties
		Individual companies	Qualifying companies		
8.	Belarus	15	15	10	10
9.	Belgium	10	10	10	0
10.	Botswana	10	5 <sup>108</sup>	10	10
11.	Brazil	15	10 <sup>109</sup>	15	15
12.	Bulgaria	15	15	15	15
13.	Canada	15	10 <sup>110</sup>	10	0/10 <sup>111</sup>
14.	Chile	10	5 <sup>112</sup>	15	5/10 <sup>113</sup>
15.	China <sup>114</sup>	10	5 <sup>115</sup>	0	6
16.	Croatia	10	5 <sup>116</sup>	10	10

<sup>108</sup> The rate applies if the recipient company owns at least 25% of the capital in the company paying the dividends.

<sup>109</sup> The rate applies if the recipient company directly owns at least 20% of the capital in the company paying the dividends.

<sup>110</sup> The rate applies if the recipient company owns at least 10% of the capital or voting power in the Russian company, as the case may be.

<sup>111</sup> The lower rate applies to computer software, patents, knowhow and copyright royalties.

<sup>112</sup> The rate applies if the recipient company owns at least 25% of the capital in the company paying the dividends.

<sup>113</sup> The lower rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.

<sup>114</sup> From 1 January 2017.

<sup>115</sup> The rate applies if the recipient company (other than a partnership) owns at least 25% of the capital in the company paying the dividends and the value of the holding is at least EUR 80,000.

<sup>116</sup> The rate applies if the recipient company owns at least 25% of the capital in the Russian company and the value of the holding is at least USD 100,000.

No.	Country <sup>101</sup>	Dividends		Interest <sup>102</sup>	Royalties
		Individual companies	Qualifying companies		
17.	Cuba	15	5 <sup>117</sup>	10	0/5 <sup>118</sup>
18.	Cyprus	15	5 <sup>119</sup>	5 <sup>120</sup> /15	0
19.	Czech Republic	10	10	0	10
20.	Denmark	10	10	0	0
21.	Ecuador <sup>121</sup>	10	5 <sup>122</sup>	10	10/15 <sup>123</sup>
22.	Egypt	10	10	15	15
23.	Finland	12	5 <sup>124</sup>	0	0
24.	France	15	5/10 <sup>125</sup>	0	0

<sup>117</sup> The rate applies if the recipient company (other than a partnership) owns at least 25% of the capital in the company paying the dividends.

<sup>118</sup> The lower rate applies to copyright royalties.

<sup>119</sup> The rate applies to dividends received by public companies with at least 15% of the shares in free float; subject to the minimum 15% direct shareholding requirement and the minimum one-year holding period.

<sup>120</sup> The lower rate applies to interest received by public companies with at least 15% of the shares in free float; subject to the minimum 15% direct shareholding requirement and the minimum one-year holding period.

<sup>121</sup> From 1 January 2019.

<sup>122</sup> The rate applies if the recipient company owns directly at least 25% of the voting stock of the company paying the dividends.

<sup>123</sup> The lower rate applies to equipment rentals.

<sup>124</sup> The rate applies if the recipient company directly owns at least 30% of the capital in the Russian company and the value of the holding exceeds USD 100,000.

<sup>125</sup> The 5% rate applies if the French company: (1) has directly invested at least EUR 76,225 in the Russian company; and (2) is subject to tax in France, but is exempt with respect to dividends (i.e., participation exemption). The 10% rate applies if only one of the requirements is fulfilled.

No.	Country <sup>101</sup>	Dividends		Interest <sup>102</sup>	Royalties
		Individual companies	Qualifying companies		
25.	Germany	15	5 <sup>126</sup>	0	0
26.	Greece	10	5 <sup>127</sup>	7	7
27.	Hong Kong	10	5 <sup>128</sup>	0	3
28.	Hungary	10	10	0	0
29.	Iceland	15	5 <sup>129</sup>	0	0
30.	India	10	10	10	10
31.	Indonesia	15	15	15	15
32.	Iran	10	5 <sup>130</sup>	7.5	5
33.	Ireland	10	10	0	0
34.	Israel	10	10	10	10
35.	Italy	10	5 <sup>131</sup>	10	0

<sup>126</sup> The rate applies if the German company owns at least 10% of the capital in the Russian company and the value of the holding is at least EUR 80,000.

<sup>127</sup> The rate applies if the Greek company (other than a partnership) owns at least 25% of the capital in the company paying the dividends.

<sup>128</sup> The rate applies if the recipient company directly owns at least 15% of the capital in the company paying the dividends.

<sup>129</sup> The rate applies if the recipient company directly owns at least 25% of the capital in the company paying dividends and the value of the holding exceeds USD 100,000.

<sup>130</sup> The rate applies if the recipient company directly owns at least 25% of the capital in the Russian company.

<sup>131</sup> The rate applies if the recipient company directly owns at least 10% of the capital in the Russian company and the value of the holding is at least USD 100,000.

No.	Country <sup>101</sup>	Dividends		Interest <sup>102</sup>	Royalties
		Individual companies	Qualifying companies		
36.	Japan <sup>132</sup>	10	5/15 <sup>133</sup>	0/10 <sup>134</sup>	0
37.	Kazakhstan	10	10	10	10
38.	North Korea	10	10	0	0
39.	Korea (Rep.)	10	5 <sup>135</sup>	0	5
40.	Kuwait	5	5	0	10
41.	Kyrgyzstan	10	10	10	10
42.	Lebanon	10	10	5	5
43.	Lithuania	10	5 <sup>136</sup>	10	5/10 <sup>137</sup>

<sup>132</sup> The new double taxation treaty applies from 1 January 2019.

<sup>133</sup> The 5% tax rate applies if the beneficial owner is a company that has owned directly at least 15% of the voting power of the company paying the dividends for the period of 365 days ending on the date on which entitlement to the dividends is determined, provided that the payer company is not entitled to a deduction for dividends paid in computing its taxable income; 15% applies to dividends derived by a resident of a state from shares of a company or comparable interests, such as interests in a partnership, trust or investment fund, if, at any time during the 365 days preceding the payment of the dividends, these shares or comparable interests derived at least 50% of their value directly or indirectly from immovable property situated in that other state.

<sup>134</sup> The higher rate applies if the interest is determined by reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person, or to any dividend, partnership distribution or similar payment made by the debtor or a related person, or any other interest similar to such interest arising in the source state.

<sup>135</sup> The rate applies if the recipient company (other than a partnership) directly owns at least 30% of the capital in the company paying the dividends and the value of the holding is at least USD 100,000.

No.	Country <sup>101</sup>	Dividends		Interest <sup>102</sup>	Royalties
		Individual companies	Qualifying companies		
44.	Luxembourg <sup>138</sup>	15	5 <sup>139</sup>	5 <sup>140</sup> /15	0
	Luxembourg <sup>141</sup>	15	5 <sup>142</sup>	0	0
45.	Malaysia	-/15 <sup>143</sup>	-/15 <sup>144</sup>	15	10/15 <sup>145</sup>
46.	Mali	15	10 <sup>146</sup>	15	0
47.	Malta	15	5 <sup>147</sup>	5 <sup>148</sup> /15	5

<sup>136</sup> The rate applies if the recipient company (other than a partnership) directly owns at least 25% of the capital in the company paying the dividends and the value of the holding exceeds USD 100,000.

<sup>137</sup> The lower rate applies to royalties for the use of industrial, commercial and scientific equipment.

<sup>138</sup> The rates apply from January 2022.

<sup>139</sup> The rate applies to dividends received by public companies with at least 15% of shares in free float; subject to the minimum 15% direct shareholding requirement and the minimum one-year holding period.

<sup>140</sup> The lower rate applies to interest received by public companies with at least 15% of shares in free float; subject to the minimum 15% direct shareholding requirement and the minimum one-year holding period.

<sup>141</sup> The rates apply until December 2021.

<sup>142</sup> The rate applies if the Luxembourg recipient directly owns at least 10% of the capital in the Russian company and the value of the holding is at least EUR 80,000 or its equivalent in national currency.

<sup>143</sup> The 15% rate applies to profits of joint ventures. Otherwise, the domestic rate applies; there is no reduction under the treaty.

<sup>144</sup> The 15% rate applies to profits of joint ventures. Otherwise, the domestic rate applies; there is no reduction under the treaty.

<sup>145</sup> The lower rate applies to industrial royalties.

<sup>146</sup> The rate applies if the value of the holding is at least XOF one million.

<sup>147</sup> The rate applies to dividends received by public companies with at least 15% of shares in free float; subject to the minimum 15% direct shareholding requirement and the minimum one-year holding period.

<sup>148</sup> The lower rate applies to interest received by public companies with at least 15% of shares in free float; subject to the minimum 15% direct shareholding requirement and the minimum one-year holding period.

No.	Country <sup>101</sup>	Dividends		Interest <sup>102</sup>	Royalties
		Individual companies	Qualifying companies		
48.	Mexico	10	10	10	10
49.	Moldova	10	10	0	10
50.	Mongolia	10	10	10	_149
51.	Montenegro <sup>150</sup>	15	5 <sup>151</sup>	10	10
52.	Morocco	10	5 <sup>152</sup>	0/10 <sup>153</sup>	10
53.	Namibia	10	5 <sup>154</sup>	10	<b>5</b>
54.	New Zealand	15	15	10	10
55.	North Macedonia	10	10	10	10
56.	Norway	10	10	10	0
57.	Philippines	15	15	15	15
58.	Poland	10	10	10	10
59.	Portugal	15	10 <sup>155</sup>	10	10

<sup>149</sup> The domestic rate applies; there is no reduction under the treaty.

<sup>150</sup> The Yugoslavia-Russia Tax Treaty is applied by both Serbia and Montenegro.

<sup>151</sup> The rate applies if the recipient company owns at least 25% of the capital in the Russian company and the value of the holding is at least USD 100,000.

<sup>152</sup> The 5% rate applies if the value of the holding exceeds USD 500,000.

<sup>153</sup> The lower rate applies to interest on foreign currency deposits.

<sup>154</sup> The rate applies if the recipient company owns at least 25% of the capital in the Russian company and the value of the holding is at least USD 100,000.



No.	Country <sup>101</sup>	Dividends		Interest <sup>102</sup>	Royalties
		Individual companies	Qualifying companies		
60.	Qatar	5	5	5	0
61.	Romania	15	15	15	10
62.	Saudi Arabia	5	5	5	10
63.	Serbia <sup>156</sup>	15	5 <sup>157</sup>	10	10
64.	Singapore <sup>158</sup>	10	5 <sup>159</sup>	0	5
65.	Slovakia	10	10	0	10
66.	Slovenia	10	10	10	10
67.	South Africa (Rep.)	15	10 <sup>160</sup>	10	0
68.	Spain	15	5/10 <sup>161</sup>	0/5 <sup>162</sup>	5

<sup>155</sup> The rate applies if the Portuguese company has owned directly at least 25% of the capital in the Russian company for an uninterrupted period of at least two years prior to the payment.

<sup>156</sup> The Yugoslavia-Russia Tax Treaty is applied by both Serbia and Montenegro.

<sup>157</sup> The rate applies if the recipient company owns at least 25% of the capital in the Russian company and the value of the holding is at least USD 100,000.

<sup>158</sup> From 1 January 2017.

<sup>159</sup> From 1 January 2017, the rate applies if the recipient company owns at least 15% of the capital in the company paying the dividends (does not apply to dividends distributed by real estate investment funds).

<sup>160</sup> The rate applies if the recipient company directly owns at least 30% of the capital in the Russian company and the value of the holding is at least USD 100,000.

<sup>161</sup> The 5% rate applies if: (1) the Spanish company has invested at least EUR 100,000 in the Russian company; and (2) the dividends are exempt in Spain. The 10% rate applies if only one of the conditions is met.

No.	Country <sup>101</sup>	Dividends		Interest <sup>102</sup>	Royalties
		Individual companies	Qualifying companies		
69.	Sri Lanka	15	10 <sup>163</sup>	10	10
70.	Sweden	15	5 <sup>164</sup>	0	0
71.	Switzerland	15	5 <sup>165</sup>	0	0
72.	Syria	15	15	10	4.5/13.5/ 18 <sup>166</sup>
73.	Tajikistan	10	5 <sup>167</sup>	10	0
74.	Thailand	15	15	10 <sup>168</sup>	15
75.	Turkey	10	10	10	10
76.	Turkmenistan	10	10	5	5
77.	United Arab Emirates <sup>169</sup>	- <sup>170</sup>	0 <sup>171</sup>	0 <sup>172</sup>	- <sup>173</sup>

<sup>162</sup> The lower rate applies to long-term loans (minimum seven years) granted by credit institutions resident in a contracting state.

<sup>163</sup> The rate applies if the company in Sri Lanka owns at least 25% of the capital in the Russian company.

<sup>164</sup> The rate applies if the Swedish company owns 100% of the capital in the Russian company (or in the case of a joint venture, at least 30% of the capital in such a joint venture) and the foreign capital invested is at least USD 100,000.

<sup>165</sup> The rate applies if the Swiss company owns at least 20% of the capital in the Russian company and the value of the holding exceeds CHF 200,000.

<sup>166</sup> The 4.5% rate applies to cinema, movies and TV and radio broadcasting programs; the 13.5% rate applies to literature, art, and science products; and the 18% rate applies to computer software, patents, trademarks and knowhow.

<sup>167</sup> The rate applies if the recipient company owns at least 25% of the capital in the company paying the dividends.

<sup>168</sup> The 10% rate applies to loans granted by Russian banks.

No.	Country <sup>101</sup>	Dividends		Interest <sup>102</sup>	Royalties
		Individual companies	Qualifying companies		
78.	United Kingdom of Great Britain and Northern Ireland	10	10	0	0
79.	United States of America	10	5 <sup>174</sup>	0	0
80.	Uzbekistan	10	10	10	0
81.	Venezuela	15	10 <sup>175</sup>	5/10 <sup>176</sup>	10/15 <sup>177</sup>
82.	Vietnam	15	10 <sup>178</sup>	10	15

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

<sup>169</sup> The application of the tax treaty is limited.

<sup>170</sup> The tax treaty is not applicable to individuals receiving dividends.

<sup>171</sup> The rate applies only if the recipient is a financial or investment institution.

<sup>172</sup> The rate applies only if the recipient is a financial or investment institution.

<sup>173</sup> The treaty does not cover royalties.

<sup>174</sup> The rate applies if the recipient company holds at least 10% of the capital or voting power in the Russian company, as the case may be.

<sup>175</sup> The rate applies if the recipient company (other than a partnership) directly owns at least 10% of the capital in the company paying the dividends and the value of the holding is at least USD 100,000.

<sup>176</sup> The 5% rate applies to bank loans.

<sup>177</sup> The lower rate applies to the fees for technical assistance.

<sup>178</sup> The rate applies if the Vietnamese company has invested at least USD 10 million directly in the capital of the Russian company.

No.	Country	Dividends		Interest <sup>179</sup>	Royalties
		Individual companies	Qualifying companies		
1.	Belgium <sup>180</sup>	15	5 <sup>181</sup>	10	0
2.	Estonia	10	5 <sup>182</sup>	10	10
3.	Ethiopia	5	5	5	15
4.	Georgia	10	10	10	5
5.	Laos	10	10	10	0
6.	Mauritius	10	5 <sup>183</sup>	0	0
7.	Oman	10	5 <sup>184</sup>	0	5

In March 2023, the Russian Ministry of Finance and the Foreign Affairs Ministry suggested that the President temporarily suspend tax treaties with countries that have imposed sanctions against Russia. If the Presidential decrees such "temporary suspension," approximately 40 tax agreements may temporarily cease to apply in Russia. For corporate and individual taxpayers this might mean a substantial increase in their tax burden in Russia and potentially abroad without any grace period.

<sup>179</sup> Many treaties provide for an exemption for certain types of interest, e.g., interest paid to state local authorities, central bank export credit institutions or in relation to sales on credit. Such exemptions are not considered in this column.

<sup>180</sup> Russia-Belgium Double Taxation Treaty, dated 19 May 2015. Signed but not ratified.

<sup>181</sup> The beneficial owner is a company that directly owns, for at least 12 consecutive months, at least 10% of the shares in the paying company and the value of the holding is at least EUR 80,000.

<sup>182</sup> The rate applies if the recipient company (other than a partnership) owns at least 25% of the capital in the company paying the dividends and the value of the holding is at least USD 75,000.

<sup>183</sup> The 5% rate applies if the value of the recipient company's holding is at least USD 500,000.

<sup>184</sup> The rate applies if the value of the recipient company's holding is at least USD 500,000.

## 6.25 Does Russia apply VAT?

Yes, VAT is imposed on all goods imported into Russia and is applied to the sale of goods, works and services. The same VAT regime applies to goods and services that are sold in or imported into territories under Russian jurisdiction, e.g., artificial islands and drilling platforms on the continental shelf.

The tax period for VAT for all taxpayers and tax withholding agents is the calendar quarter. As a rule, taxpayers must pay VAT in equal installments no later than the 28th day of each month following the reporting quarter. VAT tax returns may be filed with the tax authorities only in electronic form.

From 1 January 2019, tax legislation imposes a VAT rate of 20% on the sale of most goods, works and services (raising the rate from the previous 18%). A lower 10% rate is applied to limited types of goods, such as pharmaceuticals, medical equipment, and certain food products and periodicals. The export of goods is subject to a 0% rate of VAT. In addition, certain types of goods, works and services are exempt from VAT including, but not limited to, the following:

- land plots, dwelling houses and apartments, lease of office space to accredited representative offices and branches of foreign legal entities from jurisdictions that apply reciprocal benefits
- certain medical goods and services
- the sale of shares, derivatives and repo transactions
- certain operations provided by financial services businesses (registrars, depositaries, dealers, brokers, securities management businesses, investment, mutual and private pension fund management companies, clearing organizations and trade organizers)
- the assignment of exclusive IP rights and rights to use the results of these IP rights based on licenses (including nonexclusive licenses) on inventions, utility models, industrial

designs, integrated circuit topologies, with the exception of trademarks

- from 1 January 2021, the assignment of exclusive IP rights and rights to use the results of these IP rights based on licenses (including nonexclusive licenses) for software and databases that are included in the Unified Register of Russian Computer Programs maintained in accordance with Decree of the Russian Government No. 1236 dated 16 November 2015; the assignment of rights to foreign software was exempt from VAT until 31 December 2020

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

Generally, VAT paid on the acquisition of goods, works and services may be offset against VAT collected from customers. Russian buyers are not required to postpone offsetting input VAT on advance payments until the goods, works and services are delivered and can take an offset on special advance VAT invoices. Russian VAT legislation allows the recognition of retroactive discounts in the current tax period through issuing corrective VAT invoices (however, if a discount does not change the price set in a contract, the taxpayer does not need to issue a corrective VAT invoice). E-invoicing is possible but requires a digital signature and data transfer via authorized operators and is subject to the agreement of the counterparties.

An enterprise ends up transferring to the state only the difference between input VAT paid and VAT collected. As a rule, however, a taxpayer may not offset input VAT if such VAT is incurred on goods, works or services used by the taxpayer for the sale of goods or the provision of services that are exempt from VAT. In this case, the taxpayer will be required to maintain separate accounting for transactions that are subject to VAT and transactions that are not subject to VAT, and include such input VAT relating to sales that are not subject to VAT in its production costs. In those cases where only a portion of certain input costs was used for the production of goods or the provision of services subject to VAT, the corresponding input VAT may be offset only on a pro rata basis. Hence, for example, careful planning will be required to maintain full recovery if part of a newly constructed

building is to be directly leased to representative offices or branches of foreign legal entities accredited in Russia for which a VAT exemption applies.

As a rule, it is possible to offset the input VAT in case the place of supply of works and services is outside Russia and such works/services are not subject to Russian VAT.

For barter transactions, taxpayers are not required to transfer VAT to each other in cash but must remit VAT to the Russian budget under general rules.

A taxpayer must restore input VAT previously recovered and pay it to the Russian budget on goods, works and services, including fixed and intangible assets used for activities subject to 0% VAT (e.g., export of acquired goods or producing goods to be exported). This VAT may be offset in the future when the tax base has been determined, e.g., a full set of documents confirming export operations is prepared.

In order to claim a refund of input VAT paid in relation to goods that were subsequently exported and subject to 0% VAT, the taxpayer is required to file various supporting documents with the Russian tax authorities. The VAT refund is granted only following a chamber tax audit of the relevant VAT return and documents, which should be conducted within two months (if any violations are established, the chamber audit of a VAT return could be extended by up to three months). The Tax Code provides that the 0% VAT may be confirmed by contract as either one document signed by the parties or several documents expressing the consent of the parties qualifying to the material terms of the contract. The 0% VAT for certain transactions may be confirmed in electronic form, including custom declarations, shipping documentation and other documents, confirming the provision of services. A taxpayer may refund VAT before the end of a tax audit if it meets one of the following requirements: (i) the taxpayer has existed for no less than three years, and the total amount of VAT (except import VAT), excise taxes, corporate profits tax and mineral extraction tax paid over the three preceding calendar years is not less than RUB two billion; or (ii) the taxpayer provided a bank guarantee from an authorized Russian bank covering the full amount of the reclaimed VAT. The Russian Ministry of Finance maintains the list of authorized banks. In capital construction, the input VAT paid to suppliers of goods, works and

services may be offset under the general procedure as the construction progresses.

In 2022 and 2023, a taxpayer may apply for the VAT refund under the simplified procedure: at the time of application it should not be in the process of reorganization or liquidation or bankruptcy proceedings. In this case, no bank guarantee is required, and the VAT can be reimbursed in an amount not exceeding the aggregate amount of taxes and social security contributions paid in the preceding calendar year.

As of 1 January 2023, the VAT refund procedure has been modified due to the adoption of the UTA. A positive total balance on the unified tax account of the taxpayer is now a prerequisite for the VAT refund.

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

A Russian customer of a foreign company that is not registered with the tax authorities and is active (making sales or providing services) in Russia must withhold either 9.09% or 16.67% reverse charge VAT (depending on the applicable underlying VAT rate of 10% or 20%, respectively) from the amounts transferred to the foreign company and must itself remit such reverse charge VAT directly to the state budget.

A foreign company that is registered for tax purposes in Russia must pay Russian VAT on its transactions that are subject to VAT for Russian customers. In such case, a Russian company is not obliged to act as a tax agent or to withhold or pay VAT for services rendered by the foreign company. Based on the position of the Russian Ministry of Finance, the obligation to pay VAT must be performed by the foreign company and there is no option for the parties to agree on who will perform the VAT payment.

Starting from 1 October 2021, the Russian tax rules for tax agents have been changed in such a manner as to expand the list of cases when a Russian customer is required to act as a tax agent even if the foreign



supplier is tax registered in Russia. Russian companies are now required to act as tax agents in respect of goods, works and services purchased from foreign suppliers in the following cases:

- a foreign supplier is not tax registered in Russia
- a foreign supplier is tax registered in Russia only because it owns immovable property and/or vehicles located in Russia or has an account opened with the Russian bank
- a foreign supplier is tax registered in Russia at the location of its separate subdivision(s) not involved in the sale of goods, performance of works and/or provision of services in Russia

Russian VAT is imposed on several categories of electronically supplied cross-border services ("electronic services") provided to Russian customers. Foreign companies that supply electronic services to Russian individuals, as well as any foreign intermediaries taking part in the provision of such services, have to register with the Russian tax authorities, file VAT returns and pay Russian VAT on their own. As of 1 January 2018, national payment system operators (money transfer operators, payment agents, etc.) are not considered tax agents.

Following recently adopted amendments, starting from 1 October 2022, foreign companies providing electronic services only to Russian companies and/or individual entrepreneurs (and not to Russian individuals) are no longer required to calculate and pay VAT on their own. The Russian companies and individual entrepreneurs are now required to act as tax agents under Russian VAT rules and withhold, calculate and remit Russian VAT when making payments for electronic services to foreign companies.

A tax rate of 16.67% applies to the tax base (gross outbound fee) for the calculation of the embedded VAT amount. Foreign companies providing electronic services to Russian customers (both individuals and companies/individual entrepreneurs) are not entitled to recover VAT incurred in Russia.

## 6.26 What are the main benefits of the new preferential tax regime for IT companies?

For the period from 2022 until 2024, Russian IT companies and electronic hardware developers can apply a reduced 0% corporate profits tax (instead of 20%) and reduced 7.6% social security contributions (instead of 14%). In 2021, Russian IT companies were entitled to apply 3% corporate profits tax and 7.6% social security contributions.

To apply the reduced rates, Russian companies must fulfill all of the following conditions:

1. accreditation as an IT organization: The current accreditation rules<sup>185</sup> impose no restrictions on foreign ownership in a Russian company applying for accreditation. If these rules remain unchanged, the preferential tax regime may be available, among others, to Russian subsidiaries of foreign companies

Similar requirements apply to developers of electronic hardware. They must be included in a special register maintained by the Russian Ministry of Industry and Trade.<sup>186</sup>

2. specific revenue structure: At least 70% of the company's revenues must come from the sales of software developed by this company, the provision of related services, or the design and development of electronic hardware (with exceptions for certain types of IT activities)
3. corporate structure: The company hasn't undergone reorganization since 1 July 2022 (other than a conversion), and the participation interest of the government (if any) in such company should not exceed 50%

At the same time, the earlier available VAT exemption for software and database licenses was substantially restricted as of 2021. The

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<sup>185</sup> The current accreditation rules were established by Decree of the Russian Government No. 1729 dated 30 September 2022.

<sup>186</sup> The current rules on inclusion into the register of Russian developers of electronic hardware were established by Decree of the Russian Government No. 2392 dated 31 December 2020.

exemption now only applies to software and databases included in Russia's National Software Register,<sup>187</sup> and is not available to foreign software vendors. In addition, the exemption does not extend to the provision of access to advertising and online marketplace software.

## 6.27 Are there any specific taxes for licensed subsoil users?

### **Mineral extraction tax**

Chapter 26 of the Tax Code provides for a mineral extraction tax (the "MET") (representing a general tax regime), which came into effect on 1 January 2002. MET is generally calculated from the value of the mineral resources extracted from the subsoil based on the prices (excluding VAT and excise taxes) at which the extracted minerals were sold, subject to the transfer pricing provisions of the Tax Code, and effectively not lower than the market price. Taxpayers are required to calculate the tax base separately for each type of mineral resource extracted and pay it on a monthly basis. Subsoil users may deduct the MET amounts paid to the state budget for Russian corporate profits tax purposes. Chapter 26 of the Tax Code does not provide for any special concessions for subsoil users.

As of 1 January 2022, mining and steel companies will apply increased formula-based MET. MET on coking coal will be defined by the FOB Australia coking coal price per ton multiplied by a 0.015 royalty coefficient and monthly average USD / ruble exchange rate. MET on iron ore is based on the CFR China iron ore price multiplied by a 0.048 coefficient, monthly average USD / ruble exchange rate and by the ore's iron content divided by 62%. MET for producers of fertilizer is also increased via changes to the royalty coefficient in the formula. Along with the new liquid steel excise duty, these measures replaced a temporary 15% export duty to increase budget revenues during the pandemic.

Special rules apply for the taxation of hydrocarbons, including crude oil, natural gas and gas condensate.

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<sup>187</sup> Unified Register of Russian Computer Programs maintained in accordance with Decree of the Russian Government No. 1236, dated 16 November 2015.

The MET for crude oil is determined by multiplying the extracted quantity of dewatered, desalted and stabilized oil by the tax rate determined in accordance with the following formula:

- tax rate = RUB 919 for one ton of crude oil x  $C_p$  -  $D_m$
- the  $C_p$  multiplier reflects the average prices for Urals crude oil in US dollars on international oil markets (Mediterranean and Rotterdam oil markets) determined on a monthly basis and the average RUB/USD exchange rate is determined by the Bank of Russia. The MET rate is zero when the average price for Urals crude oil for a tax period is less than or equal to USD 15 per barrel
- the  $D_m$  factor is a decreasing coefficient (applies as a tax incentive) reflecting the conditions of oil production, including location, depletion, type of reserves, size and complexity of a particular oil field, etc. An additional damper coefficient of 1.3 applies for tax periods starting in 2023-2025

As of 1 January 2021, Russia repealed the historic MET benefits for depleted oil fields and for viscous oil to raise additional revenues for the state budget. Companies may consider shifting oil deposits, whose profitability under the MET regime is hindered, to the new income-based tax. Taxpayers retaining the general MET regime and maintaining development volumes or keeping environmental programs may receive partial compensation through tax deductions depending on the region. In particular, taxpayers producing viscous oil on historic oil fields located fully or partially in the Tatarstan Republic are entitled to reduce their MET payments by the capped amount of expenses on compliance with environmental law requirements.

West-Siberian oil producers are entitled to use the capped MET deductions, provided they enter into production agreements with the Russian Ministry of Nature and the Russian Ministry of Finance.

The MET for natural gas and gas condensate is calculated based on specific formulas reflecting the average market price of gas and gas condensate, and other factors including the complexity of gas/gas condensate recovery (depletion levels, regional characteristics of the

deposits, depth of the development of natural gas and gas condensate, etc.) and the relevant gas transportation expenses.

The Tax Code provides for a MET exemption for natural gas that is reinjected into a formation to maintain formation pressure when gas condensate is extracted.

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

As of 1 January 2019, Russia is gradually decreasing export customs duties for crude oil down to zero in 2024 via the application of a decreasing coefficient in the export customs duty rate with a corresponding MET increase as shown in the table below:

Year	Export duties on crude oil		MET on crude oil	
	Decreasing coefficient	Reduction of export duty rates	Adjustment coefficient	Increase of MET rate for crude oil, in % from the current export duty rate
<b>2018</b>	-	30%	-	0%
<b>2019</b>	0.833	25%	0.167	5%
<b>2020</b>	0.667	20%	0.333	10%

<b>2021</b>	0.5	15%	0.5	15%
<b>2022</b>	0.333	10%	0.667	20%
<b>2023</b>	0.167	5%	0.833	25%
<b>2024</b>	0	0%	1	30%

A separate compensation mechanism is provided to qualifying Russian refiners. Certain MET formula adjustments (e.g., reflecting past customs duty benefits) are used to ensure neutrality compared to the previous regime.

### **Income-based tax**

From 1 January 2019 Russia has been testing a new income-based tax (the "**IBT**") for oil and gas companies. The IBT applies in a test regime to a limited number of hydrocarbon deposits (mainly in West and East Siberia) divided into five groups (the new fifth group is made up of Arctic projects). As of 2021, with the reduction of MET benefits, companies can shift depleted fields as well as certain oil fields in the Arctic and North-Caucasus federal regions and Sakhalin (to improve profitability) to the IBT regime substantially broadening its scope. If the IBT proves to be efficient and supports the development of current and new fields that are less economically attractive under the ordinary MET regime, it may be expanded.

The IBT amount due is calculated for each oil deposit separately due to ring-fencing as the calculated revenue from hydrocarbon development, i.e., estimated revenue from the sale of all extracted hydrocarbons on international markets, less related actual expenses (certain capital expenditures (CAPEX) and operating expenditures (OPEX) on a cash basis with some caps on expenses ensuring minimal IBT), as well as calculated expenses (estimated export duties and estimated transportation costs determined according to the Russian government methodology) multiplied by the 50% IBT rate.

Payers of the IBT will be subject to a substantially reduced MET on dewatered, desalinated and stabilized oil extracted from IBT-covered deposits calculated at the special reduced MET rate of RUB one per ton of crude oil multiplied by an IBT coefficient balancing average market oil

prices, less export customs duties and special incentives for greenfield and brownfield projects. Certain MET benefits are available for IBT-covered deposits with depleted reserves (following the reduction of the MET benefits) and oil fields in the Arctic Region.

## 6.28 What are the main specifics of the special tax regime used by participants of production sharing agreements?

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

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

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

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

Corporate property tax is a regional tax, i.e., it is regulated by the legislation of the relevant region, with a maximum rate of 2.2%. The corporate property tax base includes only immovable property. From 1 January 2020, the following assets are subject to corporate property tax:

- fixed assets owned by the taxpayer in Russia if their tax base is calculated based on the depreciated book value of those assets determined according to accounting rules (and not tax accounting rules)
- immovable property located in Russia and owned by the taxpayer or held under the right of economic management if its tax base is calculated based on its cadastral value

Taxable assets do not include inventory, any costs or intangible assets recorded on the taxpayer's balance sheet, land and bodies of water.

The tax base of certain types of real property, such as business and shopping centers, offices, trading premises, catering and consumer services premises, as well as property owned by foreign entities with no permanent establishment in Russia or properties that are not used for the activities of such permanent establishments, are calculated based on their cadastral value, which is determined by a state cadastral assessment.

Managing companies of mutual funds investing in real estate are subject to property tax on the property held in the fund. The managing company pays the corporate property tax from the property of the fund and the tax effectively applies to property held for both corporate and individual investors.

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



depending on the type and cadastral value of taxable property (previously depending on the category of the taxpayer).

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

### 6.30 Does Russia apply any social security taxes?

Yes, Russia levies social security contributions that include contributions for compulsory pension insurance, for compulsory medical insurance, for temporary disability and motherhood paid to the Federal Tax Service and contributions for compulsory social insurance against accidents at work and occupational diseases paid to the Social Fund of Russia.

Until 31 December 2022, the social security contributions applied at an aggregate rate of 30% of an employee's annual salary of up to the following thresholds ("social contributions thresholds"):

- for contributions to the State Pension Fund — RUB 1,465,000 for the year 2021; RUB 1,565,000 for the year 2022
- for contributions to the Social Security Fund — RUB 966,000 for the year 2021; RUB 1,032,000 for the year 2022
- for contributions to the Federal Mandatory Medical Insurance Fund — no threshold

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

The social security contributions apply to all payments to individuals (including individuals applying the simplified system of taxation) even if made from net income. The social security contributions period is the

calendar year and the social security contributions are paid on a monthly basis.

From 1 April 2020, small and medium-sized enterprises pay social security contributions at the aggregate rate of 15% on payments to individuals in excess of the minimum statutory monthly wage.

As of 1 January 2023, social security contributions (except for contributions for compulsory social insurance against accidents at work and occupational diseases) are charged at a single rate of 30% for the amount below the respective threshold and 15.1% - in excess of it.

The amount taxable at the rate of 30% constitutes RUB 1,917,000 for the year 2023. The threshold amount is subject to annual adjustments.

Reduced rates of social security contributions apply to certain categories of payers, e.g., IT companies, agricultural goods producers, certain companies applying the simplified system of taxation. Companies that are residents of certain special economic zones and of territories of priority socioeconomic development, budgetary scientific institutions and other categories of social contributions payers listed in the law may pay social security contributions at various reduced rates from 0% to 15%.<sup>188</sup>

As of 1 January 2023, the social security contributions for foreign individuals that are temporarily staying, temporarily and permanently residing in the territory of the Russian Federation are accrued in the same manner as for Russian individuals (except for highly qualified specialists who are temporarily residing on the territory of the Russian Federation).

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

Individuals who are defined as Russian tax residents, i.e., those who have been in the country for 183 days or more during any 12 consecutive months, are subject to individual income tax on all of their income, both earned in Russia and earned elsewhere. Individuals who

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<sup>188</sup>For example, the following social security contribution rates apply depending on the category of employees: 0% — for remuneration of employed crew members of vessels registered in the Russian International Register of Ships, etc.

do not meet this criterion are subject to tax on any income received from Russian sources.

The following income tax rates apply to income received by individuals before 31 December 2020 (inclusive): a 13% flat rate applicable to most types of income received by Russian tax residents, including dividend income; a 35% rate applicable to certain types of income (e.g., deemed income from low-interest or interest-free loans in certain cases); a 30% rate applicable to Russian source income received by nonresidents; and income from certain types of securities held on foreign nominal holder and similar accounts (and not on an owner's account) if the relevant foreign nominee receiving such income fails to provide appropriate aggregate information to the Russian depository in a timely fashion. Prior to 31 December 2020 (inclusive), foreign nationals who had not yet obtained Russian tax resident status but were recognized as highly qualified foreign specialists for the purposes of Russian employment legislation (i.e., a foreign citizen or a stateless person with substantial work experience, skills and achievements, whose salary is higher than the threshold set forth in Federal Law No. 115 dated 25 July 2002) enjoyed a 13% Russian individual income tax on their Russian salary.

From 1 January 2021, a 15% individual income tax rate applies to the annual income of Russian individual tax residents in excess of a threshold of RUB five million. The 13% individual income tax rate continues to apply as long as an individual's income does not exceed the threshold. Otherwise, individuals have to pay tax of RUB 650,000 (i.e., 13% of RUB five million) plus 15% on the income in excess of the threshold.

The increased 15% tax rate mentioned above applies to most types of income (including dividends, capital gains from the sale of securities, and CFC profits), with the exception of capital gains from the sale of assets (including both movable and immovable property but excluding securities), payments under insurance contracts and pension plans, and gifts of assets (excluding securities). These types of income are subject to the 13% tax, even if they exceed the threshold. The 35% individual income tax rate still applies to certain types of income.

Nonresidents are still subject to the 30% individual income tax, although certain exceptions apply (e.g., interest on deposits with Russian banks

and employment income of highly qualified specialists are subject to 13% tax within the threshold and 15% on the excess).

Individual income tax is paid mainly through the withholding mechanism, under which tax agents assess and withhold tax on income exceeding the threshold and subject to the 15% rate. If a tax agent withholds the full amount of tax (e.g., the employer is a tax agent and the main source of income and the employee has no other income sources), an individual will not have to pay any additional tax through notification or self-assessment procedures. Should the Russian tax authorities determine that, based on information submitted by tax agents, additional tax needs to be paid due to aggregate annual income exceeding the threshold, a Russian individual taxpayer will receive notification requiring the payment of additional tax. Such an individual would be required to pay the additional tax at the 15% rate by 1 December of the year following the end of the tax period. Individuals will not be obliged to file tax returns for the payment of additional tax and will only be required to make payments based on the notifications received.

The Tax Code applies specific rules to individuals recording financial results on transactions with different categories of securities and derivatives for tax purposes. Individual investors may carry forward losses on tradable securities and tradable derivatives for 10 years. Similar to companies, Russian individuals enjoy full tax exemption on income from the sale or redemption of shares in Russian companies satisfying the requirements discussed for companies above. Russian tax resident individuals may benefit from investment tax deductions designed to attract long-term investments in securities (listed on Russian stock exchanges).

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

From 1 January 2021, individuals who are Russian tax residents can credit Russian withholding tax on dividends paid by the Russian company to its foreign corporate shareholder subject to the following requirements:

- an individual participates in the foreign company receiving dividends directly or indirectly through a chain made exclusively of foreign companies/foreign structures without establishing a legal entity (e.g., trusts)
- a foreign company is established in a jurisdiction (i) with which Russia has concluded a double tax treaty and (ii) which is not included in the black list of the Federal Tax Service (same as used for the application of Russian CFC rules)
- dividends are distributed up to the level of the Russian individual within 180 days from payment to the foreign corporate shareholder of the Russian company distributing the dividends
- a Russian resident declares income in their tax return and provides documents confirming transit of payments

From 1 January 2019, freelancers working in Russia may apply an experimental tax regime, i.e., tax on professional income. Under this regime, freelancers are subject to a 4% tax rate on their income received from the sale of goods (works, services and property rights) to individuals. Freelancers providing services to companies or individual entrepreneurs are charged a 6% tax rate.

Starting from 1 March 2022, Russian individuals are able to transfer business and personal assets worth at least RUB 100 million to new private foundations under Russian law. Private foundations can be established and tested during the lifetime of their founders. Russian and foreign assets can be transferred to a foundation, including cash, investment portfolios, real estate, business assets (shares and interests in commercial organizations) and other property.

### 6.32 What other regional and local taxes apply in Russia?

Regional and local legislative bodies, at their discretion, may introduce various tax incentives and credits with regard to regional and local taxes.

Regional taxes currently include corporate property tax, transportation tax and gambling tax. Local taxes currently include property tax on individuals, land tax and the trade levy. Although these taxes are set regionally and locally, the federal legislature has enacted limits on their overall rates.

## 7. Customs, Trade and WTO Aspects

### 7.1 Introduction

#### **What is Russian customs legislation based on?**

Russian customs legislation is based on the unified rules of the Eurasian Economic Union (the "**EAEU**"). The EAEU was launched on 1 January 2015 and it includes Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan. All Russian foreign trade regulations, including customs tariff and non-tariff regulations, are primarily based on rules established at the supranational level of the EAEU (for more details on the EAEU, please refer to Section 7.2 below). The EAEU replaced the Customs Union of Russia, Belarus and Kazakhstan (the "**CU**"). The CU commenced operation on 1 January 2010 and gained its main legislative framework on 1 July 2011.

Russia has been a member of the World Customs Organization (the "**WCO**") since 1991 and a party to the Kyoto Convention on the simplification and harmonization of customs procedures from 21 October 2010. In 2012 Russia became a member of the World Trade Organization (the "**WTO**").

### 7.2 The EAEU

#### **What was the main aim of establishing the EAEU?**

The EAEU was initially launched in 2010 by Russia, Belarus and Kazakhstan, established a unified customs territory with the free movement of goods, unified customs tariff and non-tariff regulations, and regulations on the application of indirect taxes. The main objective of the EAEU is the economic, financial and geopolitical integration between some of the former republics of the USSR.

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

On 29 May 2014, Russia, Belarus and Kazakhstan signed the Treaty on the Eurasian Economic Union, according to which, from 1 January 2015,

the CU was transformed into the EAEU. The CU and the CU regulations became an integral part of the EAEU. The EAEU establishes a unified set of rules governing the most important economic sectors. From 1 January 2015, the EAEU included Russia, Belarus, Kazakhstan and Armenia. Kyrgyzstan joined the EAEU on 12 August 2015.

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

### **What are the governing bodies of the EAEU?**

The Supreme Eurasian Economic Council is the main regulatory body of the EAEU. The EAEU Commission is the executive body of the EAEU and is authorized to issue and implement EAEU regulations.

## **7.3 Unified tariff regulations of the EAEU**

### **What is Russia's customs tariff based on, and is it consistent with the Harmonized System and the WTO?**

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

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



## 7.4 Sanitary-epidemiological measures

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

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

The unified sanitary rules include the following three lists of controlled goods:

- goods that are subject to sanitary-epidemiological control (includes almost all food products and consumer goods, e.g., chemicals, products for children, perfumes and tobacco products). Goods on this list must comply with the established sanitary and safety requirements
- goods that are subject to state registration, which is required to confirm compliance with sanitary-epidemiological and hygiene requirements and applies to household chemical products, alcoholic beverages, etc. State registration must be carried out prior to the goods' importation into the EAEU
- exemptions from the state registration requirement (e.g., when goods subject to state registration are imported for exhibition purposes)

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

Sanitary-epidemiological control is performed at EAEU customs entry points when goods cross the EAEU customs border, as well as within the EAEU territory. State registration certificates for controlled goods, if any, must be issued prior to the goods' importation into EAEU territory. Sanitary-epidemiological control is performed in Russia by regional subdivisions of the Federal Agency for the Oversight of Consumer Protection and Welfare (the "**Rospotrebnadzor**").

## 7.5 Technical regulations (confirmation of compliance)

### **What are Russian product safety requirements based on?**

Confirmation of conformity is designed to verify that goods conform to the statutory quality and consumer characteristics requirements. Confirmation of compliance in Russia is based on the Russian national regulations and on the legislation of the EAEU.

### **How to identify whether the goods require mandatory certification or not?**

There are lists of goods subject to mandatory confirmation of conformity in the EAEU. The goods can be identified by the name and customs (HS) classification codes.

The EAEU Commission has established a number of supranational technical regulations with mandatory safety requirements with respect to almost all types of goods, including regulations on the safety of machinery and equipment, elevators, low-voltage equipment, clothes, grain, food products, juices, perfume and cosmetics, toys, tobacco products, pyrotechnics, packaging, electromagnetic compatibility, petroleum gas, hazardous substances used in the production of electrical goods and radio-electronic goods, etc.

The EAEU has also established a unified list of goods that are not subject to technical regulations but require mandatory confirmation of conformity in the form of the certification or declaration of conformity under local standards.

In addition, each EAEU country may have its own local list of goods requiring mandatory certification or declaration of conformity in accordance with the local standards.

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

Currently, the technical rules of the EAEU and national (i.e., local) standards and national lists of products that are subject to mandatory confirmation of compliance may still exist separately in EAEU countries.

In Russia the national list of goods subject to mandatory confirmation of conformity is set out in Government Decree No. 2425 dated 23 December 2021. The national list provides information on the description and HS classification of the goods, as well as names of mandatory national standards.

Thus, the two separate systems of conformity confirmation coexist. Prior to importing goods into any of the EAEU member states, it is important to ensure that the goods comply with both systems.

For example, on 12 March 2022 the Russian Government issued Decree No. 353 establishing certain temporary simplifications in the sphere of product certification, labeling, and extension of certificates and declarations of conformity, which should be applied at the national level only.

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

Certificates and declarations of conformity are registered by the Federal Accreditation Service, which is a common body responsible for accrediting certification bodies and testing laboratories, maintaining registers, and state supervision (<http://fsa.gov.ru/>).

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

### **Which main requirements apply to imported goods under technical regulations?**

Mandatory technical regulations of Russia and the EAEU, together with Russian laws on protecting consumer rights, mean the following requirements apply to controlled goods at the stage of importation: minimum technical safety requirements, mandatory certification/declaration of conformity, mandatory marking and labeling requirements, and use of specific safety signs, including the EAEU unified market circulation mark (i.e., the EAC).

During customs clearance the importer of record should indicate the relevant details of valid certificates or declarations of conformity (if any) in the import customs declaration, and arrange proper labeling on the goods' and their packaging.

## 7.6 Phytosanitary and veterinary control

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

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

General requirements on the importation and exportation of plants that need to be quarantined to/from Russia are set out in the Federal Law "On Quarantine of Plants" adopted in 2015.

## 7.7 Import and export licensing

### **Does Russia and the EAEU control the importation/exportation of certain goods?**

Import requirements are established by the EAEU legislation on non-tariff measures.

The non-tariff measures establish a unified list of goods, to which import and export limitations and prohibitions are applied and includes fertilizers, rare animals and plants, goods with a high level of cryptographic protection, hazardous wastes, drugs, items of cultural value, precious stones and metals, etc.

The importation of goods subject to non-tariff measures requires an import or export permission document, which (depending on the product's type, characteristics and designation) may include:

- an import or export license or permit
- other types of import or export authorization (e.g., the importation of medicinal preparations can be performed on the basis of a state registration certificate, certain cryptographic products can be imported on the basis of a registered notification, etc.)

## 7.8 Regulatory framework in the sphere of customs regulations

### **What are the main legal acts of the EAEU in the sphere of customs regulations?**

The main legal act is the EAEU Customs Code, which came into force on 1 January 2018 following the codification of 17 supranational

regulations of the EAEU, including the customs valuation rules, the importation and exportation of cash by individuals, international mail, etc. The EAEU Customs Code was finally issued on 12 April 2017.

The EAEU Customs Code established basic rules and principles in such spheres as: customs payments, application of special safeguards, anti-dumping and countervailing measures, customs formalities and parties engaged in activities in the customs sphere, customs procedures, peculiarities of the movement of certain types of goods across the customs border of the union, conducting customs control, and rights and obligations of the customs authorities and participants of foreign trade activity.

Implementing customs regulations are set out in decisions of the EAEU Commission, as well as in the local laws and regulations of the EAEU member states.

### **What are the implementing customs regulations in Russia?**

The main Russian national legal act is the Federal Law "On Customs Regulation," which was issued by the Russian Parliament on 3 August 2018 and came into force on 4 September 2018 (except for certain articles). The law was adopted in accordance with the EAEU Customs Code, and includes articles corresponding to it, but it also contains other provisions.

## **7.9 The Russian customs authorities**

### **What is the structure of the Russian customs authorities?**

The introduction of the CU/EAEU has not affected the internal structure of the Russian customs service, which remains as follows: the Federal Customs Service, regional customs administrations, customs houses, and customs clearing posts.

## **7.10 Declarant (importer of record)**

### **Who can be the importer of record in Russia?**

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

### **Can foreign entities act as importers of record?**

As a rule, foreign entities may act as importers of record in a specifically limited number of cases, e.g., when goods are imported by representative offices or branches of foreign legal entities accredited in Russia and are designated for the internal needs of such branches or representative offices, or when imported goods are placed under special customs procedures (e.g., temporary import, re-export, customs warehousing), subject to certain specific conditions of a foreign trade transaction.

## **7.11 Registration of an importer of record with the local customs authorities**

### **Is there any special procedure an importer of record has to undergo to start performing customs clearance formalities in Russia?**

Russian customs regulations do not require importers/exporters of record to be registered with the Russian customs authorities. However, during the first customs clearance, a customs clearing post opens an electronic file for every importer/exporter of record that clears goods through customs.

The importer of record would only need to provide the electronic file of its statutory documents to start customs clearance formalities at another customs post. Hard copies are no longer required but may still be used at the discretion of the importer of record.

## 7.12 Customs brokers (representatives/brokers)

### **Are Russian customs brokers required to be officially registered?**

A declarant may clear goods through a customs broker (in accordance with the EAEU Customs Code, the term "customs representative" is used) — an intermediary legal entity fulfilling customs clearance formalities on behalf and in the name of, and as instructed by, the declarant or another person who is authorized to perform customs operations. The customs representative may pay customs duties and taxes on declared goods. Every customs representative should be included by the customs authorities in the official list of customs representatives (in Russia, the responsible body is the Federal Customs Service). A customs representative is jointly and severally liable together with the declarant for the observance of customs legislation. According to the official list, in 2021 there were more than 1,500 registered customs representatives in Russia.

### **Can Russian importers perform customs clearance formalities without licensed customs brokers?**

An importer of record can choose whether to engage a customs representative or to perform customs clearance on their own behalf.

## 7.13 Authorized Economic Operators (the "AEOs")

### **What statutory simplifications and privileges can be granted to AEOs?**

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

- temporary storage and release of imported goods at the premises of the AEO



- release of imported goods for free circulation prior to their declaration to the Russian customs authorities
- simplified customs transit procedure
- other customs simplifications that could be provided to the AEO by EAEU customs regulations

According to the EAEU Customs Code, AEOs are subject to new qualification, registration and other requirements and are entitled to more customs simplifications and privileges, which include, among others: (i) priority when performing certain customs operations; (ii) no obligation to provide security for paying customs duties and taxes under certain conditions; (iii) priority in developing pilot projects and participating in experiments performed by customs; (iv) a lower risk score in the customs risk management system; (v) the right to apply to a customs post other than the post in the region where goods are located for customs clearance purposes (provided that both customs posts are located in the territory of the same EAEU member state); and (vi) the use of means of identification recognized by the customs authorities (subject to certain conditions).

As of January 2023, AEO status had been granted to 210 Russian legal entities.

## 7.14 Customs clearance

### **How is the customs clearance of imported goods performed after they cross the customs border of the EAEU?**

Goods that are moved into Russia through the territory of EAEU member states are placed under the transit customs regime at the external border of the EAEU and are finally released for free circulation by the Russian customs authorities. In Russia, imported goods are legally released for free circulation after the Russian customs authorities confirm this by notifying the declarant electronically that the goods have been released. Imported goods are normally cleared at customs either

before their shipment to Russia or when the goods reach the designated customs house/post (and are placed in a special temporary customs warehouse if necessary).

Customs clearance is normally completed by the importer of record (or a customs representative acting on its behalf) filing the customs declaration (the main document) and the required set of documents. The list of documents required for customs clearance in each particular case depends on the type and characteristics of the goods and terms of their importation (e.g., the customs regime chosen). Notably, the EAEU Customs Code stipulates a general rule according to which importers/exporters are not required to enclose supporting documents with the customs declaration. The customs authorities may separately request any documents supporting the declared information. This move is aimed at simplifying customs declarations for the business community and eliminating burdensome responsibilities and formalities.

**What are the statutory timelines for customs clearance operations and the release of goods by the Russian customs authorities?**

Under the EAEU Customs Code, the standard term of release of goods by the customs authorities was reduced to four hours (subject to certain conditions). However, the legislation gives a customs inspector the right to extend that term by up to 10 business days at the discretion of the chief of a customs terminal.

**7.15 Electronic customs declaration**

**Do the Russian customs authorities apply electronic customs declarations?**

Currently, customs clearance in Russia is performed electronically, except for certain exceptional cases, when customs declarations could be submitted in hard copy.

**Did the EAEU Customs Code introduce any rules to the electronic customs clearance procedures?**

According to the EAEU Customs Code, almost all customs clearance formalities must be performed electronically. Hard copy is allowed only in the following exceptional cases: (i) customs transit of goods; (ii) importing/exporting goods designated for personal use by individuals; (iii) goods sent by international mail; (iv) declaration of international transportation vehicles; (v) the use of transport (carriage), commercial and/or other documents (including those envisaged under international treaties entered into between EAEU members and third parties) as a customs declaration; and (vi) other cases determined by the EAEU Commission.

## 7.16 Customs clearance procedures

### **What customs regimes are available for importers of record in Russia?**

As in the majority of countries, the Russia/EAEU customs regulations established standard customs regimes of import and export, re-import and re-export, and economic customs regimes designated for special/irregular situations (e.g., customs warehouse, temporary import and free customs zone). Goods may be placed under any of the applicable customs regimes (i.e., customs procedures) established by the EAEU Customs Code that are based on the Harmonized System. Below is a brief description of the most commonly used customs regimes.

#### 7.16.1 Internal (home) consumption

##### **What are the main features of this customs regime?**

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

## **Can foreign companies clear products under this customs regime in Russia?**

Local branches and representative offices of foreign companies can release goods for internal consumption in Russia, subject to certain conditions.

### **7.16.2 Temporary import**

#### **What is temporary import used for?**

Temporary import is considered a special economic customs regime, pursuant to which foreign goods are used for a certain period (the term of the temporary import) in Russian customs territory with full or partial exemption from import customs duties and taxes (i.e., import VAT and excise taxes, where applicable).

#### **Are there any special requirements for temporarily imported goods?**

Temporarily imported goods must remain unchanged, except for changes due to natural wear and tear or natural loss given normal transportation, shipment, storage and use conditions. Russian importers are allowed to perform operations with temporarily imported goods required for their preservation, to maintain the consumer features of products, and to keep the products in the condition they were in before they were cleared at customs for temporary importation into Russia.

#### **Are any customs payments required for temporarily imported goods?**

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

Where partial (rather than full) exemption from import customs payments is granted, the temporary import regime stipulates that 3% of the total

amount of import customs payments (that would have been paid if the goods had been fully imported for free circulation) must be paid for each month the goods stay in Russia under this regime.

### **What is the term of temporary import?**

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

### **7.16.3 Bonded warehouse**

#### **What are the main features of this customs regime?**

Under the bonded warehouse customs regime, goods imported into the EAEU are stored at special places (bonded warehouses) under customs control without an obligation to pay import customs duties and taxes. Storage at a bonded warehouse is subject to regular nonrefundable storage fees as contractually agreed with the bonded warehouse's owner. Goods so imported and put under this customs regime (pursuant to the permission of the customs authorities) have the status of foreign goods.

#### **How long can goods be stored at a customs warehouse?**

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

### **Can the importers of record sell or transfer goods placed in a customs warehouse?**

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

## **7.16.4 Customs transit**

### **What are the main features of this customs regime?**

Under the customs transit regime, goods cross the customs border of the EAEU and are under customs control during their movement across Russian customs territory without an obligation to pay import customs duties or taxes. Only foreign goods can be subject to the customs regime, which is granted only by permission of the customs authorities. The regime is normally granted to either a carrier or an expeditor if it is a Russian legal entity or an entity of the EAEU. The transit customs regime is terminated when the goods are shipped out of Russia. A special transit customs declaration is required for the declaration of the transit customs regime.

### **Can the transit customs regime be applied with the use of a TIR carnet?**

Security for payment of customs duties and taxes is usually required before the goods are placed under the customs transit procedure.

### **When can goods be destroyed or abandoned to the state?**

### 7.16.5 Destruction

Products with the status of foreign goods can be declared for destruction with the customs authorities, which would imply that such destruction must be completed under customs control and the importer would not be subject to import customs duties and taxes with respect to such destroyed products. The cost of destruction must be fully covered by the importer claiming the regime. Waste generated as a result of such destruction would be subject to customs clearance requirements and import customs duties and taxes under general rules. Customs clearance requirements do not apply to waste that cannot be further used for commercial purposes or is subject to burial, neutralization, disposal or removal in another way. Such waste has the status of goods of the EAEU and is not subject to customs control.

### 7.16.6 Abandonment to the state

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

### 7.16.7 Export

#### **What are the main features of the export customs regime?**

Export is the main customs regime for the definitive exportation of goods out of the customs territory of Russia. The export of certain types of

goods is subject to export customs duties. The export of all goods is also subject to Russian VAT with a special 0% rate (see below).

### 7.16.8 Reexport

#### **What are the main features of the reexport customs regime?**

Reexport is the customs regime when goods initially delivered into Russian territory may be taken out with the right to be exempted from customs duties, fees and taxes or refunded customs duties, fees and taxes (if paid). Generally, the reexport regime applies only to foreign goods, i.e., goods that were delivered into Russian territory but have not undergone the entire customs clearance procedure and have not been released under a particular customs regime.

#### **Are there any statutory limitations for reexport?**

Generally, the reexport customs regime is not applicable to goods imported into Russia and released for free circulation in Russia. The reexport regime can be applied to goods released into free circulation when it has been established that when such goods crossed the Russian customs border they had defects or in some other way did not conform to the provisions of the foreign trade contract in terms of quality, quantity, description or packaging, and for this reason were returned to the supplier or another nominated person. Such goods may be placed under the customs regime of reexport if they: (i) have not been used or modified, except if such use or modification was required for the detection of defects; (ii) may be identified by the Russian customs authorities; (iii) have been reexported within one year from the date of release into Russia; and (iv) have been supported with the required documents that confirm the existence of lawful grounds for such reexport and the observance of restrictions and prohibitions for the import of goods that are established by the legislation of Russia/the EAEU.



## 7.16.9 Reimport

### **What are the main features of the reimport customs regime?**

Reimport is the opposite of the reexport customs regime and is designed to exempt goods that were initially exported from the customs territory of Russia from the payment of import customs duties and taxes, without the application of any economic restrictions provided by Russian laws and the laws of the EAEU.

## 7.16.10 Customs regimes introduced by the EAEU Customs Code

### **What customs regimes did the EAEU Customs Code establish?**

The EAEU Customs Code formalized three customs regimes that were previously established and regulated by the legislation of the EAEU member states, namely the special customs regime, free customs zone and free bonded warehouse regimes.

## 7.17 Preliminary classification decisions

### **Can Russian importers obtain preliminary classification decisions?**

Yes — at the discretion of importers of record, the Russian customs authorities may make preliminary decisions on the classification of goods (known as preliminary classification decisions), which are equivalent to binding tariff information used in the US and the EU.

The new Federal Law "On Customs Regulation" in Russia shortened the period for the issuance of preliminary classification decisions from 90 days to 60 days and extended the effective term of preliminary classification decisions from three years up to five years.

Preliminary classification decisions are issued in the name of the applicants (i.e., importers of record) and may only be used by them (for more information, please refer to the section "Declarant (importer of record)" above). Also, customs authorities may take longer than the above-mentioned 60-day term to issue a preliminary classification

decision for a number of reasons established by law (primarily, if the customs authorities are not satisfied with the documentation submitted by an applicant).

## 7.18 Customs valuation rules

### **Why is customs valuation important for the Russian customs authorities?**

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

### **Can the Russian customs authorities unilaterally change the declared customs value?**

The Russian customs authorities often increase the customs value of imported goods and importers of record have the right to challenge such adjustments with higher customs authorities or in court. Court practice shows that, in the majority of cases, the courts have supported importers of record.

### **What are the main Russian customs valuation rules?**

The EAEU Customs Code established relevant customs valuation rules and replaced the Agreement of the CU on Customs Valuation (2008). The main principles of the customs valuation rules of the EAEU are based on the WTO regulations.

### **Is it possible to defer the declaration of customs value in Russia?**

Yes, it should be possible to defer the determination of customs value in certain cases when the customs value cannot be determined at the moment of importation and customs clearance. The customs valuation cannot be deferred for a period exceeding 15 months.

### **Can an importer of record obtain a preliminary ruling on the customs valuation?**

The EAEU Customs Code established a new type of ruling — a preliminary ruling on the methods for customs valuation. Such procedure was also implemented in the new Federal Law "On Customs Regulation" in Russia. According to the law, decisions on customs valuation must be issued no later than 30 calendar days from the date of registration of the application. However, currently, importers are not able to obtain such preliminary decisions. Russian customs authorities will begin issuing preliminary rulings on the customs valuation after the Federal Customs Service adopts a respective procedure. The implementing regulations on the issuance of preliminary rulings in Russia were adopted in 2022.

### **What types of customs payments can be applied in Russia?**

Customs payments applied in Russia include the following types:

- import/export customs duties
- taxes (import VAT, excise duty)
- customs clearance (processing) fees

Depending on the type of goods, importers may be required to pay other types of payments at customs when transferring records across the border of the EAEU (e.g., disposal fees).

#### **7.18.1 Import customs duties**

### **How are import customs duties calculated and how are they rated?**

Customs duties are imposed on top of the declared customs value confirmed and accepted by the Russian customs authorities. The rates of import customs duties in Russia are normally established as an *ad*

*valorem* (interest) rate or a specific rate (in euros depending on the physical features of imported goods) based on the Unified Customs Tariff of the EAEU. The unified rates of import customs duties apply to goods originating from all countries outside the EAEU, except when tariff preferences or the free trade regime are applied (e.g., the CIS FTA).

Import customs duties are paid to the unified budget of the EAEU and are subsequently distributed among the EAEU members. The rates of import customs duties are based on Russia's commitments to the WTO.

**Are there any statutory exemptions from the unified customs tariff of the EAEU?**

As an economic supporting tool, the EAEU established a temporary exemption from the import customs duty with respect to certain medicinal preparations and medical devices designated for the prevention of COVID-19 disease.

**Can the import customs duties in Russia be different from the EAEU customs tariff?**

In 2022 the Russian authorities established measures allowing exemptions from import custom duty for certain technological equipment and spare parts designated for the implementation of essential investment projects.

In 2018, in response to special safeguard measures established by the US with respect to steel products originating from Russia, the Russian Government issued regulations on the application of increased rates of import customs duty (at the level of 25%-40%) with respect to certain machinery and equipment originating from the US.

In December 2022 the Russian Government introducing increased rates of import customs duty with respect to certain household products and hunting weapons originating from so-called "unfriendly" countries. The increased rates should be in force until 31 December 2023 (unless these measures are further extended).

## 7.18.2 Export customs duties

### **Which types of goods are subject to export customs duties?**

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

## 7.18.3 Import VAT

### **How is Russian import VAT calculated and what are the applicable rates?**

Payments of import VAT and the distribution of VAT between member states are performed based on a special agreement signed by the member states. Import VAT applies to the sum total of the customs value, customs duty and excise tax (if any). The import of goods is generally subject to Russian customs VAT levied at the same rates as Russian sales VAT (i.e., 20% and 10%). VAT is imposed on all goods imported into Russia and it applies to the sale of goods, work and services in Russia. The 10% VAT rate applies to limited categories of goods, e.g., pharmaceuticals, children's products, some food products, while some medical goods, art and cultural goods, etc., may be VAT exempt. Import VAT may be generally offset against output VAT collected from local customers.

Pursuant to a direct provision of the Russian Tax Code, products that do not have analogs manufactured in Russia and that are on the list approved by the Russian government are VAT exempt.

## 7.18.4 Export 0% VAT

### **Are Russian exporters of record subject to export VAT?**

The exportation of goods from Russian customs territory is subject to 0% VAT. Russian exporters of record must comply with a special statutory procedure to apply the 0% VAT rate to exports.

### **Which documents are required to confirm the 0% rate of export VAT and what is the statutory procedure?**

Generally, exporters must provide the Russian tax authorities with the following documents:

- contract for the exportation of goods
- export customs declaration evidencing the actual export of goods
- copies of shipping documentation (transfer and acceptance statements, waybills, invoices, etc., confirming the transport of goods out of Russia or the EAEU)

Additional requirements are established for exporting goods that were previously imported into the territory of the EAEU member states.

The taxpayer must submit these documents within 180 days after exporting the goods. If the taxpayer fails to meet the requirements outlined above, the taxpayer loses the right to apply the 0% VAT rate on export and the standard VAT rates of 10% or 20% apply, depending on the type of goods.

### **How is the export VAT administered in internal trade between the EAEU countries?**

Exporting goods from Russia to other EAEU member states is also subject to 0% VAT. The procedure for confirming the 0% rate in this case is established at the level of the EAEU and has certain peculiarities (e.g., the list of confirmation documents should include an application on

the importation of goods and the payment of indirect taxes, and a bank statement confirming the receipt of funds paid for the exported goods).

### 7.18.5 Import excise taxes

#### **Which products are subject to excise tax in Russia?**

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

### 7.18.6 Disposal fee

The disposal fee must be paid for all imported or locally manufactured vehicles and is aimed at protecting the environment and contributing to the state budget. Certain types of vehicles are exempt from the disposal fee, including vehicles imported: (i) as personal belongings of refugees and certain categories of immigrating persons; (ii) by diplomatic and consular missions and international organizations; and (iii) that are over 30 years old and are not designated for commercial transportation (i.e., retro-vehicles). The disposal fee is calculated by multiplying the base rate (RUB 20,000 for cars and RUB 150,000 for commercial vehicles) by increasing coefficients, depending on certain technical characteristics of the vehicle (e.g., engine capacity and age).

#### **Are any other types of products, except vehicles, subject to the disposal fee?**

In addition to the disposal fee on vehicles, Russia has been applying an ecological fee since 2015. Importers and manufacturers of certain goods are obliged to use waste from such goods in accordance with disposal/recycling limits. If such manufacturers and importers fail to use the waste, they will have to pay an ecological fee calculated using a specific formula. The Russian government has established the list of goods subject to such disposal/recycling (including their packaging) and the applicable rates of ecological fees and disposal/recycling limits. Disposal/recycling limits depend on the particular type of used goods.

The ecological fee is payable before 15 April of each following year. The government also issued the relevant implementing regulations on the procedure for paying the ecological fee.

## 7.19 Rules of origin

### **What are the rules of origin?**

In 2018 the EAEU adopted new rules of origin for products from developing and least-developed countries (goods for which tariff preferences are granted when imported into the territory of the EAEU), as well as non-preferential rules of origin intended for customs purposes (e.g., for the application of anti-dumping duties, special protective, compensatory duties), eliminating tariff preferences. To obtain tariff preferences for goods from developing and least developed countries, it is necessary to observe a number of criteria, such as direct delivery, direct purchase, documented proven origin of the goods and sufficient processing.

## 7.20 In-kind contribution

### **Is the in-kind contribution of imported goods into charter capital duty free?**

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

## 7.21 Customs inspection and liability

### **How long should imported goods be under customs control?**

As a rule, customs authorities are allowed to carry out customs inspections within three years after clearance of the relevant goods.

Under the EAEU Customs Code, customs authorities are allowed to conduct customs control within the same period of three years after one



of the events specified by the EAEU Customs Code occurs, including: (i) change of the foreign goods' status to the status of "goods of the EAEU;" (ii) actual export of goods out of the territory of the EAEU; (iii) actual destruction of goods declared for destruction; and (iv) discharge of the transit of foreign goods through the territory of the EAEU. The legislation of member states of the EAEU may extend the term of customs control to five years.

### **What types of customs inspections are there?**

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

## **7.21.1 Administrative penalties**

### **Who is authorized to enforce administrative penalties for violations of customs regulations in Russia, and what are the maximum administrative penalties?**

Based on the results of a customs inspection, the customs authorities may hold the inspected company administratively responsible for breaching customs rules. Chapter 16 of the Russian Code of Administrative Offenses provides sanctions such as administrative fines and/or confiscation of the imported goods. Notably, in the case of confiscation, this sanction may be applied not only to the actual violator (the importer of record), but also to the bona fide downstream owner of the goods if the goods were involved in a customs law violation. Depending on the type of violation committed, the sanction against the

company could amount to a fine of up to 300% of the goods' value, or up to 200% of the amount of customs duties and import VAT that were not paid on the cleared goods in question, and may include the confiscation of those goods.

**Can self-disclosure exempt the importers of record from administrative penalties?**

Yes, in certain specific circumstances a self-disclosure on customs underpayments should be viewed as a legal ground to exempt the importer of record from an administrative fine. Otherwise, a self-disclosure is viewed as a mitigating circumstance allowing penalties to be minimized.

**7.21.2 Criminal penalties**

**Can Russian criminal penalties be applied to corporations or only to private individuals?**

Russian law does not have the concept of corporate criminal liability. Only private individuals (i.e., managers of an importer of record or a customs broker) responsible for a particular crime can face criminal penalties in Russia. Relevant crimes could be the evasion of customs payments, tax evasion and bribery.

**What are the maximum penalties and the statute of limitations period for customs payments evasion?**

The maximum punishment for the evasion of customs payments is imprisonment for 12 years or a fine of up to RUB 1 million, or the amount of salary or other income of the convicted person for a period of up to five years. The maximum period of the statute of limitations for this crime is 15 years.

**What are the general enforcement statistics on crimes related to customs payment evasion?**

In 2022, Russian customs authorities initiated 1,847 criminal cases. The majority of these cases were related to the smuggling of sensitive ("strategically important") goods (the total value of smuggled goods is estimated to RUB 9.6 billion). Around 340 criminal cases related to customs payment evasion in the total amount of RUB six billion.

### **What are the most common types of customs inspections?**

Generally, there are the following three types of customs audits:

- 1) a check of documents and information after customs clearance – the customs authorities can at any time request the importers of record to provide certain information and documents on the imported shipment within a specified time limit, which is normally from 14 to 30 calendar days
- 2) desk customs audits – when the customs authorities are thoroughly reviewing certain shipments and issue an audit report. The importer of record has the right to submit its written objections to the audit report, after that the customs authority should issue written conclusions and a final decision on the desk audit
- 3) on-site customs audits – when the customs authorities pay a visit to the importer's premises, including with elements of dawn raids

On-site customs audits can be scheduled or non-scheduled. In practice, non-scheduled customs audits can be performed with the support of law-enforcement agencies, which may perform search-and-seizure operations.

### **Are there any limits on the periodicity of customs audits?**

There are no statutory limits on the periodicity of customs audits.

### **What are the recent trends in law-enforcement and customs litigation?**

During the last several years the Russian customs authorities have been actively auditing Russian importers of record.

The following key issues are currently in the focus of the customs authorities:

- adjustment of customs value to include the following surcharges into the customs value of imported goods:
  - license payments (royalties)
  - VAT on license payments
  - dividends
  - freight charges
  - raising the customs value on the basis of similar/identical goods imported into Russia at higher value
- application of the following statutory prohibitions and limitations
  - non-tariff measures – when importers of record fail to obtain import/export permits/licenses or other import permits required *per se*
  - confirmation of conformity – if importers of record fail to obtain certificates/declarations of conformity or if the labeling of imported goods does not comply with the requirements set out in applicable technical regulations
  - export control – when importers of record fail to obtain export control licenses or authorizations for the exportation of dual-use products

## 7.22 Safeguard measures

**What are safeguard measures required for, and what types of safeguard measures exist in Russia?**

In order to protect its internal market and national manufacturers from the adverse effect of foreign competitors and to neutralize losses caused by dumping, or the subsidized or increased import of goods, Russia applies certain safeguard measures.

**Can safeguard measures only be imposed in Russia or can they cover the whole territory of the EAEU?**

From 1 January 2015, safeguard investigations are conducted and measures are imposed by the EAEU Commission in accordance with the procedure outlined by the EAEU Treaty on the whole EAEU territory.

**When can Russia impose safeguard measures and is it possible to impose such measures against WTO members?**

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

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

**Is information on safeguard measures and relevant investigations publicly available?**

Information on all safeguard measures imposed by the EAEU and investigations conducted is publicly available on the EAEU official website in Russian:

<http://www.eurasiancommission.org/ru/act/trade/podm/Pages/default.aspx>.

As of January 2023, there are 24 valid measures of protection; all are anti-dumping duties imposed on certain products originating from China, India, EU, Ukraine, Azerbaijan, Uzbekistan and Georgia.

### **Can foreign companies challenge safeguard measures applied in Russia/the EAEU?**

Foreign companies may challenge safeguard measures imposed by the EAEU that affect their business with the EAEU court in accordance with its rules.

Alternatively, if an imposed safeguard measure does not correspond to the WTO rules, the exporting WTO member can bring a case to the Dispute Settlement Body of the WTO (DSB) and file a claim for the removal of such measures, compensation or retaliation.

## **7.23 Export controls**

### **What are the multilateral export control regimes (the "MECRs")?**

There are currently four MECRs — five including the Nuclear Non-Proliferation Treaty Exporters Committee:

- the Zangger Committee complements the Treaty on the Non-Proliferation of Nuclear Weapons (the "**NPT**") by establishing guidelines for the practical implementation of export control provisions set forth in Article III. 2 of the NPT, according to which the safeguards of the International Atomic Energy Agency (the "**IAEA**") must be applied to nuclear exports
- the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (the "**Wassenaar Arrangement**")
- the Nuclear Suppliers Group — for the control of nuclear-related technology
- the Missile Technology Control Regime — for the control of

rockets and other aerial vehicles capable of delivering weapons of mass destruction

- the Australia Group — for the control of chemical and biological technology that could be weaponized

Russia is part of the first four above-listed MECRs, but it does not participate in the Australia Group.

### **Is the Wassenaar Arrangement binding for Russia?**

Russia is party to the 1998 Wassenaar Arrangement, but still has certain peculiarities.

### **Which types of products are subject to Russian export controls?**

Russia established and currently maintains several lists of controlled items that are based on the Wassenaar Arrangement. The lists of controlled items are established by presidential decrees. Apart from the list of dual-use items, there are lists of controlled chemicals, nuclear-related items, military items, etc.

### **How does one determine whether a product/technology is subject to Russian export controls?**

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

If a product by its HS code, description or designation may potentially fall under Russian export control regulations, it must undergo special export control identification and testing to determine whether special export control clearance is required (i.e., an export control license, permit, or end-use certificate issued by the FSTEC for the

importation/exportation of the products). In certain cases, the Russian importers/exporters of record need to undergo independent identification export control testing performed by testing laboratories accredited by the FSTEC.

### **Are Russian export controls unified at the EAEU level?**

Currently, the members of the EAEU are considering establishing unified rules on export control at the supranational level. Draft regulations are already in place; however, the date of adoption at the EAEU level has not yet been selected.

### **Do Russian export controls apply to the importation of controlled items?**

Yes — the importation of some specifically listed types of controlled items requires an export control license.

### **What are the main supervising bodies in the sphere of Russian export controls?**

The FSTEC performs inbound control and supervision in the sphere of the intangible transfer of controlled items (i.e., cross-border electronic downloads). The Federal Customs Service is responsible for supervising controlled items at the customs border and issuance of end-user certificates.

## **7.24 Product safety and protection of consumer rights**

### **How is product safety regulated in Russia?**

The Consumer Rights Law mainly regulates product safety, as does the Federal Law "On Technical Regulations." Product safety for certain products is also regulated at the supranational level, e.g., technical regulations adopted by the EAEU.

### **What state bodies are involved in the regulation of consumer rights and product safety in Russia?**



Rospotrebnadzor deals with consumer product safety issues, including product recalls and control and supervision over compliance with the mandatory requirements of technical regulations. Rosstandart administers state control over the compliance of products with state standards and technical regulations for non-consumer products.

Both Rospotrebnadzor and Rosstandart publish information about the noncompliance of particular products on their website.

Rostekhnadzor is responsible for supervising the use of goods, products and machines in hazardous manufacturing sites.

### **What are the product labeling requirements in Russia and the EAEU?**

Products that are subject to the mandatory confirmation of conformity in accordance with the EAEU technical regulations should be labeled with the EAC market circulation mark of the EAEU, as well as with certain other information established by the applicable technical regulations of the EAEU (i.e., information on the product's name, main technical and safety characteristics, the manufacturer, etc.).

Products that are subject to the mandatory require the confirmation of conformity in accordance with the local Russian standards must be labeled with the local TPC market circulation mark, as well as with certain other information required by the applicable standards.

Certain types of fast-moving consumer goods (the "**FMCG**") products must be labeled with QR/bar codes under the local track and trace system, including shoes and footwear, cigarettes and tobacco products, perfumes and cosmetics, cameras, tires, clothes, shoes, light industry products, milk products and packaged water. The track and trace system should allow the Russian authorities and consumers to track all stages of the manufacturing, importation, local wholesale and retail distribution of goods in Russia with the use of a special online monitoring system. The Russian authorities plan to gradually introduce

the above QR/bar code labeling requirements for all types of FMCG goods by 2024.

A similar track and trace initiative is also being considered at the level of the EAEU.

### **When must products be recalled from the Russian market?**

A product must be recalled if it does not comply with the EAEU safety and labeling requirements, including the labeling requirements established for such products by the Russian technical regulations (e.g., the EAC market circulation mark and other mandatory labeling).

### **What is the penalty for noncompliance with the statutory safety requirements?**

Failure of the manufacturer and/or seller to either prepare a plan for preventing harm as required by the state authority or perform the actions for preventing harm specified in the plan may entail administrative fines of up to RUB 500,000 for legal entities. If the manufacturer/seller does not prepare a plan or does not implement the plan, the state authority or a third person may file a claim with a court requesting a mandatory product recall. Nonperformance of the court decision by the manufacturer/seller may entail criminal liability.

Noncompliance with the recall procedure regulations may also entail civil liability, requiring the manufacturer/seller to provide full compensation of losses to any consumer whose life, health or property was harmed.

## **7.25 Russia's countermeasures (temporary export restrictions)**

### **What are Russia's trade restrictions and what is their purpose?**

On March 9, 2022 the Russian Government adopted Decrees Nos. 311-313 establishing the following temporary export restrictions and prohibitions:

- 1) Decree No. 311 established a list of goods classified by customs classification (HS) codes which should be temporarily prohibited from the exportation outside Russia and Belarus to any foreign

countries except for other EAEU countries (i.e., Armenia, Kazakhstan and Kyrgyzstan, as well as certain other local territories)

- 2) Decree No. 312 authorized the exportation of the same goods listed in Decree No. 311 to the EAEU countries of Armenia, Kazakhstan or Kyrgyzstan on the basis of a special export permit from the competent governmental authorities
- 3) Decree No. 313 established a temporary export prohibition for certain specifically listed dual-use products and certain materials to persons from so-called "unfriendly" countries which have imposed foreign trade measures against Russia. The list of "unfriendly" countries includes the US, EU, Australia, Canada, Japan, Taiwan, Singapore, New Zealand, etc.)

The key purpose of Decrees Nos. 311-313 is to prevent a possible deficit of the most essential products on the local market.

## 8. Sanctions

### 8.1 Overview of sanctions regimes

#### 8.1.1 What are the international sanctions against Russia?

International sanctions against Russia are the set of restrictive measures that were first introduced by the US, the EU, Canada, Australia, Switzerland, Norway and Japan in the course of 2014. On 31 January 2020, the UK left the EU. As a result, EU sanctions continued to apply in the UK during the transition period (from 11 pm on 31 January to 11 pm on 31 December 2020). Upon the expiration of the transition period, UK sanctions regimes came into force under the Sanctions and Anti-Money Laundering Act 2018. The US, the EU, the UK, Canada, Australia, Switzerland, Norway and Japan are referred to as "**Implementing Countries.**"

The Implementing Countries introduced sanctions targeting individuals and legal entities (so-called general or blocking sanctions). The US issued a list of specially designated nationals (the "**SDNs**") and the EU and other countries established lists of designated persons (the "**DPs**"). Generally, sanctions introduced against SDNs and DPs are similar in nature and require that: (1) the assets of the sanctioned persons be blocked (frozen); and (2) the listed individuals be banned from entering the Implementing Countries. Sanctions affect not only SDNs and DPs, but also the assets and property directly or indirectly controlled or predominantly owned by SDNs and DPs.

Sanctions may also target particular industries within a particular country or region, primarily in the finance, energy or defense sectors (so-called sectoral sanctions).

Sanctions regimes introduced by Implementing Countries provide for certain exemptions, authorizations and licenses that should be considered when doing business with Russia. The applicability of these exemptions, authorizations and licenses should be analyzed on a case-by-case basis.

Sanctions are generally introduced under particular programs (e.g., Ukraine/Russia-related sanctions; Syria, Iran and North Korea-related sanctions; US cyber-related sanctions; the Magnitsky sanctions, etc.).

Sanctions targeting key sectors of the Russian economy and certain Russian entities and individuals are mainly introduced with reference to the situation in Ukraine. Furthermore, sanctions have affected Crimea and Sevastopol, the Donetsk People's Republic (DNR) and the Lugansk People's Republic (LNR), Kherson and Zaporozhye Oblasts which have been almost completely isolated from business relations with the Implementing Countries.

The US and the EU primarily adopted sanctions, while other countries followed them by introducing similar sanctions.

Both blocking and sectoral sanctions targeting Russia, Russian entities and individuals were significantly expanded in 2022.

In order to comply with international sanctions programs, it is important to: (1) determine whether a particular transaction may be affected by the sanctions (e.g., whether it involves sanctioned persons and/or products); and (2) analyze the relevant sanctions from the perspective of each Implementing Country and taking into consideration all of the restrictions imposed during 2022.

### 8.1.2 Who must comply with the sanctions?

Generally, sanctions are binding for all nationals of the particular Implementing Country or legal entities registered in this Implementing Country (including their foreign branches and representative offices). Each Implementing Country has established its own specific rules determining which persons must comply with the sanctions. Sanctions may be tied to the nationality or residency, place of incorporation, or place of origin of the product in question.

### 8.1.3 What are the penalties for not complying with the sanctions?

Depending on the particular Implementing Country, non-compliance with international sanctions may result in the imposition of heavy criminal fines or even imprisonment for those persons who must comply with the sanctions. For other persons involved in the violation and/or circumvention of the sanctions, there is a risk of being separately included on the sanctions lists (SDNs/DPs lists).

In certain cases, foreign persons may be subject to extradition and criminal prosecution, for example, if the person conspired with US persons or otherwise contributed to the violation of sanctions by US persons.

## 8.2 US sanctions framework

### 8.2.1 What are the recent developments in the US sanctions imposed against Russia?

The latest developments in the US sanctions regime include new import and export restrictions, a ban on new investment in Russia, a prohibition on the provision of certain services to any person located in Russia, suspension of operations of Russian airlines and aircraft, a ban on Russian vessels entering US ports, inclusion of Russian financial institutions in the Non-SDN Menu-Based Sanctions (the "**MBS**") List and a significant expansion of the SDN list.

The newly imposed restrictions particularly target the financial sector of the Russian economy. The SDN list now includes almost all major Russian banks. Any transactions involving the Central Bank of Russia, the National Wealth Fund or the Ministry of Finance, including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities, are prohibited. In addition, US financial institutions are prohibited from participating in the secondary market for ruble or non-ruble denominated bonds issued after 1 March 2022 by the Central Bank of Russia, the National Wealth Fund or the Ministry of Finance. Payments on Russia's dollar-denominated debt from the country's foreign currency reserves held in US banks are suspended. The US imposed a ban on new investments in any sector of the Russian economy and prohibited the provision of certain services to Russia.

Under the US sanctions regime, non-US companies and individuals may be at risk of becoming subject to secondary sanctions if they participate in certain operations that are contrary to US foreign policy and national security interests (e.g., facilitating significant transactions for or on behalf of sanctioned Russian persons, etc.).

## 8.2.2 What are the US investment restrictions?

In addition to the previously established investment ban relating to Crimea, new investments in the DNR and the LNR are now also prohibited. The investment ban covers any commitment or contribution of funds or other assets, as well as loans or other provisions of credit.

In February 2022, blocking sanctions were imposed on the Russian Direct Investment Fund (the "**RDIF**"), its CEO and two affiliates.

Further, in March 2022, new investments by US individuals and entities in any sector of the Russian economy as determined by the Secretary of the Treasury, were prohibited.

## 8.2.3 What US import and export restrictions have been introduced against Russia?

The US imposed a ban on the import into the US of certain products of Russian origin, in particular crude oil, petroleum, petroleum fuels, oils, and products of their distillation, liquefied natural gas, coal and coal products, fish, seafood, and preparations thereof, alcoholic beverages, non-industrial diamonds and gold (excluding gold of Russian origin that was located outside of Russia prior to 28 June 2022).

The US imposed a ban on the exportation, reexportation, sale or supply, directly or indirectly from the US or by a US Person, wherever located, of certain items:

- luxury goods to any person located in Russia
- US dollar-denominated banknotes to the Russian Government or any person located in Russia

## 8.2.4 What US restrictions targeting the energy sector of the Russian economy have been introduced?

The US imposed a ban on the importation of Russian oil, liquefied natural gas, and coal, and prohibited new US investment in Russia's energy sector and US financing for foreign companies investing in Russia's energy sector.

## 8.2.5 What services now fall under the US services ban?

The US prohibited provision of the following services from the US or by a US Person, wherever located, to any person located in Russia:

- accounting
- trust and corporate formation
- management consulting
- strategic business advice
- development or evaluation of marketing programs, their implementation, brand management
- HR-services
- quantum computing

Further, the US prohibited provision of services related to maritime shipments of Russian crude oil, such as trading or commodities brokering, financing, shipping, insurance, including reinsurance and protection and indemnity, flagging and customs brokering.

## 8.2.6 What US measures are expected?

The main trend evident throughout the variety of draft bills proposed is to counter sanctions circumvention.

On 2 March 2023, the US Department of Commerce Bureau of Industry and Security (the "**BIS**"), the US Department of Justice (the "**DOJ**"), and the US Department of the Treasury's Office of Foreign Assets Control (the "**OFAC**") issued a Tri-Seal Compliance Note. This is the first collective effort by the DOJ, OFAC, and BIS to "inform the private sector about enforcement trends and provide guidance to the business community on compliance with U.S. sanctions and export laws." In particular, the note provides general "red flags" that may indicate how Russia uses third-party intermediaries to circumvent sanctions.



## 8.3 EU sanctions framework

### 8.3.1 What are the recent developments in the EU sanctions imposed against Russia?

Since February 2022, the EU has adopted a series of measures targeting key sectors of the Russian economy and a number of Russian public figures. The measures were imposed in stages in sanctions packages, the first of which was introduced on 23 February 2022. As of April 2023, the EU Council has issued a total of ten sanctions packages.

The latest developments in the EU sanctions regime include extensive financial restrictions, a general ban on transactions with state-owned entities, a prohibition on providing certain services, and extension of import and export restrictions.

The EU also imposed a prohibition on landing in, taking off from or overflying the territory of the EU for any aircraft operated by Russian air carriers, Russian registered aircraft, non-Russian-registered aircraft owned, chartered, or otherwise controlled by any Russian person or entity.

Among other measures that have been introduced are a media ban, prohibition on holding any posts in governing bodies of critical infrastructure, a prohibition on providing storage capacity in a gas storage facility, new reporting obligations for EU operators, etc.

### 8.3.2 Who is subject to the EU general transactions ban?

The EU prohibited direct and indirect engagement in any transactions with (1) certain listed Russian state-owned entities, (2) any entity or body established outside the EU directly or indirectly more than 50% owned by one of these listed entities, or (3) any entity or body acting on behalf or at the direction of any of these entities or bodies.

### 8.3.3 What EU financial restrictions have been introduced against Russia?

The EU imposed an asset freeze on numerous Russian banks, as well as a prohibition on any transactions related to the management of reserves, as well as of assets of the Russian Central Bank and any

transactions with any entity acting on behalf or at the direction of the Russian Central Bank, such as the Russian National Wealth Fund.

It is also prohibited to make, or be part of arrangements to make, any new loans or credit with any maturity to Russia and its Government, to the Russian Central Bank or any entity acting for or on behalf of the Russian Central Bank and to the listed Russian entities, as well as non-EU entities that are more than 50% owned by them or acting for or on their behalf or at their direction.

The EU prohibited certain Russian banks from providing specialized financial messaging services (SWIFT ban), which are used to exchange financial data, to certain banks or to any legal person, entity or body established in Russia whose proprietary rights are directly or indirectly more than 50% owned by these banks.

The EU prohibited purchasing, selling, or assistance in the issuance of, or otherwise dealing with, the transferable securities of listed entities, and providing investment or money-market services to said entities.

### 8.3.4 What are the EU investment restrictions?

Although the EU imposed restrictions on a wide range of investment activities in Russia, there is no complete ban on investments in Russia.

The EU prohibited dealing with transferable securities and money-market instruments issued by Russia, the Russian Government or the persons acting on their behalf, as well as providing investment services in this regard.

EU persons are also prohibited from investing in, participating in, or otherwise contributing to projects of the RDIF or projects co-financed by it.

There is a general prohibition on provision of public financing or financial assistance for trade with or investment in Russia. This prohibition is subject to a number of exceptions.

It is also prohibited to acquire real estate, shares or other securities of a participatory nature, to grant a loan or provide financing to a legal entity, or to create any joint venture in the DNR and the LNR regions, as well as provide investment services in that regard.

Significant restrictions were imposed by the EU on investments in the energy and mining sectors, which are described in more detail below.

Cooperation with state-owned enterprises is also significantly restricted. For example, dealing with certain transferable securities and money-market instruments of such enterprises is prohibited.

### 8.3.5 What EU import and export restrictions have been introduced against Russia?

The EU imposed restrictions on the sale, supply, transfer or export of a large number of listed items (e.g., dual-use items, energy-related items, items which might contribute to Russia's technological enhancement of its defense and security sector, luxury goods) to any natural or legal person, entity or body in Russia or for use in Russia.

The EU imposed restrictions on the purchase, import, transfer or transport of a large number of listed items (e.g., iron and steel products, crude oil and petroleum products, gold and gold jewelry, etc.) if they originate in Russia or are exported from Russia.

### 8.3.6 What EU restrictions targeting the energy sector of the Russian economy have been introduced?

It is prohibited to acquire or extend participation in, to grant new loans or otherwise provide financing, including equity capital to, Russian or third country legal entities operating in the Russian energy, mining and quarrying sectors. The creation of joint ventures with such legal entities also falls under the ban. Furthermore, it is prohibited to provide investment services that are directly related to investments in Russia. The ban does not cover mining and quarrying activities involving certain critical raw materials.

The EU established two price caps for petroleum products falling under CN code 2710 which originate in or are exported from Russia. These are prices per barrel at or below which petroleum products from Russia are exempt from the prohibition on providing:

- maritime transport of petroleum products to third countries

- technical assistance, brokering services or financing or financial assistance, related to the maritime transport of petroleum products to third countries

The first price cap for petroleum products traded at a discount to crude oil is set at USD 45 per barrel, while the second price cap for petroleum products traded at a premium to crude is set at USD 100 per barrel.

### 8.3.7 What services fall under the EU service ban?

The EU imposed a prohibition on providing, directly or indirectly, the following services to (1) the Russian Government or (2) legal persons, entities or bodies established in Russia:

- accounting services
- auditing services
- bookkeeping services
- tax consulting services
- business and management consulting services
- public relations services
- architectural and engineering services
- legal advisory services
- IT consultancy services
- market research and public opinion polling services
- technical testing and analysis services
- advertising services

### 8.3.8 What EU measures are expected?

The main trend evident throughout the variety of draft bills proposed is to counter sanctions circumvention.

The EU provides certain tools to counter sanctions circumvention:

- individuals or entities, organizations or bodies that contribute to the violation of the ban on circumventing EU sanctions against Russia can now be separately designated as EU DPs
- sanctions violations is now recognized as an "EU crime", and the European Commission also issued a proposal for a directive on the definition of criminal offences and penalties for the violation of EU restrictive measures to harmonize criminal enforcement of sanctions across the EU
- an "International Special Envoy for the Implementation of EU Sanctions" was appointed to ensure ongoing high-level discussions with third countries to avoid evading or circumventing EU sanctions

## 8.4 UK sanctions framework

### 8.4.1 What are the recent developments in the UK sanctions imposed against Russia?

In 2014, the UK imposed sanctions against Russia, the Russian economy, Russian legal entities and individuals in a coordinated move with the EU, which the UK was a Member State of at the time. The Russia (Sanctions) (EU Exit) Regulations 2019 ensured that sanctions continued to operate effectively upon the withdrawal of the UK from the EU.

In February 2022, the UK along with other jurisdictions imposed further sanctions targeting Russia's financial sector, aviation and shipping, strategic sectors of the economy such as defense, aerospace and energy, as well as individuals close to the Russian regime. Similar to EU sanctions, the UK introduced financial and investment restrictions, import and export restrictions, a services ban and a number of other measures.

The UK also designated a large number of Russian citizens and legal entities as UK DPs. The inclusion in the UK DPs List entails the freezing of funds and economic resources (non-monetary assets, such as property or vehicles) of DPs and ensuring that funds and economic

resources are not made available to or for the benefit of designated persons, either directly or indirectly. UK credit and financial institutions are also prohibited from establishing or continuing a correspondent banking relationship with, or processing sterling payments to, from or via, a DP.

#### 8.4.2 What UK financial restrictions have been introduced against Russia?

The UK prohibited dealing with transferable securities and money market instruments issued by major Russian banks, strategic companies, entities owned by or acting on behalf or at the direction of the Russian Government and by persons connected with Russia.

The UK imposed a ban on providing financial services for foreign exchange reserve and asset management to the Russian Central Bank, the Russian National Wealth Fund and the Ministry of Finance, and persons owned or controlled directly or indirectly by them or acting on their behalf.

Along with other partner states, the UK sanctioned major Russian banks, including Sberbank and Credit Bank of Moscow, and removed selected banks from the SWIFT international payments system.

#### 8.4.3 What are the UK investment restrictions?

The UK imposed a ban on new investment in Russia, specifically the following:

- direct acquisition of any ownership interest in Russian land and entities connected with Russia or with a place of business in Russia (which are not persons connected with Russia), as well as indirect acquisition if it is intended to make funds or economic resources available to, or for the benefit of persons connected with Russia
- establishment of joint ventures with a person connected with Russia
- opening of representative offices and establishing branches and subsidiaries in Russia

- provision of investment services directly related to the above

It is also prohibited to issue new loans or credit where the purpose of the loan or credit is to make a new investment in Russia.

#### 8.4.4 What UK import and export restrictions have been introduced against Russia?

The UK imposed a ban on the export, supply and delivery, and making available of the following goods, technology and related services to Russia:

- military and internal repression items
- advanced technology items: dual-use, "critical industry," special materials, quantum computing, aviation, maritime and space items
- a wide range of items mainly for the manufacturing sector and luxury items
- infrastructure-related, energy-related and oil refining items, and jet fuel
- sterling or euro denominated banknotes

It is also prohibited to import or acquire the following goods and technology consigned from or originating in Russia, as well as related services:

- oil and oil products, liquefied natural gas, and coal and coal products
- iron and steel items
- a range of materials and manufactured items generating revenue for Russia
- gold and gold jewelry

A 35% tariff was imposed by the UK on imports of certain goods originating in Russia and Belarus.

### 8.4.5 What services fall under the UK services ban?

The UK banned certain services, namely those which enable or facilitate certain military activities, insurance and reinsurance services, energy-, infrastructure- and tourism-related services, internet services and other professional services, including the direct or indirect provision of trust services, accounting, business and management consulting, public relations, advertising, architectural, auditing, engineering and IT consultancy and design services.

It is also prohibited to provide maritime transport, insurance and other financial services for ships carrying Russian crude oil or refined oil products to or between third countries, unless the crude oil or refined oil products have been sold below a specific price cap.

## 8.5 Swiss sanctions framework

### 8.5.1 What sanctions has Switzerland imposed against Russia?

Switzerland is not bound by the restrictive measures imposed by international organizations. However, Switzerland may enact compulsory measures to implement sanctions adopted by international organizations or its main trading partners, such as the UN or EU, in order to ensure compliance with international law.

In 2014, Switzerland imposed multiple rounds of sanctions (though such measures were limited to barring new business designed to circumvent international sanctions). The Swiss Government also required five Russian banks (Sberbank, VTB, VEB.RF, Gazprombank and Rosselkhozbank) to obtain authorization to issue long-term financial instruments in Switzerland.

Currently, Switzerland follows the approach taken by the EU within the framework of its own sanctions regime.

In February 2022, the Swiss Federal Council blocked assets belonging to the listed Russian individuals and entities sanctioned by the EU. The Swiss sanctions currently restrict the opening of new business relationships with listed persons and require that current relationships be reported to the State Secretariat.



By April 2023, Switzerland had imposed restrictions on:

- import and export of certain goods
- direct and indirect support, including financing and financial assistance or any other benefit to Russian state-owned entities
- provision of crypto-asset wallet, account or custody services to Russian persons, regardless of the total value of crypto assets at stake
- provision of accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services as well as architectural and engineering services, legal advisory services and IT consultancy services to the Russian Government or to corporations, entities or other bodies established in Russia
- provision of a registered office, business or administrative address and management services, trustee, nominee shareholder, director, secretary or similar services to a trust or a similar legal arrangement
- air traffic

The above measures were adopted under the condition that, whilst implementing the latest EU sanctions, Switzerland ensures that the exercise of the rights of defense and access to judicial, administrative and arbitral proceedings in Switzerland are preserved and that the rule of law is fully guaranteed.

### 8.5.2 What Swiss import and export restrictions have been introduced against Russia?

Switzerland imposed a ban on the export of the following goods to Russia:

- maritime navigation goods and technology from Russia and provision of related services
- goods for the energy sector from Russia and provision of related services

- military goods of any kind, including weapons, ammunitions, vehicles, military and paramilitary equipment and accessories or components to Russia or Ukraine or otherwise for use in those countries
- certain goods which could contribute to the enhancement of Russian industrial capacities or for use in Russia (locomotives, tractors, industrial robots and certain chemicals, etc.)

It is also prohibited to import the following goods consigned from or originating in Russia, as well as related services:

- import of certain economically important goods, i.e., goods which generate significant revenues (ships, turbojets, wood, fertilizers, seafood, etc.) from Russia, originated therein or exported therefrom
- import, transport and purchase of coal and other solid fossil fuels, certain iron and steel goods, gold and gold compounds, goods related to oil refining and natural gas liquefaction originating in or exported from Russia and provision of related services

The State Secretariat for Economic Affairs can grant derogations from the above-mentioned export and import restrictions for:

- medical or pharmaceutical purposes and for non-military final use
- humanitarian or evacuation purposes
- exclusive use by Switzerland to fulfil its maintenance obligations in areas which are subject to long term lease agreements between Switzerland and Russia, or
- establishment, operation, maintenance, fuel supply and retreatment and safety of civil nuclear capabilities

## 8.6 Japanese sanctions framework

Japan's approach to sanctions against Russia is aligned with other countries and international organizations. Since 28 February 2022,

sanctions against Russia have been gradually imposed by the Japanese Government.

Japan designated a large number of Russian citizens as Japan DPs. Sanctioned persons are not only subject to an asset freeze, but also to restrictions on payments and capital transactions (bank deposit contracts, trust agreements, money loan contracts).

Japan also imposed restrictions on transactions with the Russian Central Bank. Along with other partner states, Japan sanctioned major Russian banks, including Sberbank and Credit Bank of Moscow, and removed selected banks from the SWIFT international payments system.

Japan banned exports to Russian military-related organizations (Russian Ministry of Defense, Russian aircraft manufacturers, etc.). A ban was also imposed on the export of dual-use goods that can be potentially used to enhance the military capability of Russia (water cannons, gas exploration equipment and semiconductor equipment, etc.) and on goods related to chemical weapons.

Japan also restricted exports to Russia of the following goods:

- goods subject to international export control (machine tools, carbon fiber, high-performance semiconductors, etc.)
- goods that have the potential to strengthen the industrial base in Russia (plywood, steel storage tanks, freight vehicles, bulldozers and transformers)
- high-tech goods
- luxury goods (tobacco products, perfume, fur and leather goods, jewelry, works of art, antiques, etc.), precious metals (gold)

In the energy sector, Japan banned exports of petroleum refinery equipment to Russia. Japan also imposed a ban on the import of crude oil originating from Russia traded above the cap price designated by the Ministry of Foreign Affairs and provision of related services (such as brokering services, financing and financial assistance). The crude oil produced in the Sakhalin 2 project is excluded from the scope of this measure.

The permissive procedure was established for trust services, accounting and auditing services or business management consulting services for Russia.

Since Japan effectively follows the Group of Seven (G7) Enforcement Coordination Mechanism, subsequent Japanese sanctions restrictions against Russia are likely to be coordinated among G7 members.

## 8.7 Ukrainian sanctions framework

Ukrainian sanctions against Russia are currently imposed under decisions of the National Security and Defense Council of Ukraine.

Since 2014, Ukraine has imposed a wide range of sanctions targeting Russia, key sectors of the Russian economy, Russian individuals and legal entities.

A large number of Russian persons have been listed as Ukrainian DPs. Designated individuals and legal entities are subject to, in particular, an asset freeze, a temporary ban on the use of their assets, entry ban, a ban on the exportation of assets from Ukraine, etc. (the specific list of applicable restrictions may vary, depending on the particular sanctioned person).

Ukraine imposed a number of sanctions that would be in effect for a period of 10 years. Until 2032, the following restrictive measures apply:

- ban on export of capital from Ukraine to Russia and for the benefit of Russian individuals and legal entities (entities that are more than 10%-owned by such a person)
- suspension of licenses granting permission to Russian persons to use Ukrainian subsoil
- prohibition on Russian persons acquiring and leasing Ukrainian real property (including land plots)
- prohibition on public procurement of goods, works and services from Russian persons, as well as goods originating from Russia
- prohibition on Russian ships entering Ukrainian territorial water and ports

- prohibition on Russian aircraft flying to Ukraine (Ukrainian airspace is closed to Russian aircraft)
- prohibition on Ukrainian persons acquiring securities issued by Russian persons
- prohibition on exporting or transferring Ukrainian technologies and IP assets to Russian persons

Issuance of licenses and permits for investment in Russia was also suspended until 2032.

It is prohibited to import goods from Russia into the customs territory of Ukraine. It is also prohibited to circulate medicines produced in Russia or if one or more stages of production were carried out in Russia.

Property or assets that are owned by Russia, Russian individuals or legal entities can be compulsorily seized by the Ukrainian National Security Council in certain cases, for example if a Russian individual or legal entity is involved in financing or investing in Russian securities.

From 23 February 2023, sectoral special economic and other restrictive measures (sanctions) are imposed for a period of 50 years on all Russian financial institutions, including the Central Bank of Russia.

The following measures are envisaged in relation to Russian financial institutions:

- ban on establishing and maintaining business relationships
- suspension of transactions with the assets of Russian financial institutions
- transactions ban
- ban on the acquisition of securities and other monetary instruments, with the exception of the alienation (including gratuitous) of securities in favor of the country of Ukraine
- suspension of economic and financial obligations, including the transfer of dividends, interest and other payments

- investment ban
- suspension of servicing electronic payment instruments

Recently, Ukraine announced its intention to tighten sanctions and impose personal sanctions on more than 16 thousand Russians.

## 8.8 Russian countermeasures

### 8.8.1 What was the Russian response to the sanctions?

In response to the Ukraine-related sanctions introduced against Russia, on 7 August 2014, Russia imposed a ban on imports of certain agricultural and food products, such as meat and meat products, certain types of fish and seafood products, milk and dairy products, vegetables, fruit and nuts, sausages and similar products (covering approximately 54 specified HS positions with some special exemptions) originating from the EU, the US, Canada, Australia, Norway and, from 13 August 2015, Albania, Montenegro, Iceland, Liechtenstein and Ukraine. In 2020, the embargo was extended until 31 December 2021 (this term may be further extended). Following the UK's exit from the EU, starting from 22 December 2020, the import ban applies to the specified agricultural and food products originating from the UK.

From 6 August 2015, illegally imported products found in Russia must be destroyed.

In 2016-2019, the Russian Government revised the list of banned agricultural and food products several times. From November 2017, the importation of live pigs, certain edible meat products (except for those intended for the production of baby food, the importation of which requires special permission of the Russian Ministry of Industry and Trade), certain types of animal fat and lard stearin is prohibited.

Additionally, Russia introduced entry bans against officials from certain Implementing Countries. Russia also launched other actions in response to the imposed sanctions, such as certain restrictions on access to the Russian public procurement system for foreign manufacturers. In July 2017, Russia ordered the US to reduce the number of diplomatic and technical personnel across US diplomatic missions in Russia to 455 people, matching the number of Russian diplomats left in the US after

Washington expelled 35 Russians in December 2016. Russia also suspended the use of a storage facility in Moscow and a country house outside Moscow (US diplomatic properties in Russia).

On 4 June 2018, Russia adopted the Federal Law "On Measures (Countermeasures) in Response to Unfriendly Actions of the USA or other Foreign States" (the "**Law on Countersanctions**"), which entered into force on 4 June 2018. Specifically, the Law on Countersanctions includes the following potential countermeasures: (1) suspension or termination of international cooperation; (2) import ban or import restrictions; (3) export ban or export restrictions; (4) prohibition or restriction of the provision (in Russia) of works/services for state and municipal needs and for the needs of certain kinds of legal entities; (5) prohibition or restriction of the privatization of state and municipal property, provision of works/services related to the organization of the sale of federal property and/or performance of the functions of the seller of federal property; and (6) other measures determined by the President of Russia. From 22 October 2018, Russia has implemented restrictive measures envisaged by the Law on Countersanctions with respect to Ukraine.

On 22 October 2018, the Russian President issued Decree No. 592, which provided for the establishment of the Russian sanctions list (the "**Russian DPs**") under the so-called Ukrainian program. In order to implement the above measure, the Russian Government issued Decree No. 1300 establishing the Russian DPs list, and determined the measures that apply to them. According to Government Decree No. 1300, the Russian Ministry of Finance can introduce sanctions against a foreign person having established that such a person performs unfriendly actions against Russia and Russian citizens. Russian DPs and their controlled entities become subject to the following restrictions:

- freeze of funds, securities and assets located in Russia
- ban on the transfer of funds outside Russia

- ban on transactions involving the importation into Russia of goods manufactured, sold or sent by such a legal entity (except for goods imported by individuals for personal use)

On 19 June 2020, a new Russian Law (known as the "**Lugovoy Law**," named after its author) entered into force. The Lugovoy Law changed the competent courts for disputes involving sanctioned Russian persons. In particular, according to the Lugovoy Law, in the absence of an arbitration agreement, such disputes are supposed to be settled by Russian courts. Claims against a sanctioned Russian person are supposed to be filed with a competent court in Russia and sanctioned Russian persons are entitled to claim the termination of court proceedings outside Russia in a competent Russian court. Sanctioned Russian persons are entitled to unilaterally amend a valid arbitration agreement subject to the settlement of disputes in foreign states if a sanctioned Russian person cannot appear before a court, international organization or arbitral tribunal located outside Russia due to the sanctions imposed.

### 8.8.2 What are the latest Russian countermeasures?

From February 2022, a number of counter-sanctions measures were introduced as a response to foreign economic sanctions imposed by states and international organizations against Russia, Belarus and a number of Russian and Belarusian individuals and legal entities, that include:

- Prohibition on entering into transactions with certain listed persons
- Establishing a category of "unfriendly" jurisdictions and imposing prohibitions and restrictions on certain transactions with persons from such states, including:
- Ban on granting loans
  - Ban on Russian investments (including transactions involving stocks, rights and obligations under production sharing agreements, joint ventures)



- Permit procedure for the transfer of shares in Russian legal entities and real estate
- The requirement to use special ruble accounts to fulfill obligations (payment of dividends, loans, royalties, etc.)
- Permission to use patents without the consent of rights holders from "unfriendly" jurisdictions without compensation
- Restrictions on the transfer and export of funds abroad
- Mandatory sale of foreign currency proceeds
- Parallel imports
- Restriction on exports of specified products abroad (permit procedure for export to the EAEU)

### 8.8.3 Which jurisdictions are considered "unfriendly"?

The Russian Government has established a list of jurisdictions committing "unfriendly" actions against Russia, Russian citizens or legal entities, which includes: Australia, Albania, Andorra, Great Britain (including the Crown Estates of the British Crown and the British Overseas Territories), EU Member States, Iceland, Canada, Liechtenstein, Micronesia, Monaco, New Zealand, Norway, Republic of Korea, San Marino, North Macedonia, Singapore, USA, Taiwan (China), Ukraine, Montenegro, Switzerland and Japan.

The status of a person from an "unfriendly" jurisdiction is extended to persons who are under the control of persons from an "unfriendly" jurisdiction.

For the purpose of determining control, one of the following criteria shall be used:

- right to dispose of more than 50% of the voting shares of the controlled entity
- right to exercise a decisive influence over the decisions of the controlled person
- right to appoint the sole executive body or more than 50% of the executive body, board of directors
- exercising the functions of a management company of a controlled entity

The restrictions do not cover entities that are directly or indirectly (including through intermediate entities from "unfriendly" jurisdictions) controlled by Russian legal entities or individuals and information on which has been disclosed to the tax authorities.

#### 8.8.4 What are the Russian financial restrictions?

A ban was imposed on foreign currency transactions associated with the provision of foreign currency by residents in favor of non-residents under loan agreements. Further, the ban was extended to providing ruble-denominated loans to borrowers from "unfriendly" jurisdictions.

Until 31 June 2023, Russian residents are allowed to provide foreign currency to foreign persons from friendly states under loan agreements.

Russian legal entities and individual entrepreneurs have the right to offset their claims against non-residents and liabilities to non-residents when carrying out foreign trade activities or granting and repaying loans.

#### 8.8.5 What foreign currency control restrictions have been imposed in Russia?

Russian residents are prohibited from depositing foreign currency in their foreign accounts (deposits). The ban applies to the crediting of foreign currency when residents transfer funds received in the form of dividends from Russian JSCs, profits of LLCs, business partnerships and production cooperatives.

An exemption is granted to:

- residents engaged in foreign economic activities with regard to the transfer of foreign currency to their foreign accounts from non-residents under foreign trade contracts providing for transfer of goods or services to non-residents, performance of works for non-residents, and transfer of results of intellectual activities to non-residents
- individual residents with regard to the transfer of foreign currency to foreign accounts for the purpose of maintenance of property located abroad and belonging to such residents by right of ownership
- individual residents with regard to the transfer of dividend amounts to foreign accounts with foreign branches of Russian banks
- individual residents with regard to the transfer of foreign currency from accounts opened outside the territory of the Russian Federation to accounts opened with banks in states that do not commit "unfriendly" acts

At the same time, the requirement to repatriate foreign currency and Russian rubles, as well as the requirement to credit it to bank accounts with authorized banks is abolished when Russian legal entities and individual entrepreneurs carry out foreign trade activities or grant and repay loans.

Residents have the right to receive foreign currency or Russian rubles from non-residents in cash in the amount due in accordance with the terms of foreign trade contracts.

### 8.8.6 What are the Russian investment restrictions?

The following transactions are prohibited, if the securities, shares (contributions), rights and obligations belong to foreign persons related to "unfriendly" *jurisdictions*, or to persons under their control:

- transactions involving stocks, shares (contributions)
- transactions involving rights and obligations under production sharing agreements
- joint venture agreements, agreements on Russian investments

### 8.8.7 Which transactions are now subject to a special procedure?

Execution of loans, borrowings and other financial instruments arising from transactions with non-residents from an "unfriendly" jurisdiction in an amount exceeding 10 million rubles per calendar month must be made through a special S-type account.

Payments associated with the reduction of charter capitals, liquidation, or bankruptcy of legal entities to foreign shareholders from "unfriendly" jurisdictions are to be made through a special S-type account.

Payment of dividends of Russian legal entities to non-residents from "unfriendly" jurisdictions in an amount exceeding 10 million rubles per calendar month must be made through a special S-type account. This procedure can be avoided by obtaining a special permit issued by the Government Commission on Control over Foreign Investments (the "**Government Commission**").

Payment obligations associated with the use of the intellectual property or means of individualization should be executed through a special O-type account, if the IP rights holder falls under at least one of the below categories:

- the IP rights holder is connected to an "unfriendly" jurisdiction or controlled by such persons, regardless of their state of incorporation
- the IP rights holder has publicly supported or called for the imposition of economic sanctions against Russia, Russian citizens or legal entities
- from 23 February 2022, the IP rights holder has restricted or prohibited the use of its intellectual property or means of individualization, provided that such actions were performed in compliance with foreign sanctions
- from 23 February 2022, the IP rights holder has ceased, suspended, or substantially restricted its activities in Russia in compliance with foreign sanctions or on other grounds not economically justified
- the IP rights holder has committed public actions aimed at discrediting the use of the Russian armed forces or performance by Russian public authorities of their powers outside Russian territory
- the IP rights holder has disseminated information in information and telecommunications networks, including the internet, that is expressed in an indecent form, offends human dignity and public morals, or demonstrates a clear disrespect for society and Russia

The funds credited to a special O-type account can only be used for a limited list of purposes or withdrawn on the basis of a special permit issued by the Government Commission.

Exemptions from the royalty payment procedure are granted to:

- IP owners from an "unfriendly" jurisdiction taking no "unfriendly" action and duly performing their contractual obligations

- IP rights necessary (1) to provide communications and traffic services, or (2) to create and use software, databases, information systems and data centers

#### 8.8.8 What restrictions on transactions with shares and participation interests in Russian legal entities have been introduced?

Transactions resulting in the establishment, change or termination of the rights of ownership, use or disposal of a participation interest in Russian LLCs and shares in Russian JSCs or other rights that allow one to determine the terms of management of such companies or the terms of their business activities can only be performed with the authorization of the Government Commission.

This procedure applies to transactions between (1) residents and persons from foreign "unfriendly" jurisdictions; (2) residents and persons controlled by persons from foreign "unfriendly" jurisdictions; (3) persons from foreign "unfriendly" jurisdictions; (4) persons from foreign "unfriendly" jurisdictions and any other non-residents.

To obtain a permit, the parties to a transaction are required to economically justify the deal and to pay a voluntary contribution of 10% of the purchase price to the Russian budget (so-called "exit tax").

#### 8.8.9 What import and export prohibitions have been introduced by Russia?

A temporary export ban applies to wood, timber, waste and scrap steel, etc. Statutory exemptions apply to: (1) goods in transit, (2) goods exported by individuals for personal use, (3) goods exported to military units of Russia, (4) goods exported for use on Spitsbergen, etc.

A temporary export ban was imposed with respect to machinery, vehicles, technological, telecommunication, medical, electrical equipment, IT products, etc. The above-listed exemptions also apply to

this prohibition. Additionally, transactions are not prohibited with regard to (1) goods originating from Russia and covered by ST-1 or other types of certificates of origin, (2) goods exported to the EAEU (under an export permit), (3) supplies directed to Belarus, Abkhazia, South Ossetia and the LNR and the DNR, (4) goods previously imported into Russia using an ATA carnet, and (5) spare parts and special equipment temporarily exported for maintenance, etc.

To obtain an export permit, the supplier is required to confirm: (1) the possibility to manufacture/acquire the same/identical equipment in Russia (or in one of the "friendly" states), and (2) the absence of a critical shortage of the goods in Russia.

### 8.8.10 What are "parallel imports"?

"Parallel imports" emerged as a result of changes to the methodology for determining the amount of compensation to patent holders associated with "unfriendly" jurisdictions (the compensation is 0% of the actual revenue of the person who used the patent).

Liability for the so-called "parallel import" of certain goods has been abolished. Now, it is permissible to import into the territory of Russia genuine goods of foreign origin in demand without the consent of the IP rights holders. The rules do not apply to the goods of those IP rights holders who have assured supplies to Russia.

The Ministry of Industry and Trade set the list of products and product categories for which parallel imports into Russia are allowed:

- if the list only indicates the HS codes – all products classified under these HS codes can be imported
- if the list contains both the HS codes and brand/company names, only products of these brands classified under these HS codes can be imported

### 8.8.11 Is there liability in Russia for complying with foreign sanctions?

As of April 2023, Russian legislation does not provide for any specific liability for actions aimed at complying with foreign sanctions.

In April 2022, draft law No. 102053-8 "On Amendments to Article 201 of the Criminal Code of the Russian Federation" (for purpose of this Section, the "**Draft Law**") imposing criminal liability on individuals for compliance with foreign sanctions was introduced. If adopted, it may theoretically be applied by the Russian state authorities to the actions of top managers of foreign companies that have significantly reduced, suspended or even ceased their business activities in Russia due to sanctions.

The Draft Law updates part 2 of Article 201 of the Russian Criminal Code "Abuse of Authority" and provides for liability for decisions or actions involving the implementation of foreign sanctions against Russia by a person obtaining personal gain or inflicting substantial damage to the rights of third parties. The Draft Law targets those using their authority and knowingly and intentionally involved in implementing foreign sanctions against Russia.

The maximum possible penalties under the Draft Law include up to 10 years of imprisonment with a prohibition on holding certain corporate positions for up to three years.



## 9. Employment

### 9.1 Sources of Russian labor law

#### 9.1.1 What sources of Russian labor law exist on the federal level?

Russia has a comprehensive set of laws regulating labor relations between employers and employees. The principal piece of legislation governing labor relationships is the Labor Code of the Russian Federation (the "**Labor Code**"). It sets minimum employment standards that cannot be overridden by agreement between the parties. Accordingly, any provision in an employment agreement that negatively affects an employee's entitlement to these minimum employment standards is not enforceable. In addition, labor relations are regulated by the 1996 Russian Federal Law "On Professional Unions, Their Rights and Guarantees of Activity," Russian legislation on the minimum wage and labor safety, and other related laws. Many aspects of labor relations are also regulated by regulations of the Government of the Russian Federation and orders of the Ministry of Labor.

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

#### 9.1.2 Are employers obliged to enter into collective agreements?

A collective agreement may be concluded by employees and the employer (by the bodies representing them) to regulate social and labor relations in an organization. There is no obligation to enter into a collective agreement under Russian law, but as long as one duly authorized party makes an offer to conclude such an agreement, the other party may not refuse to do so. A collective agreement may provide for employees' and employers' obligations relating to the following issues:

- forms, systems and rates of remuneration for labor
- disbursement of benefits and compensation
- employment, retraining and the terms for dismissing employees
- working hours and leisure hours, including issues concerning the granting of leave and the duration thereof
- other issues defined by the parties

### 9.1.3 What local acts are employers obliged to adopt?

All employers in Russia are required to issue internal labor regulations, a personal data processing policy, a work safety policy and work safety instructions, fire safety instructions and an anti-corruption policy, and develop civil defense training programs and a remuneration policy in case relevant provisions are not included in the internal labor regulations. Additionally, it is highly recommended to adopt job descriptions for employees if the relevant duties are not incorporated into employment agreements.

All employees should acknowledge their familiarization with these documents against their wet signatures. From 22 November 2021, it is possible to arrange an electronic familiarization for companies that have implemented an electronic document flow system. This procedure is essential for the relevant policies, procedures and other mandatory requirements to become binding on the employees. The employer's policies and procedures should be issued in Russian (or in a bilingual version) and should be approved by an internal order of the CEO of the company or the head of the representative office/branch office.

Micro-enterprise employers do not have to adopt any employment-related policies. An employing entity qualifies as a microenterprise if it meets the following criteria:

- the share of the Russian Federation, of the constituting entity of the Russian Federation or a municipal unit or non-profit organization in the charter capital does not exceed 25%; the share of legal entities not qualifying as small- or medium-sized enterprises, or of foreign legal entities in the charter capital of

the employing entity, does not exceed 49% (with some exceptions related to legal entities carrying on activities related to implementing the results of intellectual activity, participating in Skolkovo projects and providing support to innovation-related activity on terms specified by the Russian Government and others)

- it employs up to 15 employees
- the amount of profit it received in the previous calendar year does not exceed RUB 120 million

The relations between a microenterprise employer and its employees may only be regulated by employment agreements (except for a local normative act on the temporary transfer of employees to distant work). A standard form of such an employment agreement is adopted by the Decree of the Government of the Russian Federation No. 858 dated 27 August 2016.

## 9.2 Recruitment process

### 9.2.1 What are the procedural requirements for hiring an employee?

Pursuant to the Labor Code, employers in Russia need to document the hiring process properly. As a general rule, hiring is formalized by a written employment agreement. Employers have the right to issue an internal order (decree) on hiring of an employee on the basis of a concluded employment agreement. Employers also need to adhere to the personal data protection legislation when recruiting staff (i.e., they need to collect applicants' and, in some cases, employees' consents for processing their personal data).

Employers are responsible for keeping their employees' labor books and making all records on time. A labor book is a document that contains information about a person's employment history. The employer must make a note of employment in the labor book when the employment lasts for over five days. The parties to an employment agreement on distant work may agree not to make any entries in the employee's labor book. As of 1 January 2021, employers should maintain the employees' labor books in hard copies only for those employees who have

submitted a relevant written application before the end of 2020. For employees taking up employment for the first time, all information will be kept electronically.

### 9.2.2 What specifications may a vacancy contain?

When identifying a vacancy, the employer should find out if a mandatory professional standard for a particular vacancy is applicable under the Labor Code or other federal laws.

Professional standards mean the requirements for the level of qualifications of an employee for specific professional activities. Each of them contains requirements for the qualifications, work experience, skills and knowledge of the employee who holds a particular position, as well as stating the tasks that may be carried out by such employee.

A specification for a position will not contain any requirements that are not connected with the professional skills of the individual concerned. Requirements for a particular gender, race, nationality, language, social origin, age, property status, place of residence, religious belief or affiliation with social associations are deemed discriminative.

If a mandatory professional standard is adopted for a particular position, the job description and specification for the position should comply with it in terms of the requirements for the employee's qualifications.

### 9.2.3 May an employer refuse to hire an employee due to the results of pre-hire checks?

The law does not require pre-hire background checks. However, in practice, employers often conduct them. Pursuant to applicable legislation, such checks may only be carried out with the candidate's prior written consent.

Some types of checks (e.g., checks of criminal records) are not permissible without the candidate's direct involvement. For instance, in Russia, information on criminal records may only be provided to the individual with respect to whom this information is sought or at the request of government law enforcement agencies.

Further, the employer should not make an offer of employment, enter into an employment agreement or admit the candidate to work before the background check is completed. Otherwise, even if the results of the background check are not satisfactory, the company will not be able to dismiss the employee on this ground. In addition, as a rule, the employer cannot refuse to employ a candidate merely due to unsatisfactory background check results.

Like background checks, reference checks are not required by law but are still widely used by employers. Pursuant to applicable legislation, these checks may only be carried out with the candidate's prior written consent. Due to Russian personal data protection legislation, former employers do not usually provide data regarding former employees unless the applicant has given prior written consent.

Russian labor legislation provides for mandatory medical checks prior to entering into an employment agreement and periodic medical checks for certain categories of employees. The list of such categories is approved by the Order of the Ministry of Health. It includes minors, employees engaged in dangerous or harmful activities, teaching employees, etc.

In some cases, employers must check if potential employees can occupy certain job positions. There is a database available indicating all persons who are prohibited from holding particular jobs (e.g., managerial) because of an administrative disqualification.<sup>189</sup> Such a check does not require the candidate's consent.

If an individual is not hired, they have the right to request the company to provide them with written reasons as to why they were not hired. Refusal to enter into an employment agreement may be challenged in court.

### 9.3 Entering into an employment agreement

#### 9.3.1 In which forms may an employment agreement be concluded?

A written employment agreement setting out the basic terms and conditions of the employment relationship must be entered into with

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<sup>189</sup> <https://service.nalog.ru/disqualified.do>.

each employee working in Russia. Russian legislation permits the conclusion of an employment agreement in electronic form with distant employees and for companies that have implemented an electronic document flow system. However, even in this case, an employer will send a duly executed employment agreement (hard copy) to the employee by registered mail with delivery confirmation. If an employer and an employee choose to execute an employment agreement in electronic form, they must use an enhanced qualified electronic signature (for employees it is also possible to use an enhanced unqualified electronic signature). The employment agreement and all other employment-related documents (i.e., an employer's local policies and all HR orders) must be in Russian or in a bilingual format.

### 9.3.2 In what situation is it possible to enter into a fixed-term employment agreement?

Generally, employment agreements are entered into for an indefinite period. A definite-term contract (fixed-term contract) can be entered into for a term of up to five years and may only be executed under the circumstances set out in the Labor Code (for instance, for the replacement of a temporarily absent employee who is legally entitled to retain the position during their absence, for the performance of temporary (up to two months) work and seasonal work, when the work can only be performed during a certain period of time (season) due to natural conditions, and some other scenarios). These situations usually occur when the nature or conditions of work make it impossible for the parties to enter into an indefinite-term contract.

Fixed-term employment agreements with foreign workers similarly may only be executed in the circumstances specifically provided for in the Labor Code.

### 9.3.3 What is the legal framework of secondary employment?

Pursuant to Russian labor law, an individual can only have one primary employment, which is generally full time.

At the same time, an individual may have several secondary employments with the same or different employers. In this case, under the requirements of the Labor Code, the employee will not work more

than four hours per day at the place of their secondary employment, provided that it is not a day off at the place of their primary employment. An employee in Russia cannot be prohibited from holding a second job in addition to their full-time employment, with certain limited exceptions and restrictions provided by the Labor Code and other federal laws.

### 9.3.4 What are the particularities of distant employment?

The Russian Labor Code allows employers to conclude employment agreements for distant work, where "distant work" means the performance of job functions by an employee outside the employer's premises. Specifically, performing job functions and related communication between the parties must be carried out via telecommunication networks, including the internet, telephone, etc.

As of 1 January 2021, Russia introduced rules on distant work. Under these rules, the following categories of distant work may be indicated in employment agreements:

- permanent distant work
- continuous temporary distant work (for no more than six months)
- periodic temporary distant work (alternation of distant work with office work)

An employer has the right, at its own initiative, to transfer employees to temporary distant work (e.g., during an epidemic). All details of the parties' communication, mutual obligations and liabilities, ways of validation and identification of senders must be specified in details in an employer's local policy, staff order, collective agreement or employment contract.

Previously, an employment agreement with a distant employee could provide for additional contractual grounds for terminating their employment. As of 1 January 2021, such additional contractual grounds cannot be applied. However, there are some additional statutory grounds for termination of employment with distant employees at the employer's initiative (e.g., in case a distant employee does not get in touch with the employer for more than two working days in a row without

a valid reason, or if a distant employee moves to another location than specified in their employment agreement).

A distant work arrangement entails fewer work safety obligations for employers and more flexibility.

### 9.3.5 When is an employer entitled to provide a probationary period in an employment agreement?

The employer has the right to establish a three-month probationary period for the majority of newly hired employees. The employer may also set a six-month probationary period for employees hired for certain top executive positions (e.g., head of an organization, chief accountant and their deputies, and head of a branch office, representative office or other separate structural subdivision of an organization). The imposition of a probationary period must be specifically stated in both the employment agreement and the order on hiring. If during the probationary period the employer determines that the employee does not meet the criteria established for the position for which they were hired, the employee can be dismissed by the employer without severance pay and with three days' written notice before the expiry of the probationary period. Such notice to the employee must state the reasons why the employee is deemed to have failed the probationary period. The employee is also entitled to resign during the probationary period, without stating any reason, with three days' written notice to the employer.

Under the Labor Code, for certain categories of employees (such as pregnant women, women with children up to 1.5 years old, persons under 18, persons invited to a specific job on transfer from another employer by agreement between employers, etc.), a probationary period cannot be established.

### 9.3.6 How can an employer make changes to an employment agreement?

Generally, to amend an employment agreement, the employer and the employee will enter into a relevant addendum to an employment agreement. The employer cannot make unilateral changes to the terms of the employee's employment agreement unless there are organizational or technological changes in the conditions of work. In



such cases, the employer must notify the employee in writing no less than two months in advance before unilaterally implementing the change.

Importantly, the employer cannot unilaterally make a change in the employee's job function; this requires the agreement of both parties.

If there are no organizational or technological changes, the amendments to the terms of the employment agreement may only be introduced by the agreement of the parties.

## 9.4 Working terms and conditions

### 9.4.1 What is the minimum amount of wages for full-time employees?

Wages may not be lower than the minimum monthly wage established by the applicable Russian legislation. The minimum monthly wage is subject to frequent indexation. The statutory minimum monthly wage at the federal level effective as of 1 January 2023 is RUB 16,242. In addition, the minimum monthly wage can be locally set at a higher level. For instance, in Moscow, the minimum monthly wage, from 1 January 2023, is set according to the tripartite agreement between the Moscow Government, Moscow associations of employers and Moscow associations of trade unions at RUB 24,801. The minimum monthly wage in Moscow is subject to a quarterly review.

Employees in Russia must be compensated in the currency of the Russian Federation (Russian rubles).

### 9.4.2 How often should an employer pay salary to the employees?

Salary payments must be made to employees at least once every half month. Employers are obligated to pay salary and other employment-related payments on a date set by the internal labor regulations or collective agreement, or by the individual employment agreement. The Labor Code specifies that a particular salary payment date will have to be established no later than 15 calendar days after the final day of the period for which it is accrued. An employer is obligated to pay compensation (i.e., interest) for delaying the payment of salary and other

employment-related payments in accordance with the rules established in the Labor Code. Currently, the monetary compensation for this violation is 1/150th of the Russian Central Bank's effective refinancing rate. In addition, legal entities and their responsible officers may be subject to administrative fines. Employees have the right to stop working, with prior written notice to their employer, if their employer has delayed payment of their salary for more than 15 days.

### 9.4.3 What is the standard length of working time pursuant to the Labor Code?

Employers are required to keep a record of all hours worked by each employee, including overtime. The normal working week is 40 hours. Any time worked over 40 hours per week is classified as overtime and may only be demanded by employers in extraordinary circumstances, as specified in Article 99 of the Labor Code, and in most cases only with an employee's prior written consent. The Labor Code limits the total amount of overtime for an employee to 120 hours a year and an employee cannot be required to work more than four hours of overtime over two consecutive days. Overtime must be paid at a rate of 150% of the regular hourly rate for the first two hours of overtime worked in any one day and at a rate of 200% of the regular hourly rate thereafter. Upon the employee's written request, the employer can compensate for overtime work by granting the employee additional time off in lieu of payment; the time off should be no less than the time worked as overtime.

Certain limitations regarding overtime work apply to certain protected categories of employees, including employees under the age of 18, pregnant women, women with children under the age of 3, disabled employees, mothers and fathers raising children under the age of 14 without a spouse, guardians of children under the age of 14, parent with a child under the age of 14, if the other parent works on a rotational basis, employees with three or more children under the age of 18, in the period until the youngest of the children reaches the age of 14, and some other categories defined by federal laws. For example, employers are entitled to guarantee women working in rural areas or in the Far North a reduced working week of no more than 36 hours with the same salary as for a working week of 40 hours.

As of October 2022, an employee who has a child under the age of 14 can be required to work overtime, in case the second parent was called

up for military service due to mobilization, only on the basis of their written consent.

Workers may also be hired on the terms of an open-ended working day, under which an employee may be occasionally engaged to perform their job duties beyond the normal working hours under the employer's instructions. The primary advantage of this is that there is no need to obtain consent whenever the employer asks an employee to work beyond the normal working hours. Moreover, the extra hours worked by employees with an open-ended working day need not be paid as overtime. Instead, they are entitled to additional paid vacation of no less than three calendar days per year. Further, job positions subject to the open-ended working day regime must be approved by the employer and must be listed in the company's internal labor regulations.

#### 9.4.4 Public holidays: how to compensate work on holidays and non-working days

There are currently 14 public holidays in the Russian Federation. The official public holidays are as follows:

- 1, 2, 3, 4, 5, 6 and 8 January — New Year's holiday
- 7 January — Orthodox Christmas
- 23 February — Defenders of the Motherland Day
- 8 March — International Women's Day
- 1 May — Holiday of Spring and Labor
- 9 May — Victory Day
- 12 June — Russia Day
- 4 November — National Unity Day

Uninterrupted weekly time off must not be less than 42 hours. As a rule, employees may only be required to work on a nonworking day or public holiday in extraordinary circumstances, as specified in the Labor Code, and only with employees' prior written consent. As a rule, employees must receive payment at no less than twice the regular rate for any work

performed on a nonworking day or public holiday, or be given time off in lieu of extra payment.

Some limitations regarding work on public holidays and nonworking days apply to certain protected categories of employees, including employees under the age of 18, pregnant women, women with children under the age of three, disabled employees and other categories as defined by federal laws. Moreover, as of October 2022, an employee who has a child under the age of 14 can be involved in work on weekends and non-working holidays, in case the second parent was called up for military service due to mobilization, only on the basis of their written consent.

## 9.5 Leave

### 9.5.1 How many days of vacation are employees in Russia entitled to?

Employees in Russia are entitled to annual paid vacation of at least 28 calendar days per year. An employee is entitled to use their vacation time in full once they have worked for the employer for at least six months. The Labor Code requires that the dates of the annual vacation of each employee be indicated in the vacation schedule for the calendar year, which the employer must approve by mid-December of the preceding year. Employees who have three or more children under the age of 18 will be provided with annual paid leave at any time at their convenience until the youngest of the children reaches the age of 14. The Labor Code further requires that employers notify their employees in writing at least two weeks before the commencement of the vacation. Each employee's vacation allowance should be paid at least three days before a vacation is due to start.

### 9.5.2 What is the procedure for providing an employee with sick leave?

Medical institutions generally provide sick leave, which should be confirmed by a statutory medical leave certificate. Generally, employees cannot be dismissed by an employer while absent on sick leave and they are entitled to receive statutory sick leave compensation. The employer covers sick leave compensation for the first three days of sick

leave and the rest of the term of sickness is covered by the Russian Social Fund, which is funded by the employer's mandatory social contributions. These contributions are paid on a year-to-date salary within the unified threshold of RUB 1,917,000 in 2023 for each employee per calendar year. Sick leave compensation and maternity leave compensation are regulated by Federal Law No. 255-FZ "On Obligatory Social Insurance in the Event of Temporary Disability and in Connection with Maternity" (as amended) dated 29 December 2006. Pursuant to this law, sick leave compensation must be paid to an employee in the event of their illness or injury (labor-related or other) and when an employee is caring for a sick family member, as well as in some other instances.

The duration of payment and amount of sick leave compensation varies according to the grounds for the sick leave. In cases of labor-related injury or occupational disease, the amount of sick leave compensation is 100% of the employee's average earnings. In other cases, sick leave compensation is determined based on the employee's average earnings and total term of employment.

The average earnings for the purpose of sick leave compensation should be calculated with reference to the two calendar years before the year an employee takes sick leave. In 2023, the statutory maximum average daily earnings for the purpose of sick leave compensation are RUB 2,736.99 per day if the employee's overall employment term exceeds or is equal to eight years.

If the employee's total term of employment is less than six months, the sick leave compensation cannot exceed the federal minimum monthly wage.

If the employee has more than one place of employment and has been employed with the same employers for the preceding two calendar years, they are entitled to sick leave and/or maternity leave compensation at each place of employment and to childcare leave compensation at one place of employment at the employee's choice. If the employee has more than one place of employment and has been employed with different employers for the preceding two calendar years, they are entitled to the above compensation only at one of their current places of employment at the employee's choice. If the employee has more than one place of employment and has been employed with both the current and other employers for the preceding two calendar years,

they are entitled to the above compensation either at each place of employment or at one of their current places of employment at the employee's choice.

Employees can get one paid day off in three years for a health check. Pre-pension and pension age employees are entitled to two days' annual paid leave to undergo health checks. The pre-pension age means the period of five years before the official pension age. In addition, as of 11 August 2020, employees aged 40 and above are entitled to one annual paid day off to undergo health checks. In order to use this benefit, employees need to agree on the dates of leave with their employers.

### 9.5.3 What is the procedure for providing an employee with maternity leave?

Maternity leave is to be provided by an employer based on an employee's request and medical certificate issued by the relevant medical institution. Paid maternity leave consists of 70 (or, in the case of a multiple pregnancy, 84) calendar days prior to a birth, plus 70 calendar days after the birth. Further paid maternity leave is provided in the event of complications while giving birth or in cases of multiple births (86 and 110 calendar days after the birth, respectively). Maternity leave is to be provided cumulatively, that is, the employee is entitled to the total amount of maternity leave days even if she uses less than 70 days of maternity leave before the birth.

The amount of maternity leave compensation is determined based on the employee's average earnings and total term of employment.

Average earnings are calculated with reference to two calendar years preceding the year an employee takes maternity leave. In 2023, the statutory maximum average daily earnings for the calculation of maternity leave compensation are RUB 2,736.99 per day.

Maternity leave compensation is to be paid as a single payment. If the employee's total term of employment is less than six months, the maternity leave compensation cannot exceed the federal minimum monthly wage.

A child's care provider (the employee who has given birth or who is the father, grandmother, grandfather or other relative who is taking care of the child) may request childcare leave until the child is three years old (paid childcare leave is provided until the child is 1.5 years old). The employee retains the right to return to their job during the entire period of childcare leave and the full childcare leave period is included when calculating the employee's length of service.

The procedure for calculating sick leave, maternity leave and childcare leave allowances is rather complicated in Russia; it is highly recommended to verify the procedures and documentary requirements on a case-by-case basis.

## 9.6 Termination of employment agreement

### 9.6.1 How can an employment agreement be terminated?

Termination of employment in Russia is strictly regulated by the Labor Code and can only be carried out on specific grounds as set out in the Labor Code. Thus, employment may be terminated by mutual consent between the parties to an employment agreement, at the employer's initiative, at the employee's initiative, due to the expiry of a fixed-term employment contract, etc.

Various aspects of some of these options to terminate employment are covered below.

An employer must carry out a number of steps on the employee's last day of employment to properly formalize the termination of employment. First, all outstanding payments must be made to the employee on the date of dismissal. These payments should include:

- all outstanding salary and bonuses
- compensation for all accrued but unused vacation
- severance payments (if applicable) as discussed below
- any other outstanding payments

An employer should provide the employee with a pay slip outlining the payment components and issue required HR documents.

### 9.6.2 In which situations is an employer entitled to unilaterally terminate employment?

An employment relationship may only be terminated by the employer on the specific grounds provided in the Labor Code, including: staff redundancy; the employee's repeated failure to perform their employment duties without justifiable reasons (if the employee was lawfully disciplined within the preceding 12 months); the employee's unjustified absence from the workplace for more than four consecutive hours during one working day; and other reasons. Arbitrary termination of an employment relationship by the employer is not allowed, except for the company CEO, who can be dismissed by the unilateral decision of the company's authorized body provided they are paid severance compensation equal to at least the employee's three months' average earnings, or a higher amount if envisaged by the respective employment agreement.

Employers must strictly comply with the specific procedures and documentary requirements provided by the Labor Code when terminating employment for any reason. The Labor Code gives additional protection to a number of categories of employees, including minors, female employees, employees with children, trade union members and various other categories.

In cases of the liquidation of the organization and/or staff redundancy, the employer is required to give at least two months' prior written notice to the relevant employees. Failure to comply with this requirement may invalidate the termination and result in the employee's reinstatement in the job.

### 9.6.3 In which situations is an employee entitled to severance payment?

In the majority of cases of employment termination at the employer's initiative (i.e., due to staff redundancy or a liquidation of the organization (termination of activities of an individual entrepreneur)), or in cases where an employee refuses to work under the changed terms of employment or move with the employer to another locality, and in some



other cases provided by the Labor Code, an employee is entitled to severance.

#### 9.6.4 How to terminate the employment by mutual consent

Termination of employment relations by mutual consent is the most efficient and safest option for an employer if such an agreement can be reached with an employee.

To formalize the mutual consent termination, the employer and the employee should sign a mutual consent termination agreement.

There is no statutory notice period for termination by mutual consent. In practice, mutual consent terminations imply the payment of compensation to an employee. There is no statutory requirement regarding the amount of such compensation; it is the result of bargaining between an employer and an employee.

#### 9.6.5 How may an employee terminate employment?

Regular employees are entitled to terminate their employment at any time, are not required to give a reason and may only give two weeks' written notice to the employer. A company's CEO may terminate an employment at their initiative with a one-month notice period.

### 9.7 Employment of foreigners in Russia

#### 9.7.1 What documents are necessary for foreign employees who need visas to enter Russia to work in Russia under the ordinary procedure?

Generally, when hiring foreign national employees, employers must obtain permission to hire foreign nationals, individual work permits and work visa invitations before the foreign nationals are employed and/or actually commence work in Russia. As a precondition for obtaining permission to hire and obtaining a work permit, a company must file an application for a quota for work permits. The Russian authorities have adopted a list of quota-exempt professions/positions, which allows employers to hire foreign employees without observing the quota requirement.

This procedure also applies to foreign nationals working in Russia under civil law agreements for the performance of work or the provision of services (e.g., marketing consultants or sales representatives). The requirements to obtain the relevant migration documents equally apply to legal entities, branch offices and representative offices of foreign firms. In contrast to Russian legal entities, the branch office and the representative office may only employ a limited number of foreign employees set by the accreditation authorities.

The process of obtaining the permission to hire foreign nationals and obtaining individual work permits and work visas in Moscow involves several consecutive steps and may take from four to six months to complete. In other regions of the Russian Federation, this period may differ. Generally, a work permit and work visa are issued for a one-year period. Renewal of a work permit involves the same procedure and takes the same amount of time as obtaining the first work permit.

Additionally, employers are required to provide financial, medical and social guarantees in respect of their foreign employees in Russia and bear a number of migration law obligations, including filing notifications, within a prescribed term, on the hiring/termination of foreign nationals, etc.

In order to obtain ordinary work permits, foreign nationals are required to provide relevant certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles, and medical certificates to the migration subdivisions of the Ministry of the Internal Affairs.

### 9.7.2 Are there any categories of foreign employees for whom a simplified procedure of employment is established?

Employees from countries enjoying a visa-free regime with Russia should obtain a "patent" (a special permission document issued in a standard simplified procedure and in the form prescribed by statute) allowing them to work for both individuals and legal entities. Foreign employees, not their employers, obtain patents. Citizens of Belarus, Kazakhstan, Armenia and Kyrgyzstan do not need patents/work permits to work in Russia.

There is also a special category of foreign employees — the highly qualified foreign specialist (the "**Specialist**"). A Specialist is subject to a simplified procedure for obtaining a work permit and a work visa invitation. To obtain a work permit for a Specialist, their employer is not required to obtain a quota to hire foreigners or obtain permission to hire foreign employees. The simplified procedure is available to Russian companies and accredited branches and representative offices of foreign commercial companies. Specialists are not required to provide certificates confirming their knowledge of the Russian language, Russian history and basic legislative principles, and do not have to provide medical certificates.

The main criterion for recognizing a foreign employee as a Specialist is the salary level paid in Russia. To satisfy this criterion, the salary received by the Specialist under a local employment/civil law agreement should be RUB 167,000 per month or more. A work permit and a work visa invitation are issued within 15-17 business days. The Specialist can receive a work permit and a work visa for up to three years, valid for several regions of the Russian Federation, if the employer has registered subdivisions in these regions.

Additionally, legal entities may employ foreign citizens from the World Trade Organization countries in positions of key personnel under a simplified procedure and requirements (i.e., extended visa terms, absence of quotas, etc.).

Employers bear the relevant migration law obligations in respect of Specialists and employees from countries enjoying a visa-free regime with Russia (including citizens of Belarus, Kazakhstan, Armenia and Kyrgyzstan), e.g., file within a prescribed term the notifications on hiring/termination, payment of salary, etc.

### 9.7.3 What are the consequences for failing to comply with migration requirements?

Russian law provides severe penalties for noncompliance with the migration requirements. Administrative sanctions for the violation of Russian migration rules may be imposed on the employer, its authorized officers (e.g., the HR director and/or the effective CEO) and a foreign employee. Administrative sanctions include heavy fines (up to RUB one million in Moscow) and, in the worst cases, may even lead to temporary

suspension of the employer's activities for up to 90 days and the deportation of the foreign employee from Russia.

Legal entities may be subject to an administrative fine of up to RUB 500,000 if a foreign citizen they have invited fails to abide by the rules for their stay in Russia. The inviting party will have to ensure that the foreign citizen abides by the terms and conditions of their visa and that they depart Russia on time.

Employers are prohibited from registering their foreign employees with migration authorities at the address of the company's office if in fact the said foreign nationals stay at another address. A foreign employee may be registered at the employer's office address only if they actually reside in the office. Otherwise, foreign citizens must be registered at the address of the dwelling or hotel where they actually live in Russia. An administrative fine of up to RUB 5,000 (up to RUB 7,000 in Moscow and St. Petersburg) and, in extreme cases, even deportation from Russia may be imposed on a foreign national for violating the rules of migration registration. The hosting party, and employing entities and their officers, may be subject to an administrative fine of up to RUB 500,000 and up to RUB 50,000 respectively. Fraudulent migration registration may involve criminal liability. The sanctions for fraudulent migration registration is a fine of up to RUB 500,000 or in the amount of a convict's salary or another income for a period of up to three years, or forced labor for up to three years, with disqualification from holding specific offices or engaging in specified activities for a term of up to three years, or without such sanction, or imprisonment for up to three years with disqualification from holding specific offices or engaging in specified activities for a term of up to three years, or without such sanction.

Imposition of an administrative fine on a foreign employee (regardless of its amount) may trigger difficulties in visiting Russia and/or obtaining work permits/Russian visas in the future.

Thus, employing a foreign national in Russia requires advance planning to allow sufficient time for all the procedures. Russian migration legislation is still undergoing significant amendments and so the procedures involved could be modified at any time. It is highly recommended to verify the procedures and documentary requirements on a case-by-case basis in advance.

## 9.8 What measures will an employer take to protect the personal data of employees?

All employers must ensure compliance with legislation on personal data. Pursuant to Federal Law No. 152-FZ "On Personal Data," employers are required to obtain prior consent from employees (in some cases) and other individuals to process their personal data. In particular, an employer must obtain written consent from the respective individuals if it transfers personal data to any third parties (including cross-border personal data transfer).

In addition, employers are required to notify the state authority supervising personal data processing matters in Russia – Federal Service for Supervision in the Sphere of Telecommunications, Information Technology and Mass Communications (the "**Roskomnadzor**") of the employer's personal data processing activities (there are certain exemptions from this rule; however, due to recent legislation amendments the exemptions are not applicable to the activities of the employers). This notification must be submitted to Roskomnadzor before the actual start of personal data processing operations. Also, as of 1 March 2023 companies, carrying out cross-border data transfers are obliged to notify Roskomnadzor on the cross-border data transfer using separate notification and prior to making this notification – to request information on legal regulation of personal data and measures taken to protect personal data from foreign operators to whom the cross-border data transfer is planned and assess their compliance with the confidentiality and safety of personal data requirements in the course of data processing.

All companies that collect and process the personal data of Russian citizens are obliged to use databases located in Russia. Once the personal data is collected in a primary Russian database, it may be transferred outside Russia, provided that the cross-border data requirements are met. All updates to the personal data of Russian nationals also must be initially performed via a Russian database. All employers in Russia must keep their information systems in which personal data is processed in compliance with the requirements set out in the Federal Law "On Personal Data" to ensure due protection of personal data.

Russian law provides severe penalties for violating personal data localization rules. Companies may be subject to administrative fines of up to RUB six million for the first violation and up to RUB 18 million for repeat violations.

## 10. Property Rights

### 10.1 What is particular about property rights in Russia?

Both the Constitution and the Civil Code of the Russian Federation uphold the right to own private property.

For historical reasons, such as the fact that transactions with real properties (other than land plots) became possible earlier than transactions with land plots, at present, Russian law still mostly treats land plots and buildings as separate objects of real estate. There is, however, the concept of a single object of real estate that prohibits the disposal of a land plot and a building located on such land plot separately from each other when the same owner owns such properties. When a building is located on a land plot that is state-owned or municipally owned, and unless there are other buildings or structures on the land plot owned by third parties, the owner of such building has an exclusive right to lease or buy such land plot.

Under Russian law, the most common types of rights to real estate available to investors are the right of ownership and the right of leasehold.

#### 10.1.1 What are the varieties of land rights?

The Land Code distinguishes the following rights to land: the right of ownership (by the Russian Federation, constituent entities of the Russian Federation, municipalities, private individuals and legal entities), leasehold, the right of perpetual (indefinite) use, the right of free use, the right of lifelong inheritable possession, and easements (servitudes).

As of 1 March 2015, land plots are not granted on the right of perpetual (indefinite) use or the right of lifelong inheritable possession, although if granted before this date these rights remain effective. Land plots are generally available to investors under the right of ownership and lease.

#### 10.1.2 What are the key principles of transactions with public land?

The key principles of transactions with public land are set forth in the Land Code, which is the core legislative act governing land relations in

Russia. Due to changes to the Land Code introduced by Federal Law No. 171 "On Amendments to the Land Code of the Russian Federation and Other Legislative Acts of the Russian Federation" dated 23 June 2014 (the "**Law 171**"), since 1 March 2015, ownership or lease of municipal or state land plots are granted through a public (open) auction, except for specific cases (an exhaustive list is provided in the Land Code). In accordance with provisions of the Land Code (and subject to very few exceptions), public land zoned for development can only be granted by lease (through a public auction). We outline some peculiarities of the acquisition of rights to public land for construction purposes in Section 10.1.6 below.

The procedures for preparing, organizing and conducting an auction are described in detail in Articles 39.11-39.13 of the Land Code. The auction may be held in an electronic form. The procedure for holding an auction in electronic form is to be determined by Federal Law No. 385-FZ "On Amendments to the Land Code of the Russian Federation and the Invalidation of Section 7 of Article 34 of the Federal Law "On Amendments to the Land Code of the Russian Federation and Certain Legislative Acts of the Russian Federation."<sup>190</sup>

### 10.1.3 Is the foreign ownership of land allowed?

Although there is no express provision permitting land ownership by foreign nationals (including stateless persons), the Land Code may be clearly interpreted as allowing such ownership, except in cases where it is specifically prohibited. In 2004, the Constitutional Court of the Russian Federation confirmed this liberal and pro-foreign national interpretation of the Land Code. Foreign nationals have the right to acquire, into lease or ownership, vacant land plots (for construction purposes) or land plots under existing buildings, subject to the following restrictions set out in the Land Code and other federal laws:

- foreign nationals are specifically prohibited from owning land plots: (i) in border areas, a list of which was approved by the Russian President dated 9 January 2011 by Presidential Decree No. 26 (the "**Decree**") for the first time since the adoption of the Land Code in October 2001; and (ii) in other particular territories of the Russian Federation pursuant to other federal laws.

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<sup>190</sup> The law took effect on 1 March 2023.



Additionally, the Russian President may establish a list of the types of buildings and other structures whose foreign owners will not enjoy the preemptive right to buy out or lease land underlying such buildings and structures. In accordance with Federal Law No. 137-FZ "On the Entry into Effect of the Land Code of the Russian Federation" dated 25 October 2001 (the "**Land Code Implementation Law**") as amended, before the adoption of the Decree, the border restrictions apply to all border areas

- foreign nationals are prohibited from owning agricultural land. Federal Law No. 101 "On Turnover of Agricultural Lands" dated 24 July 2002 further specifies that foreign nationals and foreign legal entities (and stateless persons) may only lease agricultural land plots. This restriction on foreign legal entities also extends to Russian legal entities in which the equity participation of foreign nationals, foreign legal entities and/or stateless persons exceeds 50%
- foreign nationals are prohibited from owning land plots located within the boundaries of seaports

Under the Decree, border territories are defined to include municipal districts and cities (in their geographical entirety) adjacent to the border.

Among the border territories are the city of Sochi (and other nearshore municipalities in Krasnodarsky Krai), the federal city of Sevastopol and several districts of the Republic of Crimea, five districts in the Leningrad oblast (the Lomonosovsky, Kingiseppsky, Slantsevsky, Sosnovoborsky and Vyborgsky districts), the Kronshtadtsky district in St. Petersburg, a number of municipal districts in the Bryansk, Tyumen, Rostov, Voronezh and Belgorod oblasts, most of the municipalities in the Kaliningrad oblast, a great many municipal districts in the Far East, and others.

Pursuant to the Land Code, the prohibition of land ownership in border territories applies to foreign legal entities (including entities acting in Russia through branches or representative offices), foreign individuals and stateless persons, but, in contrast to agricultural land, does not apply to Russian legal entities wholly or partially owned by foreign investors.

The Decree neither provides a transitional period nor a clear indication as to what should be done with land plots within restricted border territories acquired by foreign nationals before the adoption of the Decree. Neither the Land Code nor the Land Code Implementation Law addresses these matters. Arguably, the lack of transitional or implementation rules in the Decree reflects the intention of its authors to prompt foreign owners of lawfully acquired land in border territories to dispose of such land in accordance with the general principles envisaged in the Civil Code. In particular, according to Article 238 of the Civil Code, if an owner owns property that may not be owned by that owner by virtue of law, such property must be alienated by the owner within a year from the moment when the ownership right arose, unless the law specifies another term for the alienation of the property. Court practice (which is very scarce as of the date of this guide) uses this general principle when considering disputes with regard to land plots owned by foreign owners or stateless persons in border areas.

In the context of other provisions of the Land Code dealing with the concept of unity of title to land and facilities (buildings) built thereon, in the absence of any exemptions in the Decree for foreign owners of developed land plots, a foreign person may also have to dispose of all the facilities and buildings developed on all such land plots that it owns. As of the date of this guide, the law is silent on whether this concept will apply and whether a foreign owner should also dispose of the facilities (buildings) located on the land plot or only the land plot. At the same time, we are aware of a court decision in which the court held that the foreign owner should also dispose of the facilities (buildings) located on the land plot.

Starting from 2 March 2022, transactions with real estate involving foreigners and Russian legal entities controlled by foreigners are subject to certain restrictions (for further information please refer to Section 10.8 below).

#### 10.1.4 What are the general principles of land leases?

Foreign legal entities and individuals may be granted leases to land plots. Such leases for state-owned or municipally owned property are usually based on a standard local form. As of the date of this guide, neither the Civil Code nor the Land Code stipulates a statutory maximum length for a land lease; the lease term in most cases does not

exceed 49 years. However, Article 39.8 of the Land Code establishes different lease periods for which state or municipal land plots may be granted. In particular, the period for which a land plot may be leased depends on the permitted use of the land plot and may be determined: (i) in years (up to 49 years); (ii) as the period of implementation of an investment project; (iii) as the effective period of certain other agreements (for instance, concession agreements, license agreements and certain other agreements); (iv) as the period of reservation of land plots for state and municipal needs; and (v) in accordance with federal laws.

Under the Land Code rules, the owners of buildings and structures located on a state or municipally owned land plot may be granted a lease for a term of no more than 49 years. A lease for three to 10 years may be granted for the construction and reconstruction of buildings and structures.

The level of rent payments for the majority of land leases granted by the state or municipalities is set by a general local decree. At the same time, rental payments charged by all public lessors should conform to the general principles envisaged in the Land Code, as amended by Law 171 and Decree of the Government of the Russian Federation No. 582 dated 16 July 2009, as amended. The general principles require public lessors to adhere either to the market rent rate or a cadastral value-determined rate (where rental payments are calculated as a percentage of the land's cadastral value). The rent became an essential term of a land lease agreement from 1 March 2015.

In Moscow, a lessee must pay for the right to lease any land in excess of the area of the existing buildings on that land. In St. Petersburg, the level of rent is determined by City Law No. 608-119 "On the Method for Determination of Rental Payments for Land Plots Owned by St. Petersburg" dated 5 December 2007, as amended. If the right of ownership to a land plot has not been delimited (i.e., allocated either to the Russian Federation or to its constituent entity), the level of rental payments for such land plot is established by a resolution of the St. Petersburg Government. In both cases/cities, the lease rates vary depending on the location of the site, the type of land use and the status/activity of the lessee, etc.

The Land Code provides a lessee with certain basic rights. As of the date of this guide, a lessee that properly fulfills its obligations under a lease has a preemptive right to renew the lease at the end of its term. The renewal rights of a lessee under a land lease are to be treated in conjunction with both the preemptive right to purchase the land granted to the lessee (where the leased land is state-owned or municipally owned) and the exclusive right of the owners of the existing buildings and structures to purchase or lease the underlying land plot. In accordance with Article 39.8, a lessee does not have the preemptive right to enter into a new agreement without an auction unless the land plot was initially granted to the lessee without an auction (for instance, to owners of buildings and structures located on the land plot, or if the land plot was granted at an auction for gardening and country (dacha) activities).

Significantly, the provisions of the Civil Code, as far as they apply to land leases, are supplemented by the Land Code in a number of areas. In particular, the Land Code sets forth a series of modified rights for land lessees. Their applicability in part depends on the wording of the lease. For example, the presumption under Article 615 of the Civil Code that a lessee needs the lessor's consent to sublease has been reversed for lessees of land. Of particular significance is the provision in accordance with Article 22 of the Land Code that a lessee of state-owned or municipally owned land (other than state enterprises) under a lease with a term exceeding five years is free to assign its rights under the lease to mortgage such rights or grant the land plots for sublease to third parties, subject only to giving notice to the lessor. This rule to give notice to the lessor also applies to land leases with private lessors (in contrast to the prior consent requirement established under Article 615(2) of the Civil Code), if the assignment and sublease are within the lease term under the land lease agreement. The assignee of a land lease does not need to enter into a new land lease.

The lessor and the lessee may terminate the lease: (i) by mutual agreement; (ii) unilaterally — in the circumstances stipulated in the lease; or (iii) by a court order — in the circumstances provided by the Civil Code, the Land Code or in the lease. The Land Code contains provisions that deal with the termination of land leases in conjunction with a court order. For example, the following constitute grounds for the termination of a land lease:

- misuse of the land plot (a more stringent test than under Article 619 of the Civil Code requiring either substantial or repeated violations)
- use of the land plot that results in a decline in the fertility of agricultural land or, importantly for industrial users, a material deterioration in the environmental situation
- failure to correct a range of other intentional environmental violations of applicable land use regulations
- where the designated purpose of the land plot is agricultural production or development, failure to use the land plot for its designated purpose for more than three years
- failure to demolish an unauthorized structure or bring it into compliance with existing norms and regulations within the time limits established by a relevant decision under Russian civil law

### 10.1.5 Does the law recognize any other rights to land?

Prior to 1 March 2015, the right of perpetual (indefinite) use could be granted to state and municipal institutions, federal treasury-owned enterprises, and state and local authorities. Legal entities that possessed land plots on the right of perpetual (indefinite) use before the introduction of the Land Code and that do not fall under the above categories had to convert and re-register their rights as either lease or ownership by 1 January 2004.

This deadline was extended several times and was finally established on 1 July 2012 as a rule and on 1 January 2015 with regard to land plots under transportation, communications and utilities lines. Failure to convert the rights by the established deadlines will trigger an administrative penalty of RUB 20,000-100,000. The penalty is established with effect from 1 January 2013.

As the civil circulation of land plots held on the right of perpetual (indefinite) use is restricted — for example, such land plots cannot be sold, leased, mortgaged or assigned — the disposal of such land plots by legal entities (that do not fall under certain categories, such as public authorities) will always require the prior conversion of the right of

perpetual (indefinite) use into another title (e.g., for commercial legal entities, into lease or ownership).

### 10.1.6 What is the procedure for the acquisition of rights to land plots for construction purposes (other than residential construction)?

Law 171 and Federal Laws No. 217, No. 224 and No. 234, all dated 21 July 2014, amended the Land Code significantly with respect to the rules governing the provision of land plots for construction and non-construction purposes. As stated above, amendments to the Land Code as per Law 171 are effective from 1 March 2015. However, in accordance with Law 171, the provisions of the Land Code existing before 1 March 2015 should apply (until 1 March 2018) to the process of granting land into lease or perpetual (indefinite) use, or uncompensated use if it started before 1 March 2015.

As of the date of this guide, the acquisition of rights to state-owned or municipally owned land plots is carried out in accordance with the procedures currently envisaged in the Land Code. In particular, the Land Code distinguishes two kinds of procedures: (i) at public auction (for construction purposes, land plots are granted only for lease); and (ii) without a public auction on a resolution of the authorized body (only in exceptional cases stipulated in the Land Code for lease or ownership depending on the basis for such granting).

As a rule, land plots are granted into ownership or lease only at public auctions. The Land Code describes in detail how such auctions should be prepared and conducted. It should be noted that if the main permitted use of the land plot is for the construction of buildings/structures, such land plot may be granted only on lease for twice the term established by the competent federal authority for carrying out engineering survey works, architecture/construction planning and the construction of buildings/ structures. In furtherance of this provision, by Order No. 264/pr of 15 May 2020, the Ministry of Construction, Housing and Utility Infrastructure of the Russian Federation adopted regulations on the standard lease periods for public land plots, the maximum being 79 months.

An auction can be held through live or electronic (online) bidding. A person interested in acquiring the land plot in question can initiate an

auction. However, if the target land plot has not been formed, such interested party should prepare the layout plan of the land plot<sup>191</sup> (if the territorial land survey plan is not formalized) and arrange for the cadastral works to be performed on the target land plot.

From 1 March 2015, the rights to state-owned or municipally owned land plots can be granted without an auction only in certain exceptional cases envisaged in the Land Code (irrespective of the existence of the territorial planning documents and town planning rules and regulations and formation of the land plot). The most common case is state-owned or municipally owned land plots being granted in ownership or lease to the owners of the buildings/structures located on such land plots. Other cases of granting state-owned or municipally owned land plots without an auction are much rarer. Such land plots can be granted in the following circumstances:

- in ownership:
  - to a legal entity that entered into an agreement on the complex development of the territory in accordance with Federal Law dated 24 July 2008 No. 161-FZ "On Assistance in the Development of Housing Construction"
  - to a tenant of the land plot that was initially granted on lease for production and industrial purposes<sup>192</sup>
- on lease:
  - further to a decree of the Russian Government for the implementation of large-scale investment projects for the construction of social and cultural facilities, subject to their compliance with the relevant criteria established by the Russian Government
  - further to a resolution of a higher public official of the Russian constituent entity for the implementation of large-

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<sup>191</sup> Apart from land plots located within the boundaries of cities with federal status or within the boundaries of settlements. In these cases, the authorized body prepares the layout plan of the land plot.

<sup>192</sup> Government Decree No. 629 dated 09 April 2022 "On the Specifics of Regulating Land Relations in the Russian Federation in 2022 and 2023."

scale investment projects for the construction of social and cultural, public and welfare facilities, subject to their compliance with the relevant criteria established by regional laws

- to a party to a concession agreement (i.e., to the concessionaire)
- to an entity that has entered into an agreement on the development of a built-up area (residential development, replacing condemned buildings)
- for a new term to the lessee to whom the land plot was initially granted without an auction
- to a subsoil license holder for works related to subsoil use
- to the owners of uncompleted structures, only once for the completion of the construction (see Section 10.1.8 below)
- in some other cases

### 10.1.7 What is the rule of exclusive right?

As mentioned in Section 10.1.6 above, the owners of buildings and structures that are located on land plots owned by the state, a constituent entity of the Russian Federation or a municipality have an exclusive right to buy or lease the underlying land plots (Article 39.20 of the Land Code).<sup>193</sup> With regard to facilities erected on such land plots after the Land Code became effective, this rule means that an owner of the facility, upon the state registration of title (see Section 10.4 below), may opt for: (i) an extension of the lease; (ii) extension of the lease and subsequent acquisition of the land plot into ownership; or (iii) the immediate acquisition of the land plot into ownership. Possession of a valid lease contract does not preclude the owner of the facilities from acquiring the underlying land plot into ownership before the expiry of the lease. The Land Code does not establish a deadline by which the

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<sup>193</sup> However, due to amendments to the Land Code introduced by Federal Law No. 341-FZ dated 3 August 2018, special rules apply in relation to relocatable retail facilities, advertising structures or other structures and, for instance, where instead of granting the ownership right to the public land, the public owner may grant an easement for such public land.



owners of the facilities should exercise their right. With regard to facilities erected before the entry into effect of the Land Code, the rule is generally the same. However, when the underlying land plots had been granted on the right of perpetual (indefinite) use, in accordance with the Land Code Implementation Law, as amended, the owners of facilities located on such land plots had to purchase or lease such land plots before 1 July 2012 (in the case of land plots under transportation, communications and utilities routes — before 1 January 2016).

Under Russian law, if a land plot is required for state or municipal needs, the state or municipal authorities may expropriate such land plot with compensation to the owner for the land plot. The procedure for expropriation of land plots for state and municipal needs is described in detail in the Civil Code and the Land Code, as amended by Federal Law No. 499-FZ dated 31 December 2014, with effect from 1 April 2015.

#### 10.1.8 What are the implications of buildings being unfinished (construction in progress)?

Further to Article 239.1 of the Civil Code (effective from 1 March 2015), adopted to support the provisions of the Land Code on granting public land for construction purposes, a building located on a state-owned or municipally owned land plot that is not completed (an unfinished facility) can be withdrawn pursuant to a court order and sold at public auction upon the expiry of the land lease agreement (this rule applies to land lease agreements concluded after 1 March 2015), unless the owner proves that it was unable to finish the facility due to reasons specifically provided by the law.

The Land Code provides for granting the state-owned or municipally owned land plot on lease without an auction to the owner of the unfinished building, which acquired its ownership right to such building at public auction, or (if the withdrawal has not been initiated or satisfied) to the initial owner of the unfinished building. The land lease right is granted only for the completion of the building and on the condition that such land plot has not been provided on the same basis to any of the owners of such unfinished building before.

## 10.2 What about other real estate?

### 10.2.1 What are the peculiarities of ownership?

Russian legislation permits both Russian and foreign nationals and legal entities to own real estate (apart from land plots) such as buildings, premises (such as parts of buildings), structures and other facilities (including car parking lots). In general, the rules relating to the use, disposal and sale of real estate are set forth in the Civil Code, which guarantees the freedom to sell (with due regard to the restrictions detailed in Section 10.8 below), rent and carry out other transactions with real estate. Title to real estate is usually acquired through a sale-purchase transaction or by means of new construction. For legal entities formed in the course of the privatization of state-owned or municipally owned enterprises, it is usual that title to buildings and structures was obtained as a result of such privatization.

In the past, Russian courts have largely treated sale-purchase transactions with buildings and structures that were incomplete at the moment of execution of a sale and purchase agreement, or were not registered in the name of the seller, as invalid (on different grounds). In these circumstances, parties wanting to buy or sell such pending real estate had to enter into either preliminary sale and purchase agreements (to be followed, upon completion of such buildings and structures and registration of the seller's title thereto, by main sale and purchase agreements) or investment agreements, both types of agreements being far from safe havens for both parties in terms of enforceability.

However, the Plenum of the Supreme Arbitrazh Court in Resolution No. 54 dated 11 July 2011 "On Certain Matters of Resolving Disputes Arising from Agreements on Real Estate to be Developed or Acquired in the Future" explicitly confirmed the validity of sale and purchase agreements with regard to such future real estate. At the same time, registration of title transfers from the seller to the buyer, i.e., acquisition of ownership rights by the buyer, would be possible only after putting a real estate facility into operation (to be evidenced by a commissioning permit issued by the local administration) and state registration of the seller's title to it. In addition, the plenum maintained that investment contracts executed in the past, if they meet certain criteria, should also

be construed as contracts for the sale and purchase of future real estate.

In accordance with the Civil Code, property rights arise after their state registration if the law requires such state registration. State registration of the ownership right to real estate and encumbrances of such right was governed by Federal Law No. 122-FZ "On State Registration of Rights to Real Estate and Transactions Therewith" dated 21 July 1997, as amended (the "**Old Registration Law**"), and, from 1 January 2017, is governed by Federal Law No. 218-FZ "On State Registration of Real Estate" (the "**Registration Law**"). At the request of a legitimate acquirer of title (or at the request of both parties under a sale and purchase agreement), the authority in charge of the state registration of rights to real estate must state register the title and issue an extract from the Unified State Register of Real Estate (the "**Register**") evidencing the registration of title (see Section 10.3 below).

For all owners of real estate, the ownership right has to be state registered in accordance with the procedure set forth in the Registration Law. The exceptions to this rule relate to rights to real estate that were acquired prior to the adoption of the Old Registration Law. The owner of such real estate is not obligated to state register its rights unless it wishes to enter into any transaction involving its real estate (e.g., lease, mortgage and sale).

State registration of the ownership right to real estate is a straightforward process, as long as an applicant seeking to register its title can clearly demonstrate that the real estate in question was purchased, constructed or privatized in accordance with the procedures established by law. As a rule, before the ownership right to real estate is state registered, such real estate must undergo a cadastral recording in the Register (described in more detail in Section 10.3 below). From 1 January 2017, the cadastral recording of real estate and state registration of ownership rights with the Register (as defined in Section 10.3 below) are designed as a single (one-window) process.

Title to real estate acquired through privatization sometimes cannot be registered as a result of deficiencies in the underlying privatization documentation. In the past, state-owned real properties were granted to state-owned enterprises for economic management or use. During the privatization process of the early 1990s, such real properties were

usually transferred into the ownership of those enterprises that were formed on the basis of Soviet state-owned enterprises, which operated and used such real properties on the basis of various usage-type rights. A newly privatized enterprise thus inherited such real properties from the state-owned enterprise, if the real properties, as recorded on the balance sheet of the state-owned enterprise, were easily identifiable in the privatization plan of the newly formed (privatized) enterprise. The problem of title registration is not unusual for legal entities that are the legal successors to such Soviet era state-owned enterprises. Such legal entities may, however, register title by virtue of having held and used property for 15 years in good faith, openly and without interruption (acquisitive prescription) based on a court order.

### 10.2.2 What is the regime of common property?

Until recently, the regime of common ownership (a situation where real estate properties belong to several owners) applied only with regard to common areas in a multi-apartment building, while the situation for nonresidential buildings (i.e., office, warehouse, retail, administrative buildings, etc.) remained unregulated. However, on 21 December 2021 Federal Law No. 430-FZ "On Amendments to the First Part of the Russian Civil Code" (the "**Federal Law 430**") was adopted to address this issue.

According to Federal Law 430, owners of any type of premises and car parking lots have the right of common ownership with regard to the common property, i.e., the property intended to serve more than one premises in the building. The common property includes, in particular, auxiliary premises (technical floors, attics, technical basements, in which there are utilities that serve more than one premises or car parking lot), roofs, enclosing structures, mechanical, electrical, sanitary and other equipment located outside or inside the premises, or parking spaces, and that serve more than one premises. A land plot with landscaping underlying a building and necessary for its use and safe operation also falls into the category of common property.

Most of the changes introduced by Federal Law 430 will become effective from 1 March 2023. Up until then, while considering disputes between owners of premises in nonresidential buildings, the courts are guided by the position of the Plenum of the Supreme Arbitrazh Court expressed in Resolution No. 64 dated 23 July 2009 "On Certain Matters

Concerning Court Practice Regarding Disputes Between Premises' Owners with Respect to Their Rights to Common Property in a Building" (the "**Resolution No. 64**"), according to which, in the absence of direct regulation the owners of premises in a nonresidential building must be guided by legal analogy, that is, by the rules governing common ownership in multi-apartment buildings.

Pursuant to Resolution No. 64, the owner of separate premises in a nonresidential building always has a share in the right of common ownership to the common property of the building, independently of whether such right is registered in the Register.

Resolution No. 64 embraces the concept of common property in a nonresidential building, including the following: premises designated for serving more than one unit of premises in the building, and also landings, stairs, halls, lifts, lift shafts and other shafts, corridors, technical floors, attics, basements housing engineering communications or other equipment serving more than one unit of premises in the building (technical basements), roofs, supporting and nonstructural constructions of the building, and mechanical, electrical, sanitary and other equipment located externally or inside the building and serving more than one unit of premises. This definition is an almost verbatim repetition of the description of common property in a multi-apartment building given in the Housing Code of the Russian Federation dated 29 December 2004 (the "**Housing Code**"), which came into effect on 1 March 2005, with the exception that the Plenum of the Supreme Arbitrazh Court does not directly add the underlying plot of land to the common property of a nonresidential building. Applying legal analogies to complex relations can lend clarity to a fundamental question, but inevitably leads to the emergence of certain new ambiguities.

### 10.2.3 What is noteworthy about leases?

Foreign legal entities and individuals may be granted leases to other real properties (apart from land plots). Like leases of state or municipal-owned land plots, leases of other real properties in state or municipal ownership are usually based on a standard local form.

The Civil Code provides a lessee with certain basic rights. When a property is leased, it must be in the condition stipulated by the lease. Thereafter, unless the lease specifies otherwise, the lessor is liable for

the repair of defects of the premises. If the lessor fails to carry out the necessary repairs, the lessee can opt for either a reduction of the rent or termination of the lease and compensation of the losses incurred. A lessee that properly fulfills its obligations under a lease has a preemptive right to renew the lease (i.e., enter into a new lease for the same premises but not necessarily on the terms of the preceding lease), unless this right is expressly excluded by the lease contract.

The lease survives the change of ownership over the leased property except in the event of some foreclosures that meet certain criteria. The lease of buildings and structures assumes the right to use (either in lease or under another right of usage) the land plot that underlies such buildings and structures, which is necessary for their operation and use. As with the lease of land plots, the lessor and the lessee may terminate the lease: (i) by mutual agreement; (ii) unilaterally on the grounds stipulated in the lease; (iii) by a court order in the circumstances provided by the Civil Code or in the lease; or (iv) by the lessor's receiver (lessor's bankruptcy trustee) in accordance with Federal Law No. 127 "On Insolvency (Bankruptcy)" dated 26 October 2002.

Lease agreements for one year or longer must be state-registered and, as provided by Article 433 of the Civil Code, are deemed concluded upon such state registration. In 2015, Article 433 was amended to provide that, unless the law provides otherwise, transactions subject to state registration are deemed concluded for third parties upon such state registration (for the parties to the transactions, they come into effect upon execution unless the transaction documents provide otherwise). However, Part II of the Civil Code (Article 651) still provides that a lease shall come into effect upon its state registration without distinguishing between the effects of state registration for third parties and parties to the lease. Therefore, in accordance with a conservative interpretation of the law, even for the parties to a long-term lease, such lease comes into effect only upon its state registration. However, as we comment in Section 10.3 below, the Russian Supreme Court gave a different interpretation of the law, holding that for parties to a transaction requiring state registration such transaction becomes binding on them upon its execution (even before its state registration); the market now operates largely on this basis.

Lease agreements for less than a year (that is, less than any 365-day period) do not require state registration and become valid when signed.

To avoid the obligation of state registration, which can be a time-consuming process, leases are often concluded for less than a year and are renewed on a regular basis. If the procedure is properly described in the lease, such renewal of the lease is regarded as the conclusion of a new lease for a period of less than a year.

### 10.3 When is the state registration of rights to real estate required?

The right of ownership of and other proprietary interests in real properties, their creation, encumbrance (e.g., mortgage, leasehold for a term of one year or more, easement, etc.), transfer and termination are subject to state registration. Rights to real estate (rights in rem) come into existence only upon their state registration.

The Registration Law stipulates procedures for the identification and registration of rights to real estate. In many cases, the registration of title is a prerequisite for the validity and enforceability of transactions involving real estate.

Before 1 March 2013, such transactions with real estate as sale/purchase of residential premises, sale/purchase of enterprises, annuity contracts and gift contracts required state registration to be valid and effective. From 1 March 2013, said transactions do not require state registration and they are deemed concluded from the moment the agreement is signed by the parties. However, where such transactions provide for a transfer of title (e.g., sale/purchase of residential premises), the acquisition of title must be state registered.

Lease transactions (in addition to rights or titles) with real estate made for a term of one year or longer are subject to state registration and become effective only upon such registration. A registration stamp on a lease agreement evidences the state registration. However, the interpretation of the law made by the Supreme Court (item 3 of Resolution No. 25 dated 23 June 2015 "On Interpretation by Courts of Several Provisions of Chapter 1, Part 1 of the Civil Code"), which was in line with earlier interpretations made by the Supreme Arbitrazh Court, confirms that the parties to a real estate transaction (e.g., a lease) requiring state registration are bound by the terms of their transaction, regardless of state registration. Further to this interpretation, it has become more common for landlords and tenants to enter into long-term

leases, but not proceed with their registration, in an attempt to save time and effort.

The Registration Law provides for a unified system of state cadastral registration of all basic types of real estate, including land plots, buildings, premises, unfinished construction, complex immovable property objects, territorial and functional zones, and zones with usage conditions. The Registration Law does not apply to subsoil resources, marine vessels or aircraft.

Prior to the state registration of title, land plots and real estate objects (buildings, structures and premises) must undergo cadastral registration. Under the Land Code, only land plots that have undergone state cadastral registration can be bought or sold or be subject to other transactions. The procedures and rules for the state cadastral registration of land and buildings (including premises as parts of buildings) are outlined in the Registration Law. The government agency that performs cadastral recording and state registration of rights to real properties is the Federal Service for State Registration, the Cadastre and Cartography (Rosreestr).

Applications for cadastral recording of real estate objects and state registration of rights to such real estate objects may be submitted simultaneously or this process may be divided into two different stages. If applications for the cadastral recording and state registration are submitted simultaneously, these two actions must be completed within 10-12 business days. If an applicant seeks cadastral recording only, the statutory term for its completion is five to seven business days. If an applicant seeks state registration only, the statutory term for its completion is seven to nine business days. However, in each scenario, the cadastral recording and the state registration, may be extended by up to six months as a result of suspension or refusal. The grounds for suspension or refusal of cadastral recording and registration of rights/transactions are specified in the Registration Law. Refusal can only be contested in court.

Further to the Registration Law, starting from 1 January 2017, the cadastral recording and registration of rights to real estate facilities are consolidated into a unified system of recording and data management — the Register (as defined above). The Register contains information on the cadastral details of all real properties, including land plots, buildings,



structures, premises and other facilities, and it indicates the history of a real estate object and its current legal status. Information on state-registered transactions with immovable property is also included on the Register. The Register also records various registrable encumbrances over real estate (including long-term leases, mortgages and easements) and restrictions (such as freezing orders against or court disputes relating to the real estate object and certain injunctions). From 1 March 2013, the Register may also include the objections of an ex-owner to the state-registered ownership right of a new owner, if such ex-owner applies to the court with the relevant claim within three months after the registration of the objections. However, the law is silent as to the period within which an ex-owner can apply to the registrar with its objections.

Basic information on the cadastral details of a real estate object, the right holder(s) and restrictions (encumbrances) on such rights is generally open to the public and can be provided for a fee in the form of an extract within three business days to any person submitting a written application to the registration authority. However, due to the recent amendments to the Fundamentals of Notaryship Legislation of the Russian Federation (Federal Law No. 4462-1 dated 11 February 1993, as amended) (the "**Notary Law**") where rights to a real estate property belong to an individual (or individuals), starting from 1 March 2023 such extract will lack the individual's personal data unless the extract is provided to the individual being the right holder. It is possible to apply for information from the Register electronically. In a number of cases a full-scale extract containing personal data (first and foremost, the individual's name) may be requested through the notary.

In accordance with the Registration Law, from 1 January 2017, an application for state registration of a right to real estate, or a real estate transaction and an application for cadastral recording of a real estate property in question, may be submitted at any territorial department of the governmental authority in charge. The Registration Law also provides for the submission of such applications electronically from any place within the Russian Federation using a digital token, which should be obtained at an accredited certification center.

From 28 October 2021, an application for state registration of rights can be filed through a notary in accordance with the procedure set out in the Notary Law. Previously, this could be done only if a notary certified the transaction or issued a certificate of heirship.

Additionally, in an attempt to simplify the document submission process for registration purposes, the Registration Law was changed to provide that applications for state registration of rights and encumbrances (restrictions) of such rights can be filed both in hard copy (paper) and electronically, not only with the state registration authorities directly, but also through multifunctional governmental and municipal service centers which are now the prevailing route for submitting documents for state registration.

Upon completion of the cadastral recording and/or state registration, the registration authority issues an extract from the Register in a statutorily defined form that outlines the cadastral details of the real estate object, certifies by which right the object in question is held by a legal entity or individual, and which encumbrances and/or restrictions, if any, are established with regard to such object.

#### 10.4 Is there any classification of real estate?

There is no official legislative classification of real estate (properties) in Russian law. In practice, real properties are classified on the basis of their intended use (e.g., residential or nonresidential for buildings, agricultural or industrial for land plots, etc.). The designated use should be identified in the lease, in the Register (confirmed by the relevant extract) and in the technical documentation and cadastral documents.

Buildings, structures and other facilities require various obligatory state permits and approvals. The Town Planning Code stipulates the documents to be obtained and the procedures to be followed for carrying out construction. Construction activities are also governed by regional and municipal legislation, such as the Town Planning Code of the City of Moscow (as amended), adopted by Moscow City Law No. 28 dated 25 June 2008, which came into effect on 10 July 2008.

#### 10.5 What are the foreign currency restrictions affecting payments for leasing and buying real properties?

Under Russian Federal Law No. 173-FZ "On Currency Regulation and Currency Control" dated 10 December 2003 (the "**Currency Regulation Law**") as amended, payments for real estate (sale-purchase, lease and other transactions) are permitted both in Russian rubles and in foreign currency, provided that payments in foreign currency meet the

requirements for such payments stipulated in the Currency Regulation Law and other currency control normative acts and regulations. Payments between Russian residents can be carried out in rubles only. Where a seller or buyer, or both the seller and the buyer (or the lessor and the lessee) are foreign legal entities, settlements in foreign currency are possible. Settlements between foreign residents (including legal entities and individuals) can be carried out through foreign (non-Russian) bank accounts. However, transactions with real properties may trigger Russian tax consequences even if done outside Russia.

However, there are number of restrictions affecting, among others, the procedure for conducting real estate transactions and making payments in connection with such transactions. For further details please see Section 10.8 below.

## 10.6 How is residential real estate regulated?

Up until the early 1990s, most apartments in the Russian Federation were state-owned or municipally owned. However, most apartments have since been privatized and investors have constructed many new residential developments, most of which are in private ownership. The Housing Code regulates relations arising in connection with residential real estate. The Housing Code (as amended) defines categories of residential property, which include residential houses (cottages), apartments in a multistory building (multi-apartment building) or rooms in such apartments, and various forms of rights to residential real estate. The Housing Code provides for the use of residential property for residence by individuals. Residential premises may also be used by individuals for their professional and entrepreneurial activities (as an individual entrepreneur), provided that such activities do not violate: (i) the rights and legitimate interests of other individuals; and (ii) statutory requirements established for the residential premises.

From 1 January 2020, the new Chapter 10.1 of the Registration Law entered into force and introduced a procedure for compensating a bona fide purchaser of residential real estate for the loss of title to such real estate. If the court establishes that the purchase transaction is void and holds that the property must be returned to the legitimate owner (which results in the residential real estate being repossessed from a bona fide purchaser), the bona fide purchaser will be entitled to claim compensation in the amount of documented losses caused by such

repossession or the cadastral value of the residential real estate (there is no statutory cap or limit).

According to Chapter 10.1 of the Registration Law, the person who is responsible for this loss (by default, the seller of this real estate) must compensate the monetary losses of a bona fide purchaser. In the event that bailiffs fail to collect the money within six months, the bona fide purchaser may seek compensation from the state by filing a relevant lawsuit. This mechanism of legal protection also applies where the residential real estate was inherited or acquired as a gift.

## 10.7 What is the mortgage of real properties under Russian law?

### 10.7.1 What are the general principles of mortgages?

A mortgage arises either by virtue of law or by a mortgage agreement. Mortgage rights must be state registered and are invalid without such registration. As for practical issues associated with mortgages in favour of foreigners, please refer to Section 10.8 below.

Federal Law No. 102-FZ "On Mortgage of Immovable Property" dated 16 July 1998, as amended (the "**Mortgage Law**"), stipulates the following essential terms of a mortgage agreement: (i) description of the mortgaged property (described to the extent sufficient to identify it), its location and valuation; (ii) the nature, scope and maturity date of the obligation secured by the mortgage; (iii) the right on which the mortgaged property is held by the mortgagor; and (iv) the date of state registration and the registration number of the mortgagor's right in the Register. When requested, and subject to the payment of state duty, local offices of the state registration authority can provide information on whether a specific real property is mortgaged. Such information is provided in the form of an extract from the Register.

According to the Mortgage Law, the following types of real properties/rights can be subject to a mortgage (the list of real properties that can be subject to a mortgage is not exhaustive):

- land plots (including agricultural land plots); however, land plots that have been withdrawn from or are limited in circulation and

(with a few exceptions provided by the Mortgage Law) the land plots held by the state or municipalities cannot be mortgaged

- enterprises (i.e., complexes of immovable and movable properties registered as a single real estate property), buildings, structures and other immovable property used for business activities
- residential houses, apartments and parts thereof consisting of one or several separate rooms
- cottages, garages and other structures for personal use
- aircraft, sea and river vessels
- car parking spaces
- lessee's lease rights to real properties — "to the extent a mortgage of lease rights does not contradict federal law and the nature of lease relations"
- rights of a participant in shared construction arising out of the agreement on shared participation in construction in accordance with Federal Law No. 214-FZ "On Participation in Shared Construction of Apartment Houses and Other Real Estate Objects and On Amendments to Certain Legislative Acts of the Russian Federation" dated 30 December 2004.

Buildings and structures can only be mortgaged together with the land plots underlying these buildings and structures, or together with the lease rights to such land plots.

The existing mortgage of a land plot is automatically extended to cover a building or structure erected on such land plot by the mortgagor, unless otherwise provided by the mortgage agreement. This provision of the Mortgage Law entitles a mortgagee to extend the mortgage over a land plot to all buildings and structures that may be developed on it without the need for a subsequent addendum to the mortgage agreement.

The terms and conditions of a mortgage may restrict the owner's or user's capability to dispose of the property, including its contribution to charter capital and/or lease to third parties. The disposal of mortgaged

property generally requires the mortgagee's consent unless the mortgage agreement provides otherwise. Notwithstanding such consent, the mortgage survives the change of ownership over the mortgaged property, or the change of holder of such property, unless and until the primary obligation secured by the mortgage is performed. Following this, the property must be released from mortgage. The release of property from mortgage is performed through the procedure of cancellation of the mortgage entry in the Register.

The Mortgage Law provides that, unless otherwise provided in the mortgage agreement or by federal law, a building, structure or any other nonresidential property and an underlying land plot, as well as a residential house or an apartment that was purchased or constructed with loans from banks or other lenders, is deemed to have been mortgaged from the date of state registration of the ownership right of the relevant purchaser/investor to the respective nonresidential or residential property (and the underlying land plot). With regard to residential property, the Mortgage Law further provides that foreclosure by the mortgagee on a mortgaged residential house or apartment and disposal of such property constitutes grounds for the termination of the occupancy rights of the mortgagor and the family members residing together in such residential house or apartment, provided that this residential house or apartment was mortgaged under a mortgage agreement to secure the return of a loan granted for the purchase or construction of such residential house or apartment, or a loan granted to refinance a previous construction/acquisition loan.

The implications of these provisions of the Mortgage Law are that a mortgagee can now demand that a mortgagor vacate the mortgaged property if the mortgagee intends to foreclose on it. However, this rule would apply only if the mortgaged property were mortgaged to secure the repayment of a loan taken out by a mortgagor to purchase or construct a property, or to refinance a previous construction/acquisition loan. It is also important to note that those individuals who occupy mortgaged property pursuant to a lease or a hiring agreement (under Russian law, a specific type of residential lease where the lessee is a private individual) cannot be evicted upon foreclosure on the mortgaged property. Such lease or hiring agreement concluded prior to the mortgage agreement or after the mortgage agreement with the mortgagee's consent, will remain in force and can be terminated only

under specific circumstances provided for by the Civil Code or applicable housing legislation.

### 10.7.2 What is the procedure for foreclosure on mortgaged property?

There are two types of foreclosures on mortgaged property: in court and out of court. With regard to an out-of-court foreclosure, prior to 7 March 2012, the parties could enter into a contract for the transfer of the mortgaged property to the mortgagee to discharge the secured obligation only after an event of default under the secured obligation had occurred. In the absence of such contract, a mortgagee could not automatically acquire rights to the mortgaged property if an event of default occurred and, in most cases, the mortgaged property had to be sold at public auction, with the proceeds then being used for the repayment of the debt.

From 7 March 2012, the transfer of the mortgaged property to the mortgagee after an event of default has occurred is possible if the parties so stipulate in the mortgage agreement. There are three methods for an out-of-court foreclosure: (i) a sale at a public tender; (ii) a sale at an open auction (subject to some exceptions where a sale at a closed auction is also possible); and (iii) appropriation of the mortgaged property by a mortgagee.

An out-of-court foreclosure on a mortgaged property is prohibited with regard to certain classes of immovable property (such as immovable properties owned by the state and municipalities and residential properties owned by individuals). The Civil Code, amended as per Federal Law No. 367-FZ dated 21 December 2013 (the "**Law 367**"), establishes additional cases applicable to real estate where an out-of-court foreclosure is not allowed:

- residential property that is the only residential property owned by an individual; however, after establishing the grounds for foreclosure, the parties may conclude an agreement on an out-of-court foreclosure
- pledged property is of significant historical and cultural value

- a pledger is an individual recognized in the established-by-law manner as a missing person
- pledged property is pledged under a preceding and subsequent pledge agreement that provides for different procedures for foreclosure
- pledged property is pledged to different pledgees to secure different obligations

The above list is non-exhaustive and the law may provide for other grounds that prohibit out-of-court foreclosures.

As a rule, an out-of-court foreclosure of the pledged property should be completed through auction, to be held in accordance with the statutory requirements or an agreement between a pledgee and pledger. However, under the rules, if a pledger is engaged in business/entrepreneurial activities, the agreement between the pledger and pledgee may also provide for foreclosure by means of: (i) appropriation of the pledged property by the pledgee; and (ii) the pledgee selling the pledged property to a third person. However, in both cases, the pledged property is to be assessed at no less than its market value. If the outstanding amount of the secured obligation is less than the market value of the pledged property, the difference is to be returned to the pledger.

### 10.7.3 Mortgage certificates

A mortgage certificate can be issued to the mortgagee at any time by the registration authority after the state registration of the mortgage and until the termination of the secured obligation. Mortgage certificates can be transferred to a depository for registration and custody, which is evidenced by a respective note on the document. Such note should also disclose if the custody is temporary (in which case the certificate's holder can at any time require that the registration and custody of its certificate is canceled) or obligatory. The type of custody can be chosen by the issuer or by the subsequent holder of the mortgage certificate. Further to recent changes introduced by Federal Law No. 328-FZ "On Amendments to the Mortgage Law and Certain Normative Act of the Russian Federation" dated 25 November 2017, if so envisaged by a



mortgage agreement, the mortgagee with an electronic digital signature can apply for and obtain the mortgage certificate in electronic form.

#### 10.7.4 Mortgage agreement versus mortgage certificate

The Mortgage Law protects the position of mortgage certificate holders by providing that, among other things, in case of discrepancies between the provisions of a mortgage agreement/main agreement containing the secured obligation and the provisions of the respective mortgage certificate, the provisions of the mortgage certificate have priority, unless at the time of acquisition of such certificate its acquirer was aware or should have been aware of such discrepancies.

#### 10.7.5 Pledge

Further to certain amendments to Part 1 of the Civil Code, which were introduced by Law 367, from 1 July 2014, the concept of the ranking of pledges has been established, which allows pledgees and pledgers to change seniority pledges by agreement. The object of pledge may be pledged to several pledgees whose pledges will be of the same seniority and who will have equal rights to the pledged property (co-pledgees).

Law 367 specifically states that the provisions of the Mortgage Law and the Old Registration Law regarding the state registration of mortgage agreements do not apply to mortgage agreements made after 1 July 2014. This means that a mortgage agreement is valid from the moment of its signing by the parties. However, the mortgage as an encumbrance becomes effective only after its state registration. Currently, mortgage registration procedures have certain specifics. The mortgages of land plots and buildings are to be registered within seven to nine working days and the mortgages of residential property within five to seven working days. The state registration of any mortgage certified by a notary is carried out within three to five working days.

### 10.8 Are there any restrictions for real estate transactions?

On 2 March 2022, Russia introduced special rules for real estate transactions between Russian residents and foreign legal entities and individuals associated with foreign states that adopted measures targeting Russian legal entities and individuals (the "**Foreign States**").

Russian residents may only carry out transactions resulting in the change of ownership to real estate assets with (i) counterparties from the Foreign States and (ii) persons, including Russian and non-Russian legal entities, controlled by such counterparties, upon obtaining a permit issued by the Government Commission on Control over Foreign Investments in the Russian Federation (the "**Government Commission**"). The same regime applies to the transactions between Russian residents and foreign persons not affiliated with the Foreign States where such nonaffiliated foreign persons acquired real estate assets from the counterparties from the Foreign States after 22 February 2022.

In order to obtain a permit of the Government Commission one should file an application with the Ministry of Finance of the Russian Federation and disclose the nature of the transaction (including its purpose, subject of the transaction and the desired term of such permit's validity).<sup>194</sup>

At the moment, there are several general licenses that allow some types of transactions (operations) to be performed without obtaining a permission from the Government Commission, including the following:

- certain transactions with foreign individuals: (i) sale of property to a foreign individual and (ii) purchase of property from a foreign individual – provided that settlements are in Rubles and subject to the transfer of sale proceeds in rubles to special S-type account
- transactions with real estate located outside Russia – provided that settlements are made through an account whose information has been disclosed to the tax authorities
- transactions made by Russian financial organizations (banks) controlled by legal entities and individuals from the Foreign States
- acquisition of real estate by Russian residents from companies from the Foreign States or entities under their control registered

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<sup>194</sup> The procedure for obtaining such permit is described in Decree of the Russian Government No. 295 dated 6 March 2022.

outside the Russian Federation provided that settlements are in Rubles and conducted through S-type account

Formally, current Russian legislation does not require a permit of the Government Commission for entering into a mortgage agreement. This is due to the fact that transfer of a title to real property is only possible as a result of foreclosure and separate transactions. Nevertheless, there have been cases where Russian registration authorities refused to register mortgage agreements with the Property Register where a party to such agreements was a foreign legal entity associated with a Foreign State.

## 11. Privatization

### 11.1 What is privatization?

Privatization is the disposal of publicly owned property to private ownership for a consideration.

### 11.2 How is privatization regulated?

The core legal act regulating privatization in the Russian Federation is the Law "On Privatization of State and Municipal Property" dated 21 December 2001, as amended.

### 11.3 What property is subject to privatization?

As a rule, any state-owned property may be subject to privatization. However, Russian law sets certain exceptions for this general rule, such as land, natural resources, property located outside of Russia, etc. Disposing of such excluded property is often subject to separate regulation and there may be special procedures for granting rights to private persons with respect to such excluded property (e.g., subsoil licenses with respect to subsoil resources).

In practice, privatization is usually used with respect to shares or equity owned by the Russian state.

### 11.4 Who acts as the seller of property subject to privatization?

The seller is the owner of the relevant property. This may be the Russian Federation, its constituent territory or a municipal unit. Their respective bodies usually represent them, for example, the Russian Federation is represented by the Federal Agency for State Property Management ("*Rosimuschestvo*" in Russian).

### 11.5 Who may purchase property subject to privatization?

Both Russian and non-Russian individuals and legal entities may participate in privatization, with certain exceptions established for the following:

- Russian state- and municipal-owned entities
- offshore companies (the list of restricted offshore states/territories is maintained by the Russian Ministry of Finance) that do not comply with Russian disclosure requirements with respect to their beneficiaries, beneficial owners and controlling persons

To participate in privatization, all relevant governmental clearances, including antimonopoly and strategic (foreign investment) clearances, must be obtained when required.

### 11.6 How is the privatization procedure implemented?

The privatization procedure usually depends on the way in which the relevant property is being privatized. In general, privatization is implemented (at the federal level) through the following consecutive steps:

- the Government of the Russian Federation develops and approves the plan (program) for privatization for the relevant period with respect to particular properties (though, certain properties may be privatized without inclusion into the privatization plan (program) upon by the decision of the Russian Ministry of Finance per the lists of the relevant property that may be developed by the Federal Agency for State Property Management for a period from one year up to three years)
- the Federal Agency for State Property Management determines the way in which the relevant property is to be privatized
- the Federal Agency for State Property Management publishes information on the privatization on the official website<sup>195</sup>
- prospective buyers submit their applications and other necessary documentation

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<sup>195</sup> <https://torqi.gov.ru/>.

- the winner (buyer of the relevant property) is determined by the Federal Agency for State Property Management based on the submitted applications (in an auction sale, the winner of an auction becomes the buyer of the relevant properties) and a sale and purchase agreement is concluded with the buyer. If a person is recognized as the sole participant of the auction, such person is treated as the winner

### 11.7 What are the most common ways of privatizing a publicly owned property?

The most common method of privatization is selling publicly owned property at an auction.

## 12. Language Policy

Under Article 68 of the Constitution of the Russian Federation, the state language throughout the territory of the Russian Federation is Russian. All official election materials, legislation, and other legal acts must be published in the official state language.

In addition, the Constitution upholds the rights of each of the individual republics within the Russian Federation to establish its own state language. Thus, regional state bodies and local institutions of self-government within Russia's republics may conduct official state business in two languages: Russian and the republic's national language.

There are a few other principle legislative acts dealing with language policy in Russia in addition to Russia's Constitution. These are: Federal Law No. 53 "On the State Language of the Russian Federation" dated 1 June 2005, as amended, Law of the Russian Federation No. 1807-1 "On the Languages of the Peoples of the Russian Federation" dated 25 October 1991, as amended, Law of the Russian Federation No. 2300-1 "On Protection of Consumer Rights" dated 7 February 1992, as amended, and Civil Code of the Russian Federation (Article 1473). According to the abovementioned laws:

- all Russian state and municipal bodies, and all companies operating in Russia, including those owned by foreign investors, are required to use Russian in their activities, for example, in book-keeping, tax reporting and office paperwork. Official paperwork in the national republics within Russia may also be conducted in those republics' national language. Paperwork in the sphere of commerce may be also conducted in a foreign language as provided in respective agreements between commercial partners
- the names of companies operating in Russia must be either in Russian or expressed in Russian transliteration. It is normally permitted to also have a company name in a foreign language and/or the state language of a national republic within the Russian Federation in addition to the mandatory Russian name. The company name of a legal entity in Russian and in the languages of peoples of the Russian Federation may comprise

borrowed foreign words in a Russian transcription or in a transcription of the languages of nations of the Russian Federation, except for the terms and abbreviations reflecting the legal entity's legal form. A company whose name is inconsistent with the requirements of the law may be refused registration

Use of the word "Rossiya" (Russia) or "Rossiyskaya Federatsia" (Russian Federation) in Cyrillic, or a derived name, for example, "Rossiyskiy" (Russian) in Cyrillic in the name of a company requires a special permit from the Ministry of Justice of the Russian Federation, and exposes such company to certain tax consequences. Only those companies that have branch and/or representative offices in more than half the constituent entities of the Russian Federation, companies which are qualified among the largest taxpayers, companies dominant in a market with more than a 35% market share, or companies in which more than 25% of the shares or of the charter capital is held by the Russian Federation, can apply for such a permit. However, use of words denoting ethnicity rather than the official country name, such as "Russkiy" or "Russkaya" in Cyrillic (translated into English also as "Russian") does not require a permit, as has been clarified by the Russian Supreme and Supreme Arbitrazh Courts.

All advertising in the Russian Federation must be either in Russian or in the particular state language of the individual republic in which the advertising appears.

Under the consumer protection regulations, a consumer should be informed in a clear and accessible manner in the Russian language about the manufacturer (seller), the operating mode of its work and the goods (works, services) it produces or sells.

Foreign languages or state languages of individual republics within the Russian Federation may be used in addition to the Russian language, in which case the communications in Russian and in the other language must be identical in their content, sound and form of presentation. When using Russian as the state language of the country, it is prohibited to use words or expressions that are not consistent with the norms of the Russian literary language, except foreign words that do not have commonly used Russian equivalents.



There are a few exceptions to the requirement of mandatory usage of the Russian language outlined above. For example, trademarks and service marks expressed in the original (non-Russian) language of the trademark and registered in Russia may be used without being accompanied by a Russian equivalent.

In cases provided for in specific provisions of Russian federal laws, a person who does not understand Russian is entitled to an interpreter. For example, it is guaranteed for those foreigners who are subject to criminal proceedings in Russia to have a Russian interpreter free of charge.

There is no single state authority responsible for enforcement of the Russian language policy in the territory of the Russian Federation. Some aspects of the language policy, in particular violation of Russian language norms in advertising, are overseen by the Russian Federal Antimonopoly Service. The Russian Federal Antimonopoly Service may penalize a company that violates applicable language rules with a fine and/or issue it an order requiring it to cease and desist the violation.

## 13. Contract Law

### 13.1 Are there any mandatory contractual terms under Russian law?

Parties entering into a contract must agree on all of its essential terms, as otherwise the contract may be deemed unconcluded.

By default, the subject matter is considered an essential term for any contract, while other essential terms may be provided by law or may be declared by either party as essential. For example, under Russian law, a construction agreement must contain at least the following essential terms: (i) the subject matter; and (ii) the period (deadline) for the performance of construction works.

Parties are free to agree on the terms of a contract at their own discretion, as long as such contractual terms do not contradict mandatory provisions of Russian law.

### 13.2 What types of contracts are recognized under Russian law?

Parties are free to enter into any type of contract, irrespective of whether such type of contract is expressly recognized by law.

Certain types of contracts are directly specified by law, including: sale and purchase; donation; rent; contractor's agreement; performance of services; transportation; forwarding; loan; bank deposit; storage; insurance; agency; trust management; franchising; and simple partnership contracts.

Russian law also specifies various contractual instruments, such as option agreement, framework agreement and subscription agreement (contract to be performed on demand).

While the parties are free to conclude any contract, including one that is not specified or is different from the framework set out in the law, the prevailing enforcement practice underlines that parties cannot agree on terms that breach any mandatory rules of law or contradict the law's objectives.

### 13.3 Are there any rules for entering into a contract?

The Russian Civil Code specifies various mechanisms for entering into a contract, for example, by signing a single document. Other mechanisms include an offer to enter into a contract and its acceptance, conditional acceptance, option to enter into an agreement, late acceptance, and conclusion of contracts at an auction.

When negotiating and entering into a contract, the parties must act in good faith, which, among other things, includes the obligation to provide accurate and complete information required by law or the substance of the negotiated transaction. A party suffering from the other party acting in bad faith may claim compensatory damages from such other party.

### 13.4 How to secure the proper performance of a contract under Russian law?

Russian law provides for various instruments to secure the proper performance of a contract, including pledge, surety, independent guarantee, earnest money, security deposit, withholding of property and penalty (fine). The parties are free to agree to any of the above security options, as well as any other mechanism, even if it is not specifically listed in the law, including such security instruments as credit limit management with respect to deferred payment contracts, due diligence, change of control, etc.

### 13.5 What are the rules relating to the alteration or termination of contracts?

A contract may be altered or terminated by mutual agreement. In addition, a party may unilaterally claim for the agreement's alteration or termination through a court. A party may submit such claim in court if there is either a material breach committed by the other party or a substantial change in the circumstances that formed the basis for the parties to enter into the contract.

Unless otherwise provided by law, a party may also unilaterally alter or terminate a contract, if the law or the contract itself establishes such right. Based on the terms of a particular contract, a party that unilaterally alters or terminates it may have to pay additional compensation to the other party. Please note, however, that in certain cases Russian law

protects the rights of the weaker party to a contract and limits the right of the stronger party to unilaterally alter or terminate it (e.g., in case of an adherence agreement).

A similar approach has been developed in the practice of Russian courts, whereby the parties cannot agree in their contract on a unilateral alteration or termination of a contract by either party, if such alternation or termination contradicts the law's objectives. For example, Russian courts have confirmed that a lease agreement concluded for an indefinite period cannot limit the parties' rights to terminate such an agreement because such limitation would effectively lead to the lease agreement becoming interminable.

Based on the same approach, Russian courts have established that the parties cannot agree on a penalty that effectively blocks a party's right to terminate or alter a contract, if such right was established by law. For example, under Russian law, a contractor may unilaterally terminate a service agreement if the contractor compensates the customer's losses. While it is acknowledged under Russian law that the contractor's right to terminate the agreement may be conditioned on the contractor's payment of an additional penalty to the customer, according to Russian courts, such penalty may not constitute an amount that is incomparable to the customer's potential losses. Otherwise, such penalty effectively deprives the contractor of their right to terminate the service agreement as established by law.

### 13.6 What are the rules relating to the invalidity of contracts?

There are two types of invalid contracts: (i) so-called voidable transactions, which may be declared invalid based on a court decision; and (ii) void transactions, which are invalid irrespective of a court decision.

The following limitation periods apply to claims for the invalidation of contracts: (i) for a void transaction, three years from the moment that a party knows or should have known about the transaction; and (ii) one year for a voidable transaction. In any case, the limitation period cannot be more than 10 years from the moment that a party's right has been breached.

Please note that under Russian law, a party acting in bad faith loses its right to claim that a transaction is invalid; for example, if such party knew the transaction was invalid or its actions demonstrated the intention to maintain the transaction or gave others grounds to believe that the transaction was valid.

Parties to an invalid contract must return everything received under such contract and if the return of particular assets is impossible, e.g., because they were consumed, the parties must compensate their value.

### 13.7 Contract liability and its limitation

Unless otherwise specified by law or the parties' agreement, a suffering party is entitled to claim for full compensation of its losses and specific performance (if the latter is possible).

In particular, a suffering party may claim compensation for: (i) its actual losses (known as "real damage" under Russian law); (ii) its lost profit caused by the infringing party; and (iii) injury to its business reputation or an individual's moral harm. While in practice compensation for proven actual losses is fully supported by Russian courts, companies often struggle to prove their loss of profit as they cannot prove that they have undertaken all necessary preparations to gain the expected income.

Under Russian law, the business parties to an agreement may agree to limit their liability under the agreement. That is, the company will be liable for any breach of the agreement, but only up to an amount not exceeding the limit set forth in such an agreement (such as the contract price).

Importantly, if the contract limits the party's liability to a very low nominal amount, there is a risk that the court may deem such limitation as essentially an exclusion of liability, which is prohibited under the law. In this case, the party's liability will be considered unlimited. In particular, the court may hold that a contract in which one party's liability is many times less than the amount its counterparty invests in the transaction is too burdensome for such counterparty. Thus, the court may hold that the limitation of liability clause is invalid.

Please note that under Russian law the parties cannot limit the following types of liability:

- noncontractual liability (e.g., liability for tort or IP infringement)
- liability before third parties that are not parties to the contract
- liability for willful breach of the contract
- liability for "harm" caused to the person, or the property of an individual, or the property of a legal entity
- liability for moral harm (damage to business reputation)
- other liability that may not be limited under Russian law

## 14. Intellectual Property

### 14.1 What is the regulatory environment of intellectual property (IP) rights protection in Russia?

Russian IP legislation primarily consists of the Civil Code of the Russian Federation (the "**Civil Code**"), predominantly Part IV which covers all kinds of IP, and Parts I to III, which set out general provisions on the legal protection and disposal of IP rights.

The Civil Code grants protection for the IP rights of any foreign legal entity or individual in accordance with international treaties on IP rights that Russia is party to:

- general treaties:
  - Convention Establishing the World Intellectual Property Organization (the "**WIPO**")
  - Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement
- treaties on copyright and neighboring rights protection:
  - Universal Copyright Convention
  - Berne Convention for the Protection of Literary and Artistic Works
  - Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
  - Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms
  - WIPO Performances and Phonograms Treaty
  - Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite
  - WIPO Copyright Treaty

- WIPO Beijing Treaty on Audiovisual Performances
- Nairobi Treaty on the Protection of the Olympic Symbol
- Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled
- treaties on industrial property protection (patents, industrial designs, trademarks, etc.):
  - Paris Convention for the Protection of Industrial Property
  - Patent Cooperation Treaty (PCT)
  - Patent Law Treaty (PLT)
  - Eurasian Patent Convention Regulating Eurasian Patent Applications and Eurasian Patents for Inventions
  - Strasbourg Agreement Concerning International Patent Classification
  - Hague Agreement Concerning the International Registration of Industrial Designs (starting from 28 February 2018)
  - Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
  - Locarno Agreement Establishing an International Classification for Industrial Designs
  - Madrid Agreement on the International Registration of Trademarks, the Protocol to the Madrid Agreement
  - Singapore Treaty on the Law of Trademarks, the Trademark Law Treaty
  - International Convention for the Protection of New Varieties of Plants (UPOV)



- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks
- Treaty on the Eurasian Economic Union

## 14.2 What IP objects may be protected in Russia?

Russian law generally distinguishes two groups of assets that enjoy IP protection in Russia:

- results of intellectual activity, namely:
  - works of science, literature and art
  - software and databases (protected as copyrighted work)
  - content of databases, performances, phonograms, radio or television transmissions, and publications (works that have fallen into the public domain but have never been published before) (protected under a neighboring rights regime)
  - inventions, utility models, industrial designs (see Section 14.3.1 below)
  - selection achievements
  - topologies of integrated microcircuits (see Section 14.3.6 below)
  - trade secrets (know-how)
- means of individualization of companies, goods, works and services, namely:
  - trademarks and service marks; appellations of origin and geographical indications (see Section 14.3.2 below)
  - company names, trade names (see Section 14.3.3 below)

## 14.3 Overview of IP objects protected in Russia

### 14.3.1 Patents

In Russia, patents may be obtained with respect to inventions, utility models and industrial designs.

#### What is an invention?

**An invention** is a technical solution in any field related to a product (e.g., a device, substance, composition, system, microbial strain or cell culture of plants and animals) or a method/process, including the use for a new purpose of a known product and method. Patent protection is given to an invention if it meets the following criteria: novelty, inventive step (non-obvious from prior art), industrial applicability and sufficiency of disclosure in the description for its implementation. A doctrine of equivalents is applicable for patented inventions in Russia.

The maximum duration of patent protection for an invention is 20 years from the application filing date, subject to payment of annuities beginning from the third year as of the filing date and only after the patent is granted.

The term of a patent for an invention related to a medicine, pesticide or agrochemical, the use of which is subject to obtaining special permission (marketing authorization), may be extended at the request of the patent owner for a period not exceeding five years. Such patent term extension may be granted upon a patent owner's request and a supplemental patent is granted in the scope covering the corresponding product only.

The right to obtain a patent belongs to the inventor, employer of the inventor (in case of an employee's invention) and their assignees. A patent application must be filed with the Federal Service for Intellectual Property of the Russian Federation (the "**Rospatent**").

#### What is a utility model?

**A utility model** is a technical solution characterizing a single device only. Utility model protection is similar to that of inventions, with certain limitations and restrictions.

Patent protection is granted to a utility model if it meets the criteria of novelty and industrial applicability, and if it is sufficiently disclosed in the description for its implementation.

The term of a utility model's patent protection is 10 years from the application filing date, subject to the payment of annuities beginning from the first year. One application can cover only one device; variants have not been allowed since 1 October 2014. It is required to prove the use of each feature of independent claim for patent protection purposes.

### What is an industrial design?

**An industrial design** is an outer appearance solution of a product of industrial or handicraft origin. Patent protection is granted to an industrial design if it meets worldwide novelty and originality criteria. It is permissible to protect patterns and graphical user interfaces as industrial designs.

Legal protection of industrial design patents granted prior to 1 January 2015 lasts for 15 years, subject to the payment of annuities, and with the possibility of extension for an additional period specified in the application, but not exceeding 10 years. From 1 January 2015, the initial term of validity of an industrial design patent is five years, extendable up to four times for five years (up to 25 years in total).

The Hague System of International Registrations of Designs has been applicable in Russia since 28 February 2018. It is obligatory to submit an original certified priority application copy to Rospatent within **three months** from the date of publication of the international registration in the International Designs Bulletin. The submission of the required document should be accompanied by a cover letter (free format) identifying the corresponding international application or registration. If the prescribed three-month deadline is missed, the priority claim will be irrevocably disregarded.

It is also important to note that a single creative concept requirement might be a problem for multi-design applications, as color and size differences are usually considered by Rospatent as a reason for refusal.

### How are patentable works protected?

Russia has two valid patent systems for inventions: national and regional.

Under the **national patent system**, a patent application is filed with Rospatent.

Rospatent examines patent applications within the following terms:

- for inventions — up to 34 months (in practice — 10-15 months on average)
- for utility models — up to 17.5 months (in practice — 6-12 months on average)
- for industrial designs — up to 20.5 months (in practice — 8-12 months on average)

It is possible to reduce the term of the application examination by ordering Rospatent to conduct a special patent search for the acceleration of the examination.

The **regional patent system** is based on the Eurasian Patent Convention of 1995, which enables one Eurasian patent to cover eight countries that are members of the Commonwealth of Independent States (CIS). For more information, please visit <https://www.eapo.org/en/>. The Eurasian patent application is filed with the Eurasian Patent Organization (EAPO), which is located in Moscow, Russia.

#### Can granted patents be invalidated?

A granted Russian patent can be invalidated on a limited number of grounds, such as:

- the patented invention, utility model or industrial design not complying with the patentability requirements established by law
- the patented invention, utility model or industrial design not being sufficiently disclosed to enable implementation by a skilled person

- the granted patent has additional essential features in the claims not disclosed in the initially filed application
- the patent being issued when there were several applications for identical inventions, utility models or industrial designs with one and the same priority date
- the patent indicating as the author or patent holder a person not being such or without an indication in the patent of the real author or patent holder

Any person may challenge a patent on the above-mentioned grounds within the term of such patent protection, and after the term of protection, only a person with a legal interest in such invalidation. A claim on invalidation must be filed with the Chamber for Patent Disputes of Rospatent and, in case the patent indicates the wrong author or patent holder, with a court.

#### What rights are vested in a patent?

The patent owner has the sole (exclusive) right to use an invention, utility model or industrial design that is protected by such patent. Without the patent owner's consent, no one may commercially use a patented object in any way, including importation, manufacture, application, offer for sale, sale or other ways of introducing into commerce, or storage for this purpose.

Since March 2022, the Government of the Russian Federation amended the methodology for determining the amount of compensation paid to a patent owner when a third party decides to use an invention, utility model or industrial design without the consent of the patent owner. These changes apply only to patent owners associated with foreign states who commit so-called unfriendly actions against Russian legal entities and individuals. Such patent owners will receive 0% of the actual revenue of the third party who has used the invention, utility model or industrial design. However, this non-compensation will only apply if the invention, utility model or industrial design is used interests of national security.

What constitutes use of a patent?

A patented invention would be deemed used in a product (or by a method) if the product contains (or the method uses) each feature of the patented invention stated in an independent claim of the invention, or a feature equivalent thereto. Equivalence of a feature is generally assessed according to the criteria of identical or adequate replacement and achievement of the same technical function or effect, which became known as such in the relevant technology field before the priority date.

A patented utility model would be deemed used in a product if the product contains each feature of the patented utility model stated in an independent claim of the utility model. Contrary to inventions, since 1 October 2014, the use of features equivalent to the features of the patented utility model does not constitute the use of the patented utility model.

A patented industrial design would be deemed used in a product if the product contains all the essential features of the patented industrial design or set of features giving the consumer the same general impression as the patented industrial design, provided that the products have similar purposes.

What patent infringement remedies are available in Russia?

Infringement of patent rights may entail civil, administrative and even criminal liability (see the question on IP rights enforcement below).

Civil remedies are provided for in the Civil Code (see Section 14.7 below) and are applicable at the request of rights holders and/or exclusive licensees.

At present, preliminary injunctions are not available as such in Russia, only provisional remedies that are supposed to secure the "main" claim. Such provisional remedies cannot overlap with the main claim, e.g., if the claim seeks the prohibition of the use of IP rights, it is not possible to ask for the same remedies in a preliminary injunction. Preliminary injunctions (provisional remedies) are rarely granted in practice and it is quite difficult to predict whether they will be granted, since the granting of preliminary injunctions is solely at the judge's discretion.

There are also criminal and administrative proceedings available for patent disputes but these are rarely used in practice.

#### What should one know about patent litigation in Russia?

It is necessary to have all the information and evidence at hand before initiating the action because:

- there is no discovery
- courts are not likely to satisfy requests to obtain information from third parties
- once initiated, the proceedings move quickly
- judges rely heavily on forensic examination results, so it is necessary to engage suitable experts for the forensic examination

Patent disputes mostly derive from either patent invalidity or patent infringement. The first is not a defense of the latter, since these are two different types of actions that are handled by different authorities. In addition, if a patent is invalidated partially or wholly, a patent infringement court case may be dismissed or reconsidered. The Chamber for Patent Disputes of Rospatent handles invalidity actions, as Russian arbitrazh (state commercial) courts handle patent infringement suits. The Court for Intellectual Property Rights (the "**IP Court**"), which operates in Russia since 2013, currently considers all patent disputes as a third (cassation) court instance (see the question on IP courts below) or as the first instance court for cases challenging Rospatent's decisions on patent invalidation. A declaratory judgment for noninfringement is not available in Russia.

### 14.3.2 Trademarks and service marks, geographical indications and appellations of origin of goods

#### What is a trademark?

Under Part IV of the Civil Code, **trademarks and service marks** ("trademarks") are designations individualizing goods or services of legal entities and individual entrepreneurs, as well as of individuals (individuals may become trademark owners starting from 29 June 2023).

A word or words, pictures, three-dimensional signs and other designations or combinations thereof may represent a trademark. A trademark may be registered in any color or color combination.

#### How to get a trademark protected in Russia?

Legal protection for trademarks is granted by virtue of their registration with Rospatent or by virtue of international agreements to which the Russian Federation is a party (e.g., the Madrid System).

Russia is a "first-to-file" jurisdiction. Although unregistered designations used as trademarks do not enjoy legal protection, extensive prefilling use may help to demonstrate the acquired distinctiveness if the trademark is inherently nondistinctive.

It is advisable to conduct a preliminary search of senior rights among registered trademarks and pending applications designating similar goods and services prior to any use or filing of a trademark for registration.

Russian trademark legislation does not provide a formal opposition procedure. Third parties may challenge trademarks only after registration. However, it is possible to submit an informal opposition with objections against granting registration while the undesirable trademark is still pending.

Rospatent examines all applications for compliance with formal and substantive requirements, including the absence of conflict with prior rights. A coexistence agreement with the prior rights holder (or its written consent to registration) may help to overcome a provisional refusal.

#### What is the effective term of trademark protection?

Trademark protection is granted for 10 years from the filing date of the application, and may be renewed multiple times during the last year of validity for a subsequent 10-year period. Unless it is renewed, a trademark registration will expire.

Trademark protection may be terminated upon a request from an interested party in respect of all or part of the designated goods and services due to non-use. A request for non-use cancellation may be filed with the IP Court with respect to registered trademarks that, as of the



date the cancellation request is filed, have not been used fully or partially in Russia for a consecutive three-year period.

Any changes that might affect the registration, such as changes to the name and/or address of the trademark owner, assignments, mergers or other transactions, must be recorded with Rospatent as soon as possible.

Trademark assignments, licenses and pledges must be registered with Rospatent. In the absence of such registration, the trademark assignment, license or pledge would be invalid.

#### How are famous/well-known trademarks protected in Russia?

Extensively used trademarks and unregistered designations may be recognized as well-known marks in Russia. Legal protection of a well-known trademark is perpetual, retrospective and under certain circumstances not limited to the goods and services for which the registration was originally granted.

Therefore, the procedure of recognizing a trademark as well-known may be used in order to ban the use of identical or confusingly similar trademarks owned by third parties for other goods and services, without the necessity to have the renowned trademark registered in all classes of goods, thus risking cancellation based on non-use.

#### What is appellation of origin and geographical indication?

**An appellation of origin** of goods is a designation constituting or containing a current or historical denomination of a country, settlement, locality or other geographic unit ("geographic unit") or a derivative of such denomination that has become known as a result of its use with respect to goods whose specific features of which are mainly or exclusively determined by natural conditions or human factors that are characteristic of such geographic unit. An appellation of origin is protected only if all stages of the production of a product are carried out on the territory of a given geographic unit, and it has a significant impact on the formation of characteristics of the product.

**A geographical indication** is a designation that identifies a product originating from the territory of a geographical object, a certain quality, reputation or other characteristics of which are largely related to its

geographical origin (product characteristics). A geographical indication is protected only if at least one of the stages of the production of a product is carried out on the territory of a given geographic object, and it has a significant impact on the formation of the characteristics of the product.

How to obtain protection for an appellation of origin and a geographical indication and the right to use them?

Legal protection is given to an appellation of origin of goods and a geographical indication based on their registration with Rospatent. An appellation of origin of goods or a geographical indication may be registered in the name of one or more persons (individuals, legal entities, associations, unions, etc.). The person who has duly registered an appellation of origin of goods or a geographical indication obtains the right to use such item provided that the goods manufactured by such person satisfy the criteria mentioned above.

The appellation of origin and the geographical indication are protected for 10 years from the date of filing the application. The appellation of origin and the geographical indication, registered in accordance with an international treaty to which Russia is a party, are protected for 10 years from the date of the decision on granting legal protection in the Russian Federation. The appellation of origin and the geographical indication may be renewed for a subsequent 10-year period if the rights owner proves that it produces goods with relevant specific features within the relevant territory.

The owner may not grant licenses for use or assign rights to use of the appellation of origin of goods or the geographical indication.

How to enforce rights to a trademark and/or an appellation of origin and geographical indication?

Infringement of rights to a trademark, appellation of origin of goods or geographical indication may entail civil, administrative or criminal liability (see question on IP rights enforcement below).

### 14.3.3 What are company names and trade names (commercial designations) and how are they protected?

What is a company name and how it is protected?

**Company names** are designations that identify or distinguish different legal entities when conducting their commercial activities. The Civil Code and the Paris Convention for the Protection of Industrial Property, to which the Russian Federation is a party, provide legal protection for company names.

Under Russian law, only commercial legal entities have the right to company names; non-commercial organizations cannot protect their names directly as company names, but can enforce their rights to an organization name by virtue of protecting it as a trade name or by general provisions on unfair competition or abuse of rights.

In the Russian Federation, a company name consists of two parts: the indication of a legal form and the distinctive name of the company. A company may use the official name of the Russian Federation or any words derived therefrom in its company name only with the consent of the Russian government.

The right to a company name arises automatically from the moment of state registration of the legal entity in the Unified State Register of Legal Entities (the "**USRLE**").

What constitutes use of a company name?

The owner of a company name is allowed to use its company name exclusively and prohibit others from its unauthorized use.

The owner of a company name may not alienate its company name or grant the right to use it to another person.

A legal entity may not use a company name that is identical or confusingly similar to the company name of another legal entity if both entities are engaged in similar business activities and the company name of the former legal entity has been incorporated into the USRLE prior to the state registration of the latter. A legal entity illegally using the company name of another legal entity is obliged to cease such use at the request of the company name owner and compensate for any losses caused.

A company name owner may use its company name or its individual elements as part of its trade name or trademark (service mark) belonging to the company name owner. A company name incorporated into a trade name or a trademark (service mark) is protected regardless of the protection of the trade name or the trademark itself.

#### What is a trade name?

The Civil Code protects trade names. Part IV of the Civil Code contains a special section concerning the legal protection of trade names. Trade names (so-called commercial designations) are designations that individualize trading, industrial or other types of enterprises owned by legal entities and individual entrepreneurs.

Trade names differ from company names in that they do not require registration and are not subject to obligatory incorporation into the corporate documents of the trade name owners.

The scope of protection of a trade name used for the purpose of the individualization of an enterprise located in the Russian Federation is limited to the territory of the Russian Federation.

#### What constitutes the right of use of a trade name?

The owner of a trade name enjoys the exclusive right to its trade name and may use it by any lawful means. The exclusive right to a trade name arises if the designation that is used as a trade name possesses sufficient distinctiveness and its use has become well known within a certain territory.

An exclusive right to a trade name terminates if the owner of the trade name fails to use it during a continuous one-year period. A trade name owner may grant the right to use its trade name to another person only under a lease of enterprise agreement or a franchising agreement.

### 14.3.4 Copyright and neighboring rights

#### What works are granted protection by copyright?

Part IV of the Civil Code protects works of science, literature and the arts (copyrighted works) that are the result of a human's creative activity. Absence of novelty, originality and uniqueness does not mean that the

work is not a result of a creative activity and is not protected by copyright. Copyright protection arises automatically by virtue of the creation of a work of art without any registration requirements.

What rights does an author have?

An author enjoys personal (moral) rights (right of authorship, right to the name, right to public disclosure and the right to protect the integrity of a work) and proprietary (exclusive) rights (right of reproduction, distribution, import, public demonstration, public performance, translation, modification, etc.).

Personal (moral) rights are inalienable from the author (who can only be a natural person) and cannot be assigned or waived by agreement. However, it is possible, to a certain extent, to dispose of moral rights in a contract so that the copyright owner that is not the original author or a licensee of such owner may duly use the work. The proprietary (exclusive) rights to a copyrighted work may be licensed or assigned by virtue of a copyright license or assignment agreement, respectively.

Infringement of copyright may entail civil, administrative or criminal liability.

What is the term of copyright protection in Russia?

The general term of copyright protection for all works, including software programs or databases, is the lifetime of the author/co-authors plus 70 years after the author's death/death of the last of the surviving co-authors. The author's moral rights (right of authorship, right to the name and right to protect the author's reputation) are protected perpetually.

What objects are protected by neighboring rights?

The rights of performers, performance directors, phonogram producers, broadcasting and cable-casting organizations, database compilers and publishers are protected in Russia as neighboring rights.

Under the Civil Code, the neighboring rights' owners enjoy proprietary (exclusive) neighboring rights in any case, while personal (moral) rights arise only for some objects (e.g., performances).

Neighboring rights arise automatically upon creation without any registration requirements.

What are the effective terms of neighboring rights protection in Russia?

The terms of neighboring rights protection for neighboring rights are as follows:

- for performances / staging a play — the whole lifetime of the performer/performance director but not less than 50 years from the year of first performance/recording of the performance/broadcasting of the performance/making the performance available to the public
- for phonograms — 50 years from the year of recording the phonogram/making the phonogram available to the public
- for broadcasting radio and TV shows — 50 years from the year of first broadcast
- for databases — 15 years from the year it was created/made available to the public
- for publisher's rights — 25 years from the year it was made available to the public

The proprietary (exclusive) neighboring rights may be granted or assigned. Personal (moral) rights (if available) are inalienable from their rights holder and cannot be assigned or waived by agreement. However, it is possible, to a certain extent, to dispose of moral rights in a contract so that the neighboring rights owner that is not the original performer or a licensee of such owner, may duly use the work.

### 14.3.5 Software programs and databases

Are software programs and databases protected in Russia?

Copyright protection also extends to software programs and databases.

Pursuant to Part IV of the Civil Code, software programs are protected as literary works, and the copyright protection covers source code, object code, multimedia produced by software and preparatory materials

made in the course of software development. Databases are protected as compilations.

Although registration is not mandatory for protection, an author may optionally register and deposit software or a database with Rospatent. Assignments and pledge (starting from 29 June 2023) of registered software and databases must be recorded with Rospatent. The right to use a software program may be granted under a software license agreement.

### 14.3.6 Topologies of integrated microcircuits

#### Are topologies of integrated microcircuits protected in Russia?

In accordance with Part IV of the Civil Code, legal protection is granted with regard to original topologies of integrated microcircuits, developed as the result of an author's work. The author enjoys the exclusive right to use the topology as they see fit, including the prohibition of its unauthorized use by third parties.

The rights to a topology may be transferred fully or partially to another person under a written assignment agreement or license agreement. Although the registration of a topology is not mandatory for its protection, an author may voluntarily register it with Rospatent. The exclusive right to use the topology is effective for 10 years from the date of its initial use or from the date of the topology's registration, whichever is earlier.

### 14.3.7 Knowhow and information constituting commercial secret

#### What information is recognized and protected as know-how and information constituting a commercial secret in Russia?

Proprietary and confidential information may be protected in Russia under two different regimes: as know-how or so-called "information constituting a commercial secret."

Know-how, i.e., information of any nature (production, technical, economic, organizational, etc.) relating to (i) the results of intellectual activity in the scientific and engineering sphere, and (ii) methods of

carrying out professional activity, are protected as IP in accordance with the Civil Code, if such information meets certain requirements set by law:

- such information has actual or potential commercial value not known to third parties
- there is no free legal access to such information
- the owner of such information takes reasonable measures to maintain such information's confidentiality, including through the establishment of a special commercial secrets regime with regard to such information.

Information constituting a commercial secret is protected in accordance with Federal Law No. 98-FZ "On Commercial Secret" (the "**Commercial Secret Law**"). Information constituting a commercial secret is defined as information of any nature (production, technical, economic, organizational and other), including, but not limited to, information on the results of intellectual activity in the scientific and technical areas, as well as information on the methods of carrying out professional activity. Criteria for the protection of commercial secret information are similar to know-how protection criteria but, instead of a general requirement to maintain confidentiality, the Commercial Secret Law mandates the establishment of a so-called commercial secret regime with regard to information constituting a commercial secret.

What steps should be taken for legal protection of know-how and information constituting a commercial secret?

Before 1 October 2014, the establishment of a commercial secret regime in accordance with the Commercial Secret Law was mandatory for both for know-how and information constituting a commercial secret.

Since 1 October 2014, the Civil Code does not provide any special technical or organizational requirements to establish a know-how regime. Thus, the owner of information, in its sole discretion, chooses and takes measures that it deems reasonable for the protection of the confidentiality of knowhow. In general, these measures may include adopting local acts and policies establishing the confidentiality of certain information, determining the information that must be deemed know-



how, taking organizational measures to ensure limited access to such information, warning employees and counterparties about confidentiality, etc. However, to the extent technically feasible, it is still highly recommended that the Commercial Secret Law requirements be considered "best practice" while taking measures to maintain the confidentiality of information.

In relation to information constituting a commercial secret, the Commercial Secret Law sets strict mandatory requirements for the steps and actions that must be taken by an owner, in particular:

- creating a list of information constituting a commercial secret
- limiting access to the information constituting a commercial secret by establishing and implementing control procedures
- creating a list of persons who have been given access to the information constituting a commercial secret, including, e.g., employees and counterparties of owners of such information
- regulating the relations on the use of information constituting a commercial secret by employees on the grounds of employment agreements and by contractors on the grounds of civil agreements
- affixing "commercial secret" markings on tangible media (documents) containing the information constituting a commercial secret with a reference to the owner of such information and their/its full name and address.

Additionally, the Commercial Secret Law contains a list of information that cannot be considered information constituting a commercial secret, even if the above-mentioned criteria are met. For example, information on violations of legislation, on factors that negatively affect the safety of people (such as environmental pollution, fire safety, sanitary-epidemiological and radiation conditions, and food safety) and some labor conditions cannot be protected as commercial secrets.

## 14.4 Are domain names protected and recognized as IP objects in Russia?

Part IV of the Civil Code does not list domain names among objects of IP. A registered domain name by itself is not considered a prior right impeding the registration of a trademark.

The domain names in the .RU and .РФ generic top-level domains (also known as gTLDs) are registered in Russia on a first-come, first-served basis by several registrars. When registering domain names, the registrars neither check nor require domain name applicants to prove that they have a legitimate right to use the names they seek to register.

Pursuant to Part IV of the Civil Code, no one may use, without the permission of the trademark owner, designations that are confusingly similar to a trademark in respect of goods and services for the individualization of which the trademark was registered, or similar goods. The law specifies some acceptable but non-exhaustive forms of use of a trademark by its owner. The exclusive right to a trademark may be exercised, in particular, by the use of the trademark on the internet, including its use in domain names and other means of address.

### What is the current court practice in domain name disputes?

In recent years, the number of disputes concerning domain names has significantly increased.

There is no procedure similar to the Uniform Domain Name Dispute Resolution Policy in Russia. Therefore, all disputes concerning domain names in the .RU and .РФ domain zones that are not amicably resolved must be taken to court.

A few years ago, there was consistent judicial court practice based on the position of the higher arbitrazh court.<sup>196</sup> According to that practice, disputes on domain names used for commercial activities were generally considered by the arbitrazh (state commercial) courts regardless of whether the defendant was an individual or a legal entity/individual entrepreneur.

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<sup>196</sup> On 6 August 2014, the higher arbitrazh court, the supreme judicial authority in the system of arbitrazh (state commercial) courts, terminated its activity and its authorities were transferred to the Russian Supreme Court.

According to recent clarifications from the Russian Supreme Court, disputes involving respondents that are individuals (i.e., not legal entities or individual entrepreneurs doing business professionally) should be considered by the court of general jurisdiction, not by the arbitrazh courts considering commercial disputes. However, the Russian Supreme Court later clarified that disputes on domain names used for commercial activities can still be considered by arbitrazh (state commercial) courts (regardless of whether the defendant is an individual or an individual entrepreneur), provided that the claim is filed by a foreign rights holder. According to the position initially adopted by the higher arbitrazh court and then supported by the IP Court, courts should verify the following criteria to find a domain name holder responsible for trademark infringement:

- whether the domain name at issue is confusingly similar to the trademark
- whether the domain name holder has any rights or legal interests with respect to the domain name
- if the domain name is registered and used in bad faith (e.g., the domain was registered for its subsequent sale or rent to the legitimate rights holder or its competitor, or the domain was registered to create obstacles for the competitor's business or to intentionally mislead consumers).

#### 14.5 Who owns the IP rights to employee creations under Russian law?

Generally, an employer obtains proprietary (exclusive) rights to the IP created by an employee strictly within their employment duties. Therefore, to ensure that all proprietary rights are owned by the employer, it is essential to ensure that employment agreements and other relevant documents with Russian developers are drafted in such a way that all proprietary rights in the IP created by the developers are fully and duly vested in the employer and are consequently wholly owned by the employer without any limitations or encumbrances.

What are the rules for the remuneration of employees who create IP assets?

The amount of remuneration for the creation of IP and its payment to an employee should be established in an agreement between the employee and the employer (e.g., an employment agreement). If the employee and employer fail to reach such agreement, the amount of such remuneration and other payment terms may be established by a court at the request of either party.

The Russian government adopted rules on the calculation of remuneration payable to employee inventors who have created patentable solutions, including an invention, utility model or industrial design:

- 30% of the employee's average monthly salary (for the last 12 months preceding the date of patent application filing) for the creation of an invention
- 20% of the employee's average monthly salary (for the last 12 months preceding the date of patent application filing) for the creation of a utility model or an industrial design

In addition, the employee inventor is entitled to receive:

- an average monthly salary for each 12-month period during which the invention, utility model or industrial design is used by the employer (from 2021, this remuneration will increase: three average monthly salaries for an invention, two average monthly salaries for a utility model or industrial design)
- 10% of the licensing fees the employer receives under a patent license
- 15% of the remuneration received by the employer as consideration for the assignment of the patent

These rates of remuneration apply in the absence of a specific agreement between the employer and employee covering these issues.

#### How to ensure that rights to employee creations are vested in the employer?

To ensure that all rights to IP created by employees are vested in the employer, the latter should take the following steps:

- 1) prepare and execute an employment agreement and other employment documents (i.e., job descriptions) to ensure that any IP that has to be, or might be, created by an employee falls within the scope of their employment duties
- 2) ensure that the employment agreement envisages that remuneration for the creation of IP is included in the employee's salary or, alternatively, the employee and the employer may enter into a stand-alone agreement on the remuneration. It is highly advisable to enter into such agreements with employees who are likely to create patentable solutions to avoid the application of the rules on remuneration established by the Russian government
- 3) implement timely measures provided by the Civil Code to keep the ownership of the IP created by its employees (i.e., keep the created IP confidential, file a patent application with Rospatent and start to use the created IP)

#### 14.6 What are the legal requirements applicable to IP rights assignment, license and franchise agreements?

With the exception of some special IP objects (e.g., appellation of origin, geographical indication or company name), the IP owner may dispose proprietary (exclusive) rights to IP objects, including its assignment or granting to another person of usage rights.

##### Assignment agreements

According to the Civil Code, the assignment of proprietary (exclusive) rights is assumed to be in full for the entire period during which these rights are protected within the whole territory of rights protection. If an assignment agreement contains any limitations (limitation of territory, term, methods of use, etc.) it would be deemed a license (or can be deemed void if it does not fit the requirements of a license agreement).

Assignment agreements must be made in writing. The non-observance of the written form causes the invalidity of assignment.

An assignment agreement must provide for the assignment's remuneration or the procedure for its determining, or expressly provide

that it is free of charge. Otherwise, the assignment agreement is deemed non-concluded. The Civil Code expressly prohibits free-of-charge assignment agreements between commercial entities.

Unless otherwise stipulated in the agreement, the assignment of rights takes place from the moment of the agreement's execution. This rule does not apply when the registered IP objects are assigned (including voluntarily registered software); the assignment of rights to such objects takes place only at the moment of its state registration of such assignment by Rospatent. However, even in the absence of the said registration with Rospatent, the terms and conditions of the assignment agreement are valid between the parties as of the agreement's execution.

#### License and franchise agreements

Generally, the right to use IP in Russia may be granted in the form of a license agreement made in writing.

Rights to trademarks, patents, copyrights, trade names and know-how may also be granted under a franchise agreement. Such agreement must provide for a license to a trademark and, at least, any other IP object from the above list.

Unless otherwise provided by the Civil Code, license/franchise agreements must be made in writing. The non-observance of the written form causes the invalidity of the grant of rights. Some software and copyright licenses are excluded from this rule.

A license agreement should provide the terms concerning the fee amount/royalty or the procedure for determining it, or expressly provide that it is free of charge. Otherwise, the license agreement is held to be non-concluded.

The Civil Code expressly prohibits free-of-charge exclusive licenses for the whole term of rights within the whole territory of its validity between commercial entities.

From 27 May 2022, there are some limitations for payments under IP license agreements which were imposed by Presidential Decree No. 322 (the "**Decree**"). The Decree applies to payments for using IP that are payable to the right owners from so called unfriendly jurisdictions or right

holders taking so called unfriendly actions against Russia. For details of these limitations, please refer to Section 8 ("Sanctions").

What documents are necessary for the registration of rights assignment/license?

The grant/assignment of rights to registered patents or trademarks is subject to mandatory state registration with Rospatent. Without such registration with Rospatent, the license/franchise/assignment would be deemed not to have taken place.

The grant/assignment of rights can be registered based on the following:

- original agreement
- notification executed by both parties
- notarized statement from the agreement

The notification or statement from the agreement must contain the essential terms of the relevant agreement. Alternatively, to register the grant of rights to use IP under a license/franchise, the parties can file a notarized statement from the relevant agreement or the agreement in its entirety with Rospatent.

Non-Russian law may govern license and franchise agreements between an international licensor/franchisor and a Russian licensee/franchisee. However, certain mandatory Russian law provisions and requirements would be applicable to license and franchise agreements irrespective of the parties' choice of law. For instance, a license/franchise agreement must provide a detailed description of the licensed IP (e.g., registration numbers of the licensed trademarks) and specify the scope of rights granted to a licensee. From a Russian law perspective, the right to use IP that is not specifically provided in a license agreement is considered as not granted.

Under Russian law, a franchisor is subsidiarily or even jointly and severally liable with a franchisee with regard to claims brought against the franchisee in respect of the quality of the franchised goods and/or services. The scope of such liability differs depending on whether the franchisee manufactures those goods in connection with which a claim is brought under the franchise agreement. For a trademark license, a

trademark licensor would be jointly and severally liable with a licensee in connection with claims brought against the licensee in connection with its manufacture of goods and rendering of services under the licensed trademark.

#### 14.7 How can infringed IP rights be enforced in Russia and what are the available remedies?

Infringement of IP rights may entail civil, administrative or criminal liability.

What are the procedures and sanctions applicable in the case of a public prosecution of IP infringement?

**Criminal and administrative actions** are initiated by the police, the Federal Antimonopoly Service and local customs, other state bodies authorized to investigate IP infringements (such as Rospotrebnadzor, the Federal Service for Consumer Rights Protection and Human Well-being) or by the rights holder filing a complaint with one of the above agencies.

To qualify for criminal proceedings, the infringement should result in gross damage to an IP right/trademark owner or consumers. Damages are considered to be "gross" if they are equal to or exceed RUB 250,000 for copyright infringement and RUB 100,000 for trademark infringement. Repeated infringement can also be subject to criminal proceedings. The authority in charge will investigate the case and submit the case files to the court for further consideration and a decision. The decision of the court of first instance may be further appealed in the court of appeals and in the cassation court.

In Russia, legal entities cannot be held liable for a **criminal offense**. Criminal charges may be lodged against the director(s)/manager(s) of the entity responsible for the infringement of copyright and neighboring rights, patent, trademarks and appellations of origin. Depending on the scale and gravity of the crime, the court hearing the criminal case may adjudge a punishment in the form of a fine, forced or compulsory work or imprisonment.

Administrative sanctions (fines or confiscation of infringing products) are applicable to both individuals and legal entities. The sanctions applied to



legal entities are stricter than those applied to individuals. If a legal entity repeatedly or grossly infringes IP rights, the court may decide to liquidate it.

A civil claim may be filed in a criminal trial, but to obtain damages in case of administrative liability, the IP owner must file a civil lawsuit at the same time.

There is also an option to try to block the infringing websites selling clear-cut counterfeits through the state prosecutor. This option is only emerging but to date many infringing websites have already been deemed infringing and have been blocked by the court at the prosecutor's request, without the direct involvement of the rights holder. The state prosecutor, who is the claimant in the proceedings, files all applications; the rights holder does not participate in such court cases.

#### What civil remedies for IP infringement are available in Russia?

**Remedies under civil proceedings** include the following:

- recognition of IP rights by the court
- cessation of the actions that infringe the right or create the threat of such infringement
- payment of damages or — alternatively, for patent, trademark, appellation of origin, copyright and neighboring rights holders — of statutory compensation in the amount of:
  - from RUB 10,000 to RUB five million
  - double the value of the counterfeit products — for copyrights, neighboring rights, trademarks and appellation of origin
  - double the royalties that would be due under similar circumstances — for patents, trademarks, copyrights and neighboring rights
- seizure of material carriers containing unauthorized representation of the intellectual property rights

- publication of a court decision on infringement

In addition to the above enforcement options, Russian law additionally provides an option to block the websites that infringe exclusive rights for works of copyright, except for photos, through the Moscow City Court (see Section 14.9 below).

## 14.8 Are there any specialized IP courts in Russia?

Yes, the IP Court is the first IP-dedicated civil judicial body in Russia. It became operational on 3 July 2013. It has exclusive jurisdiction to consider disputes involving IP rights and it acts both as the court of first instance and the court of cassation.

As the court of first instance, the IP Court resolves disputes involving challenges of acts of the federal state authorities in the IP area, as well as various disputes related to the grant or termination of the legal protection of IP, including decisions of the federal antimonopoly authority recognizing actions related to the acquisition and use of exclusive rights for the means of individualization of legal entities, goods, works, services and businesses as unfair competition.

Within its capacity as the court of cassation, the IP Court considers cases it had previously resolved as a court of first instance, as well as cases related to the protection of IP resolved by other arbitrazh courts across the country.

The court is authorized to resolve all disputes mentioned in federal legislation regardless of the parties involved in the case.

Decisions passed by the IP Court as the court of first instance cannot be appealed other than by way of cassation appeal with the presidium of the same court, and come into force immediately after adoption. The judgment of the Presidium of the IP Court can then be appealed with the Supreme Court. In practice, the Supreme Court only considers approximately from three to five percent of the cases filed, which are generally of great significance to the Russian legal system or court practice, or, for instance, where judgments of lower-level courts were entirely wrong.

The IP Court resolves IP disputes by a panel of judges in the first instance and in cassation, while the Presidium of the IP Court,

consisting of five judges, reviews cassation appeals in cases considered by the IP Court in the first instance.

#### 14.9 What mechanisms can IP owners use to combat online piracy in Russia?

In August 2013, Russia introduced countrywide blocking injunctions for the rights owners of movies and TV shows, and codified safe harbor principles for information intermediaries.

On 1 May 2015, blocking injunctions also became available to owners of other categories of copyrighted content (with the exception of photographs).

##### What is the procedure for seeking an injunction against online copyright infringement?

Applications seeking preliminary injunctions should be filed with the Moscow City Court. Alongside the regular paper method there is an option to file the application through an online form on the website of the Moscow City Court. Together with the application, the rights holder should also provide the court with documents confirming: (i) its rights to the disputed works and (ii) the use of such works on the disputed website. In practice, however, when considering such applications, the courts generally do not evaluate the provided documents from the standpoint of their sufficiency and, in almost all cases, such applications are automatically granted by the court.

Once the injunction is granted, the Moscow City Court appoints a deadline for filing a claim (no more than 15 calendar days). If the claim is not filed, the preliminary injunction will be withdrawn. The ruling imposing the injunction will be published on the website and sent to the applicant and the Russian telecoms supervisory authority – Federal Service for Supervision in the Sphere of Telecommunications, Information Technology and Mass Communications (the "**Roskomnadzor**").

Further, the law provides for a procedure of executing injunctions by Roskomnadzor. Roskomnadzor must identify the internet service provider (the "**ISP**"), send a notice with details that will enable the identification of the particular website and work (name of the work,

author, rights holder and IP address), and record the date when the notice was sent out.

The ISP must inform the customer and request the immediate removal of the infringing information within one business day. If the customer takes no action, the ISP must limit access within three business days after the receipt of the notice by the customer. Should the ISP fail to perform such actions, this information will be sent to the relevant network operator who must block this website/web page within one day.

In case of repeat violations, the Moscow City Court can permanently block the entire website.

Additionally, from 2017, the rights holder has the right to approach Roskomnadzor and ask it to block "mirrors" of the websites that were permanently blocked by the Moscow City Court due to repeated copyright infringement. Once Roskomnadzor receives such request, it can issue the relevant ruling with respect to the new website as a "mirror" of the permanently blocked one, ordering the "mirror" to be blocked by telecom providers and removed from the search results of search engines.

From October 2020, a similar procedure was implemented for mobile applications containing infringing content. According to this new procedure, the owner of the resource (application store) where the application is located must block the application with the infringing content if the application owner does not block the content upon request. If the blocking does not occur either from the owner of the application or from the side of the application store, then the telecom operators should block it.

#### 14.10 Can ISPs be held liable for infringing content placed by third-party users?

The law explicitly states that ISPs cannot be held liable for limiting access to the internet under this procedure.

There are three types of providers identified by the new law:

- 1) persons transmitting materials in networks (i.e., access providers)

- 2) persons providing the ability to place materials in networks or information required for obtaining such materials (i.e., website and platform operators)
- 3) persons providing the ability to access materials placed in networks (e.g., hosting providers)

Are there any safe harbor rules allowing ISPs to avoid liability?

An internet access provider cannot be held liable if it (i) does not initiate the transmission, (ii) does not alter materials (except for technical purposes); and (iii) is not and could not have been aware that the use of the materials by the person initiating their transmission is illegal.

A website and platform operator cannot be held liable if it: (i) is not and could not have been aware that the use of the respective IP in such materials is illegal; and (ii) receives written notice of an infringement and expeditiously takes necessary and sufficient measures. Meanwhile, a website operator has to prove that the infringing content was placed on the website by a third party, otherwise it is presumed that the IP rights are infringed by the website operator. Moreover, if a website operator alters the content and/or receives income from the placement of infringing content, it is likely to be held liable for infringement.

With respect to persons providing the ability to access materials placed in networks, the law simply states that the above rules apply to this category without any further specifications.

Nevertheless, even if an ISP meets the above requirements, it is possible to file an infringement claim against an ISP. However, the relief will be limited and will not include damages or statutory compensation.

## 15. Insolvency

### 15.1 Overview

Russia has had a series of insolvency regulations and laws in place since 1992, which have been subject to regular changes and amendments. Russian insolvency law is rather extensive and regulates both the rehabilitation (external management and rehabilitation of an insolvent company and debt rescheduling for individuals) and the winding-up (corporate insolvency liquidation and seizure of property for individual bankruptcies) stages. Along with these court-supervised procedures, since 1 September 2020, an out-of-court bankruptcy procedure is available to individuals.

From a practical standpoint, insolvency is not yet widely viewed as a reliable and transparent mechanism for resolving debtor-creditor issues. To date, creditors often view insolvency proceedings as a process used by debtors to relocate assets and avoid repayment to the creditors. To avoid such negative scenarios, the legislature consistently develops Russian insolvency law enabling creditors to use a wide range of mechanisms aimed at preclusion of bad faith practices and the increase of satisfied creditors' claims. For instance, Russian insolvency regulation sets forth a concept of sham (intentional) insolvency, as well as concepts of suspicious and preferential transactions of a debtor, which may be undone (clawed back) during insolvency proceedings. One of the instruments designed to prevent bad-faith practices within insolvency proceedings is the liability of controlling persons (i.e., management, shareholders, participants and ultimate beneficial owners) responsible for the insolvency of a company or a failure to timely commence voluntary insolvency proceedings. Court practice also elaborated the subordination mechanism that allows courts to lower the priority rank of affiliated and/or controlling creditors in favor of independent creditors.

Russian insolvency rules are applicable to both companies and individuals, including those who are not engaged in any business activities. Separate insolvency regimes are applied to core companies, farms, financial organizations (e.g., banks, insurance companies, etc.), strategic enterprises, natural monopoly entities and developers.

## 15.2 What law applies?

Insolvency and restructuring in Russia is governed by the Civil Code of the Russian Federation (the "**RCC**") and, in most part, by Federal Law No. 127-FZ dated 26 October 2002 "On Insolvency (Bankruptcy)" (the "**Insolvency Law**"). Moreover, there are extensive rules and regulations adopted by the Government, the Ministry of Economic Development and various state bodies. Decisions on specific cases and abstract plenary resolutions of the Supreme Court of the Russian Federation, the Supreme Arbitrazh (State Commercial) Court of the Russian Federation (dissolved in 2014) and lower arbitrazh (state commercial) courts play a significant role in standardizing insolvency practice and set forth the landmarks for the insolvency practitioners, business and legislature.

## 15.3 What are the requirements to initiate insolvency?

Either a creditor or a debtor can initiate insolvency (bankruptcy) proceedings in Russia.

### *Initiation by creditor:*

Any creditor (including an ex-employee) can initiate insolvency proceedings, provided the debt owed by the company to such creditor: (i) is confirmed by an effective court decision or an enforced arbitral award; (ii) exceeds RUB 300,000 and (iii) is at least three months overdue.

The same is applicable to individual bankruptcies with the exception that the debt must exceed RUB 500,000. It should be noted that to initiate insolvency proceedings the debt should be of a principal nature, i.e., the financial penalties are not included in the threshold necessary to initiate insolvency proceedings.

In practice, to restrict creditors' rights to commence insolvency proceedings, debtors would partially repay the creditors' claims to decrease the due amount under the foregoing thresholds. However, the Supreme Court of the Russian Federation held that if the debtor consistently and partially repays the debts so that the amount of each outstanding

claim remains less than the threshold for commencing insolvency proceedings, then the claims of several creditors can be considered cumulatively. In this regard, if the cumulative sum of several claims exceeds the statutory thresholds, the creditors can commence insolvency proceedings.

From 1 January 2018 creditors, the debtor, the employee or the former debtor's employee may initiate insolvency proceedings only if they published a prior notice of their intention to file for insolvency in the Federal Corporate Register. Such notice should be made no later than 15 calendar days before the petition is filed with the court. The notice becomes nonbinding upon the expiration of 30 days from the date of publication.

The Insolvency Law contains certain exceptions to the commencing insolvency proceedings. For instance, credit institutions may initiate insolvency proceedings without a court decision, provided the onset of insolvency indications and the publication of the notice of the intention to commence insolvency proceedings. Under current court practice, the term "credit institution" covers not only banks with a Russian license, but also banks with licenses issued under foreign laws. In addition, the court decision rule does not apply to tax and customs authorities. These creditors are entitled to file insolvency petitions 30 days after the relevant authority rendered an order to collect the amounts due from the debtor.

*Initiation by debtor:*

In general, if the company is unable to perform its obligations before its creditors due to the absence of sufficient funds, the company's management is obliged to file for voluntary insolvency proceedings. This obligation of the company's management is aimed at protecting the company's creditors from risks related to continuing business with a distressed company. The obligation to commence



insolvency proceedings also applies to the company's shareholders.

Note that the company's director is obliged to make a voluntary insolvency application within a period of one month from the moment when a reasonable director should have known about the company's insolvency and the insufficiency of funds/assets to meet the company's obligations. Namely, the director should file for bankruptcy if one of the following applies, among others:

- fulfillment of the obligations of one or several creditors makes it impossible for the debtor to fulfill the obligations of other creditors
- foreclosure on the debtor's assets will significantly hinder or preclude the business activity of the debtor
- the debtor shows indications of insolvency and/or insufficiency of the funds

Failure to apply for voluntary insolvency triggers the secondary liability of the director. The Insolvency Law extends the liability for the failure to file for insolvency to shareholders, in addition to the director. Shareholders are obliged to convene a general meeting to decide to file for insolvency if the director failed to do so when the company showed insolvency signs. All persons at fault are held jointly liable.

The debtor is also obliged to publish a prior notice of its intention to file for insolvency in the Federal Corporate Register no later than 15 calendar days before filing the application with the court.

From 1 September 2020, the out-of-court bankruptcy procedure is available to individuals. Under the Insolvency Law, the debtor must file an

application with the special government services center for its bankruptcy if they are unable to fulfill their outstanding obligations and the overall indebtedness exceeds RUB 50,000 but does not exceed RUB 500,000. The financial sanctions are not included in the threshold necessary to initiate out-of-court bankruptcy.

As of the date of the application, there must be no pending enforcement proceedings in respect of the debtor seeking to take advantage of the out-of-court bankruptcy regime, and the latest enforcement proceedings should be terminated due to the absence of property and funds.

The out-of-court bankruptcy procedure is available only to individual debtors, while creditors can commence insolvency proceedings only by making a relevant application with the court.

In light of the COVID-19 threat, the Russian Parliament approved amendments to the Insolvency Law enabling the Government to introduce a moratorium on commencing bankruptcy and insolvency proceedings. Accordingly, on 3 April 2020, the Government introduced a moratorium that expired on 7 January 2021. Moreover, Russian Government introduced a new moratorium on 31 March 2022 that expired on 1 October 2022 as part of measures to stabilize Russian economy. However it may still be reintroduced.

The moratorium covered certain individual entrepreneurs and legal entities determined by the Government. The affected debtors were not obliged to file for bankruptcy during the period of the moratorium, while retaining the right to waive their moratorium status and commence voluntary bankruptcy proceedings.

In general, according to Article 9.1 of the Insolvency Law, the moratorium invokes the following legal consequences:

- insolvency proceedings will not commence during the period of the moratorium. Creditors' petitions filed during the moratorium period will be dismissed by the courts

- enforcement proceedings (including foreclosure on the pledged assets) will be suspended for the period of the moratorium
- if the supervision or debt rescheduling stages (i.e., initial stages of corporate insolvency and individual bankruptcy) are introduced in respect of the moratorium debtor, such debtor is entitled to apply for court-supervised restructuring instead of the insolvency proceedings

In general, the insolvency proceedings are commenced at the place of the debtor's incorporation or registration.

In cases of personal bankruptcies, court practice allows to initiate bankruptcy proceedings against a foreign citizen if there is a strong connection between such citizen and the Russian Federation. Courts usually take into account whether the foreign individual has a residence in the territory of Russia, whether most of the foreigner citizen's assets are situated in Russia (center of main interest (COMI) test) or if the foreign citizen is engaged in an occupation or business activities in Russia, etc.

A similar test is applied to corporate insolvencies of foreign companies: according to the overwhelming approach, Russian courts may establish their jurisdiction to consider the insolvency case with respect to the foreign company if such company conducts commercial activity in Russia and owns assets located in Russia. Such approach is based on similar provisions of the UNCITRAL Model Law on Cross-Border Insolvency.

#### 15.4 What are the stages of insolvency?

Once the grounds of the petition for insolvency have been verified, the court orders the first stage of the insolvency proceedings, which is called supervision. Supervision is usually the first insolvency stage, except in cases of simplified insolvency proceedings, when the debtor goes immediately into the winding-up stage, thus circumventing the supervision and rehabilitation stages.

Other stages, which vary depending on the circumstances of the insolvency, include financial rehabilitation, external management,

liquidation and amicable settlement. All these stages are conducted under the supervision of the court.

As for individuals, the Insolvency Law sets forth two types of court-supervised procedures — debt rescheduling and seizure of property — as well as out-of-court bankruptcy.

### 15.4.1 Supervision

The main aim of the supervision stage is to have a court-appointed temporary administrator to secure and evaluate the debtor company's assets and compile a list of creditors. Once these tasks are completed, the first creditors' meeting is convened to decide the next stage of the insolvency proceeding. This decision of the creditors' meeting is subject to final approval by the court supervising the insolvency proceedings.

During the supervision stage, the debtor's business is largely run in the same way as before, since the temporary administrator has only limited powers over the debtor's activities. The company's management remains in place, unless the administrator receives court approval to dismiss the management. If the management is dismissed, the court appoints the new management from candidates proposed by a representative of the company's shareholders.

At the same time, the Insolvency Law sets forth certain limitations that need to be taken into account. First, during the supervision stage, the temporary administrator's approval is required for: (i) any transaction involving the company's assets with a value of five percent or more of the book value of the debtor's assets as of the date of commencing supervision; and (ii) granting/receiving loans, assignment of rights, transferring debts, granting guarantees/suretyships, putting the debtor's assets into trust, etc. Second, the debtor (its management) is prohibited from acquiring shares from its shareholders, issuing bonds or paying dividends, approving reorganization, liquidation, establishing branches or representative offices, or participating in joint ventures, associations and holding companies.

After the commencing of the supervision, no penalties or any other financial sanctions may be imposed on a debtor for failure to perform its obligations. Instead, the amount claimed by creditors accrues

moratorium interest, which is interest equal to the refinancing rate set by the Central Bank of the Russian Federation.

At the end of the supervision stage, the temporary administrator presents to the creditors' meeting and submits to the court a report on the outcomes of the supervision. This report contains the analysis of the debtor's financial standing and recommendations regarding the possibility of restoring the debtor's solvency or the necessity of introducing a liquidation stage. Based on this report and the decision of the creditors' meeting, the court approves a decision on the further insolvency stage to be applied to the debtor.

The supervision stage should not last for more than seven months, although this period may be extended.

#### 15.4.2 Financial rehabilitation

This procedure is rarely used in practice. It may be introduced if the creditors and the court believe there is a reasonable chance of the debtor avoiding insolvency liquidation. During this stage, the debtor's management remains in place and the business is largely carried out as during the supervision stage, with certain minor exceptions.

At the financial rehabilitation stage, a debtor presents a plan for repaying the outstanding debts, which can envisage, among other things, writing off a certain part of such debts. If the debtor succeeds in repaying its debts, the insolvency proceedings are terminated.

In our experience, this stage can be effective, especially if there is an investor seeking to acquire the distressed assets of the insolvent debtor.

#### 15.4.3 External management

External management has the same objective as financial rehabilitation, i.e., restoration of the debtor's solvency. The principal difference is that, during this stage, the debtor's management is dismissed and a court-appointed administrator manages the debtor according to an external management plan, which is prepared by the administrator and approved by the creditors' meeting. External management must be completed within 18 months but, in some instances, this term may be extended.

During the external management, the administrator is entitled to refuse to execute the transactions, which are not fulfilled by the parties at all or in part, if such transactions impede the restoration of the debtor's solvency or if the debtor's execution of such transactions entails losses for the debtor compared to similar transactions concluded under comparable circumstances.

#### 15.4.4 Insolvency liquidation

In contrast to other jurisdictions where insolvency proceedings are often used to defend a company from its creditors and help it recover from a difficult financial situation, in Russia most insolvency proceedings result in the liquidation of the company. Thus, the courts often order insolvency liquidation once the supervision stage is accomplished.

At this stage, the court-appointed receiver compiles an insolvency estate subject to proportionate distribution among the creditors. Under the Insolvency Law, the receiver is entitled to file clawback applications to invalidate certain transactions, to recover the debtor's receivables, to apply for the secondary liability of controlling persons, etc. Accordingly, the receiver arranges for trades of the debtor's assets in order to increase the estate. Once the insolvency liquidation is completed, the debtor is wound up and it ceases to exist. The receiver is also entitled to refuse to execute the transactions, which are not fulfilled by the parties at all or in part, in the same circumstances as during external management.

The insolvency liquidation takes from six months to six years to complete. The actual term largely depends on the size of the company and its business, the number and complexity of creditors' claims, as well as the number of claims brought by the receiver.

#### 15.4.5 Debt rescheduling

Debt rescheduling is applied to individuals to repay their debts in up to three years. The debtor may initiate the procedure if they contemplate insolvency, if they are unable to pay their debts and/or if they have insufficient property to pay.

The starting point is the draft debt rescheduling plan, which has to be prepared by either the debtor or a creditor. In case no draft is presented

within two months after the court's decision to initiate bankruptcy proceedings, the financial manager should propose the seizure of property.

The plan is subject to approval by a simple majority at the first creditors' meeting. If the vote is in favor of the plan, the plan must be approved by the court. The court can enforce the rescheduling plan even if it is not approved by the creditor's meeting, provided the court finds that the rescheduling will satisfy substantially more claims (at least 50% of registered claims) than the immediate seizure of property.

The rescheduling is terminated by virtue of a court decision if all claims have been satisfied. If not all claims are satisfied, the creditors may file a motion with the court to cancel the debt rescheduling plan no later than 14 days before the end of the period provided for repayment.

#### 15.4.6 Seizure of property

A seizure of property stage is similar to the winding-up stage in the corporate insolvency proceedings. During the seizure of property, the court-appointed financial manager gains control over the debtor's assets to compile the bankruptcy estate and to distribute the proceeds among the creditors.

A court orders the seizure of property stage in the following cases:

- insufficiency of debtor's assets to conduct the debt rescheduling stage
- failure of the creditors' meeting to consent to a debt rescheduling plan or refusal of the court to approve such a plan
- cancellation of the debt rescheduling plan by the court

The seizure of property must be accomplished within six months, but this term may be extended by the court. Once the seizure of property is completed, the debtor is discharged from their obligations. However, in the following circumstances the Insolvency Law allows the court to refuse to discharge the debtor from the debts:

- the debtor was found criminally or administratively liable for illegal actions in the course of the bankruptcy proceedings
- the debtor knowingly provided incomplete or false information in the course of the bankruptcy proceedings
- the debtor acted in breach of the law when a creditor's claim arose or during its performance
- the debtor was declared bankrupt within five years after the previous bankruptcy

An individual may not file for voluntary insolvency within five years after bankruptcy. They are also barred from managing legal persons for three years and are obligated for the next five years to notify a creditor under a credit or loan agreement of the fact that they have been declared bankrupt.

#### 15.4.7 Amicable settlement

The creditors and the debtor company or an individual are entitled to enter into a settlement agreement at any stage of the insolvency proceedings. Such an agreement is subject to the court's approval. Once a settlement agreement is concluded and the court approves it, the insolvency proceedings are terminated.

#### 15.4.8 Out-of-court bankruptcy of individuals

The out-of-court bankruptcy proceedings were introduced in September 2020 to allow individuals with minor outstanding debts to take advantage of a simplified bankruptcy process. The procedure is administered by government services centers, i.e., institutions providing day-to-day services to individuals.

The out-of-court bankruptcy is available to individuals with debts no lower than RUB 50,000 but not exceeding RUB 500,000. If the individual fulfills this criterion, the government services center inputs information about the individual into the Uniform Federal Register of Information on Bankruptcy. This triggers the following consequences:



- the individual is restricted to satisfying creditors' claims, except for claims not indicated in their application, and debts for alimony, compensation for moral damage and tort claims
- the penalties, fines and interest under the obligations of the debtor do not accrue
- the debtor is prohibited from taking new loans or acting as a surety
- the debtor must inform the government services center about acquiring ownership of any property or other significant improvement in their financial status

Out-of-court bankruptcy is terminated after six months from the time the information was included in the Uniform Federal Register of Information on Bankruptcy. The debtor is discharged from the obligations indicated in the application.

The State Duma is currently considering a bill designed to significantly amend the insolvency stages. The legislator is seeking to change the strong liquidation focus of local insolvency proceedings and allow debtors to use insolvency to overcome financial distress and restore their positive standing. The potential amendments are also aimed at acceleration of the insolvency proceedings' timeframes. Among other things, the bill proposes to: (i) reduce the number of insolvency stages to two — debt restructuring (a rehabilitation stage) and liquidation (a winding-up stage); (ii) introduce a more flexible procedure of the bankruptcy auction; and (iii) effect a new data system with transparent information on the insolvency estate of the debtors. So far, the suggested amendments are still under consideration.

### 15.5 What is the role of the insolvency practitioner?

The insolvency practitioner plays a key role in the insolvency proceedings, balancing the interests of the creditors and the debtor. Depending on the stage of the insolvency proceedings, the powers of the insolvency practitioner may differ. For instance, during the liquidation stage, the receiver is empowered to make an application to hold controlling persons secondary liable, to file clawback claims to invalidate transactions entered into by an insolvent company prior to or after

commencing of the insolvency proceedings, to request and obtain information on managers, controlling persons and, in certain circumstances, data of a classified nature. During the supervision stage, the temporary administrator has limited control over the debtor's activities and mainly analyzes the debtor's financial standing.

Given the key role of the insolvency practitioner, the Insolvency Law sets forth certain procedures for their appointment. At the initial stage of the insolvency proceedings, a creditor is entitled to propose a candidate to be nominated as the temporary administrator. The nominee should be a member of a professional Russian self-regulating organization responsible for establishing and monitoring requirements and industry standards. If the court concludes that the proposed candidate meets the legal requirements, it will approve this candidate as a temporary manager. If the first creditors' meeting votes for the introduction of the liquidation stage, it should also approve a candidature for the position of receiver. This decision is subject to a majority vote and a final approval by the court supervising the insolvency proceedings.

In the voluntary insolvency proceedings, a debtor may no longer propose a nominee for the position of temporary administrator. Instead, a self-regulating organization is to be established by random selection in accordance with the guidelines to be adopted by the Ministry of Economic Development. In most cases, the same approach applies when the affiliated or controlling creditor commences the insolvency proceedings.

The Insolvency Law also enables the court to remove the insolvency practitioner, for example, if they improperly perform their duties, and in several other cases stipulated by law.

The State Duma is currently considering a bill that is aimed at extending the insolvency practitioners' powers. Currently, the creditors' claims are listed in the debtor's register by the order of the court. During the listing procedure, the insolvency practitioner is entitled to object to the claims or acknowledge them based on the documents/information available. The proposed amendments vest in the insolvency practitioners the exclusive authority to adjudicate creditors' applications and list their claims in the register of an insolvent company. The courts, however, retain the power to resolve disputes arising between the insolvency practitioners and the creditors regarding applications to the register.

## 15.6 When may transactions be clawed back?

Transactions may be invalidated by an application of the insolvency practitioner or a registered creditor having more than 10% of the total claims listed in the debtor's register. Pursuant to the practice of the Supreme Court of the Russian Federation, minority creditors may consolidate their claim to reach the 10% threshold and file clawback applications. The interim administration of the financial organization is also vested with the right to file clawback applications.

The Insolvency Law and the RCC set forth the following grounds for the clawback of transactions/payments in the course of the insolvency proceedings:

- **voidable preference (Article 61.3 of the Insolvency Law):** all transactions/payments entered into within one month prior to the admission of the bankruptcy application by the court or after such admission (the so-called post-submission period), aimed at establishing the priority of one creditor over the others, may be challenged. Transactions/payments may be challenged within a period of six months if, apart from preferential satisfaction, the creditor was aware or should have been aware of the insolvency indications of the debtor.
- **unequal consideration (Article 61.2(1) of the Insolvency Law):** the receiver/creditors may challenge transactions under which the debtor received unequal consideration (e.g., the value of received assets deviates from the value of the comparable assets on the market). Such transactions may be challenged if executed no earlier than one year before the court accepts the insolvency application for consideration.
- **detrimental transactions (Article 61.2(2) of the Insolvency Law):** transactions executed by the debtor within three years prior to the admission of the bankruptcy application are subject to a clawback if the following circumstances are met: (i) the purpose of the transaction was to cause harm to the creditors' rights; (ii) the transaction has actually caused harm to the creditors' rights; and (iii) the counterparty knew or should have known about the detrimental purpose of the transaction. Should the bankruptcy administrator or the registered creditors fail to

prove any of these circumstances, the court will dismiss the clawback.

- **bad-faith transactions:** under Articles 10 and 168 of the RCC, transactions executed by the parties in violation of a general good-faith requirement are considered void. To invalidate transactions based on the above-mentioned grounds of the RCC, the receiver or the registered creditors have to prove deliberate bad-faith actions aimed at causing harm to the debtor's creditors.

If a transaction is clawed back, the court will apply restitution and all assets transferred under such transaction will be returned to the insolvency estate. Instead, the creditor under the clawed back transaction may list its claim to the debtor's register. However, the claims of the counterparty under the clawed back detrimental and "six-month" preferential transaction may only be satisfied after repayment to the registered creditors. Notably, if the transaction against the creditor is clawed back, this creditor will not only be entitled to restore their claims against the debtor but can also ask for restoration of certain security (e.g., pledge, suretyship, guarantee, etc.).

Information regarding claims to invalidate a transaction and corresponding court decisions must be made publicly available through the Uniform Federal Register of Information on Bankruptcy. This obligation ensures the right of all interested parties to monitor and spot the clawback applications and timely undertake procedural actions required to defend against or support the clawback.

## 15.7 How are creditors paid in insolvency?

The Insolvency Law envisages the following ranks of creditor's claims:

<i>Priority rank:</i>	Current expenses are monetary obligations that arise after the commencing of the insolvency proceedings (i.e., when the court accepts the insolvency application for consideration). Such claims have priority over the claims of all other creditors. The Insolvency Law sets out the following order for settling current expenses: (i) court expenses and insolvency practitioner remuneration and expenses associated with the insolvency practitioner
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engaging other persons whose participation is mandatory under the Insolvency Law; (ii) claims regarding salaries and severance payments, which occurred after the commencing of the insolvency proceedings; (iii) expenses associated with engaging persons whose participation in the insolvency proceedings is required but not mandatory (e.g., accountants, attorneys, etc.); (iv) utility and maintenance charges; and (v) other current obligations.

*First rank:* Claims connected with bodily injuries and other injuries to health.

*Second rank:* Claims of employees regarding their salaries and severance payments and royalties to the authors of items of intellectual property.

*Third rank:* Claims of all other creditors, including claims of state bodies (e.g., federal, regional government, tax, customs, pension funds, etc.).

The property available for distribution, including proceeds from the sale of assets, will subsequently be allocated among creditors of each rank on a pro rata basis. Secured claims are satisfied prior to other creditors' claims of the same rank.

The claims of third-rank creditors for damages in the form of lost profits, recovery of penalties (fines) and other financial sanctions, including sanctions for nonperformance or improper performance of the obligation to make mandatory payments, are recorded separately in the register of creditors' claims and are subject to satisfaction after the principal amounts due and interest due are repaid.

Based on established court practice, in some cases, claims of creditors affiliated with the debtor may be subordinated, i.e., satisfied only after the satisfaction of the claims of all of the first, second and third-rank creditors.

## 15.8 How are secured debts handled?

Secured creditors enjoy a special status during the insolvency proceedings, having the right to foreclose on the collateral and receive preferential repayment of their claims out of the proceeds. However,

unlike the ordinary out-of-insolvency foreclosure, the Insolvency Law introduced certain requirements and conditions for insolvency foreclosure to protect the rights of other non-secured creditors and the debtor.

For instance, during the financial rehabilitation or external management stages, a secured creditor is entitled to enforce the pledge/mortgage and receive the entire amount of the proceeds. However, the court is allowed to prohibit foreclosure on the pledged assets if this will entail an inability to reinstate the debtor's solvency. Additionally, written consent of a secured creditor must be obtained if the pledged assets are on sale together with other assets. However, the court is entitled to circumvent such consent, if the secured creditor acts in bad faith and the simultaneous sale of the pledged and non-pledged assets is more efficient compared to a separate sale.

During the insolvency liquidation stage, the pledged assets are sold at a public auction administered by the receiver. However, during the liquidation stage, the Insolvency Law restricts the secured creditor's right to receive the entire amount of the proceeds. In the event of a successful sale, a secured creditor will receive 70% of the proceeds from the assets' sale, and the remaining 30% will be used to cover claims of the creditors of the first and second ranks, as well as the court and the receiver's expenses. If the pledge was to secure the debtor's obligations under a credit agreement, 80% of the proceeds from the sale of the assets will go to the secured creditor and the remaining 20% will be used to cover claims of the creditors of the first and second ranks, as well as the court and receiver's expenses.

As for the moratorium interest accrued on the secured creditors' claims, such interest has no priority over the claims of unsecured creditors for the repayment of the principal debt. Therefore, the secured status does lead to the priority repayment of the financial sanctions before payments to other creditors. Such moratorium interest accrued on the claims of the secured creditors has priority only before the similar moratorium interest accrued on the claims of unsecured creditors.

Notably, according to the recent approach of the Supreme Court of the Russian Federation, the property taxes accrued on the pledged assets are subject to priority repayment before the secured and priority creditors.

For individuals, 80% of the proceeds are used to discharge the pledger's secured obligations, with 10% directed toward satisfying the claims of creditors of first and second ranks and the other 10% used to cover court and other costs.

During the creditors' meetings, the secured creditors can vote on matters of electing a bankruptcy manager, or filing for dismissal of the bankruptcy manager, as well as on any matters during debt rescheduling or seizure of individuals' property.

## 15.9 What are the grounds for the secondary liability of controlling persons?

### *Secondary liability*

Previously, the Insolvency Law contained only several articles regulating the secondary (personal) liability of the controlling persons. Such an approach was rather eclectic and left numerous troublesome issues of secondary liability to be resolved by court practice. However, in 2017, the rules of the Insolvency Law on secondary liability were significantly amended. The amendments broadened the definition of the controlling person, set forth detailed grounds for the secondary liability and introduced procedural rules aimed at the coherent application of the secondary liability instrument. In the same year, the Supreme Court of the Russian Federation issued clarifications to the amended provisions of the Insolvency Law that contained specific guidelines to the lower courts on how to apply the new secondary liability rules. Together with the amendments, the Supreme Court's clarifications contributed to the development of the secondary liability concept and its consistent application by the commercial courts.

A controlling person is broadly defined as an individual or a legal entity entitled to give obligatory instructions to the debtor regarding, among other things, the determination of the terms and conditions of the transactions of the debtor in the period not exceeding three years before the onset of insolvency indications. Under the Insolvency Law, the controlling status is presumed if a person owned more than 50% of the debtor's shares, controlled or had significant influence on the bankrupt's actions by kin or occupation, or could force the debtor to enter into unprofitable transactions. Moreover, even if a person had no corporate connections with the debtor (being neither director nor shareholder) but

still benefited from the unlawful and/or bad faith activity of the debtor's management/shareholders, such person is subject to secondary liability.

Notably the recent amendments to Insolvency Law set forth certain procedural rights of controlling persons. In particular, now the controlling persons may participate in earlier stages of insolvency case (i.e., consideration of the creditors' applications) that may affect their rights later even if the claim against controlling person hasn't been filed yet. Such practice had been introduced previously in several acts of the Supreme Court of the Russian Federation and allows the controlling persons to proactively protect their rights and mitigate liability risks.

Under the Insolvency Law, a controlling person of the debtor is subject to the secondary (personal) liability on the following grounds: (i) the controlling person failed to file for voluntary insolvency despite the onset of the insolvency indications; or (ii) the controlling person's actions and/or omissions caused the insolvency of the debtor and its inability to cover the creditors' claims. Moreover, apart from the secondary liability, if the controlling person's actions/omissions did not lead to the debtor's insolvency, but caused detriment to the creditors, the controlling person is subject to the damages compensation.

#### *Liability for failure to file for insolvency*

The company's director is obliged to file for voluntary insolvency (so-called voluntary filing) within a period of one month from the moment when a reasonable director acting in good faith should have become aware of the objective insolvency: the financial standing of the company when the overall amount of its outstanding obligations exceeds the total value of its assets. Failure to make a voluntary filing in the objective bankruptcy triggers the director's secondary liability.

Under the Insolvency Law, apart from the director, the shareholders of the company are also obliged to monitor the financial standing of the company and undertake actions aimed at protecting its creditors. Thus, if the insolvency indications are evident and the company's director does not apply for voluntary insolvency, the shareholders are obliged to convene a general meeting to approve a voluntary filing. If both the director and shareholders fail to do so, they are subject to joint and several secondary liability.



The voluntary filing is deemed necessary in the following cases:

- the satisfaction of the obligations before a certain creditor or group of creditors leads to the impossibility to satisfy the claims of other creditors
- the seizure of the company's assets under certain claims will make further business activity impossible
- the company has insolvency indications

The amount of the secondary liability for the failure to commence insolvency proceedings is equal to the overall value of the creditors' claims incurred after the date of mandatory filing. However, the Supreme Court of the Russian Federation clarified that courts may limit the scope of the liability if, despite the objective insolvency, the director and/or shareholders acted diligently and approved a crisis plan aimed at restoring the company's solvency. In this case, even if such a plan fails, the director and/or shareholders will not be liable for the claims incurred during the period when the performance of the plan was feasible.

*Liability for the impossibility to fully satisfy creditors' claims*

The Insolvency Law sets forth the secondary liability for the actions/omissions of the controlling persons, which made it impossible to fully satisfy the creditors' claims. To build a secondary liability case on these grounds, it should be proven that: (i) the controlling persons' actions caused damage to the company; (ii) the controlling persons' actions were unlawful; (iii) there is a causal link between the unlawful actions of the controlling persons and the damage incurred; and (iv) the controlling persons are at fault for the caused damage.

The company's directors and managers are deemed to be at fault in the following cases:

- the controlling persons executed, approved or benefited from the transactions, which caused significant detriment to the debtor and its creditors
- more than 50% of the creditors' claims listed in the creditors' register arose due to the tax, administrative or criminal violations of the controlling persons

- the controlling persons provided inaccurate or insufficient information to state registers (the companies register and the corporate register)
- the misrepresentation or absence of accounting reports and corporate documents significantly hinders the insolvency proceedings (if such circumstances are proved, in addition to the company's CEO and chief accountant, external accountants and organizations retained for keeping records may be held liable)

Under the Insolvency Law, the controlling person must prove the absence of its fault in the company's insolvency. In practice, this means that the controlling person must demonstrate to the court that it acted as a reasonable manager and did its best to minimize the risk of the company's insolvency. Here, the Supreme Court of the Russian Federation encourages lower courts to follow the so-called business judgment rule, restricting the liability for mere commercial decisions in line with the general business risks.

The scope of the secondary liability equals the amount of creditors' claims that remained unsatisfied in the course of the insolvency proceedings. From a practical standpoint, once the grounds for the secondary liability are established, courts suspend consideration of the secondary liability applications until the receiver complies with the bankruptcy estate and distributes the proceeds among the creditors. Then, when the outstanding balance of unpaid claims becomes evident, courts order the controlling persons to make an appropriate contribution. Notably, the amount of the moratorium interest is not included in the scope of secondary liability.

Information on claims against controlling persons for secondary liability must be made public through the Uniform Federal Register of Information on Bankruptcy. This rule helps the management and shareholders of the insolvent company to monitor the secondary liability applications and to undertake timely defense actions.

Recently, the Constitutional Court of the Russian Federation extended the rights of controlling persons that are defendants under the secondary liability claim. Under the new approach, the controlling persons enjoy the same scope of procedural rights in the insolvency

case as other parties and may contest creditors' claims filed against the debtor.

### *Administrative liability*

An insolvency practitioner, director and/or other controlling person, including shareholders, may face administrative liability. In particular, under the Russian Administrative Code, such persons may be held administratively liable for:

- fraudulent actions aimed at concealing/dissipating the assets of the debtor
- unlawful preferential satisfaction of claims aimed at establishing the priority of one creditor over the others
- failure to timely execute the obligation to commence voluntary insolvency
- obstruction of the insolvency proceedings (failure to transfer financial records, assets, etc.)
- evasion of the court decision on holding the controlling person secondary liable
- intentional insolvency (when the director intentionally takes business actions that ultimately result in the debtor's insolvency)
- sham insolvency (when the director intentionally makes the public believe that a company is insolvent)

The liability for these offences may vary from an administrative fine to disqualification (i.e., restriction to hold managing positions in corporate entities or the insolvency practitioner position). The court may impose disqualification for a period of six months to three years.

### *Criminal liability*

Under the Russian Criminal Code, the grounds for criminal liability are similar to the administrative liability grounds. The main difference between the criminal and administrative liability grounds is the amount of damages caused by illegal actions. If such an amount exceeds

RUB 2.25 million, the illegal actions fall within the definition of a criminal offence.

The liability for such crimes may vary from a criminal fine to imprisonment. Russian law does not envisage criminal liability for companies (e.g., if a shareholder is a legal entity) but, in this case, their officers could be prosecuted.

The court has discretion to impose disqualification on the shareholders/director/administrator as an additional criminal sanction. In this case, the period of restriction varies from six months to three years.

In July 2021, the President of the Russian Federation approved the amendments proposed by the State Duma of the Russian Federation, which introduced more a detailed and complex regulation of criminal liability for crimes connected to insolvency proceedings.

After the amendments were introduced, controlling persons became special subject to criminal liability for certain insolvency-related crimes: (i) dissipation/concealment of debtor assets; (ii) unlawful repayment of creditors' claims aimed at the detriment of other creditors; and (iii) obstruction of the insolvency proceedings (failure to transfer financial records, assets, etc.).

Despite strengthening the criminal sanctions, the amended Criminal Code introduced an opportunity to avoid criminal liability for bankruptcy-related crimes by means of so-called insider trading.

In order to avoid criminal liability, a defendant must: (i) commit the relevant crime for the first time; (ii) actively assist the prosecution; (iii) voluntarily reveal the beneficiaries of their unlawful actions; and (d) report the assets of such beneficiaries; while (iv) such assets must be sufficient to recover losses caused by the criminal offense.

## 15.10 Subordination of claims filed by controlling and/or affiliated creditors

Creditors with large claims listed in the register of an insolvent company have a significant influence over the insolvency proceedings. Such creditors may ultimately approve or disapprove the decisions of the creditors' meeting, the main body of an insolvent company that adopts

important decisions in the course of the insolvency proceedings. Thus, in order to gain control over the insolvency proceedings, the controlling persons, acting by themselves or through affiliated companies, would create an obligation with the distressed company, which would be listed, eventually, in the creditors' register. Such practices often caused detriment to the interests of independent creditors.

The Insolvency Law contains no explicit provisions regulating the issue of the controlling and/or affiliated creditors' claims. However, court practice elaborated the approaches, under which claims of controlling and/or affiliated creditors are subject to subordination (i.e., listing in the lower priority rank compared to third-party creditors) under certain circumstances. In January 2020, the Supreme Court of the Russian Federation summarized these approaches and issued an obligatory clarification on the subordination instrument to the lower courts.

In general, the following claims of the controlling and/or affiliated creditors are subject to subordination:

- 1) claims of compensatory nature aimed at financing the company during its unsatisfactory condition. This rule is closely related to the fiduciary duties of the directors and shareholders. Once the financial crisis becomes evident, the fiduciary duties oblige the shareholders to invest additional funds into the company's assets or charter capital. Under the Insolvency Law, such corporate contributions will not be listed in the creditors' register once the company becomes insolvent. However, if the shareholders finance the company by providing ordinary loans, the shareholders will receive an opportunity to return their de facto investments in the course of the insolvency proceedings. According to the Supreme Court of the Russian Federation, such privileges are unfair and should be avoided through subordination
- 2) claims that occurred as a result of the relocation of the debtor's assets. This applies to situations when the assets of the debtor were distributed to the affiliated company, which subsequently performed the debtor's obligations before the independent creditor. Under the RCC, such performance vests the affiliated company a "recourse" claim against the debtor. However, once the debtor becomes insolvent, such "recourse" claim will not be

listed in the debtor's register. Here, the Supreme Court of the Russian Federation states that the performance was possible only after the debtor was deprived of assets that could have been used to cover the creditors' claims and avoid insolvency. Thus, such "recourse" claims will be subordinated

- 3) claims of independent creditors acquired by the affiliated or controlling persons. From a practical standpoint, to receive a vehicle of control over the insolvency proceedings, affiliated or controlling persons would buy out a claim of an independent creditor and submit it for inclusion into the debtor's register. The Supreme Court of the Russian Federation clarified that in such circumstances courts must subordinate relevant claims as they have the compensatory nature. Later the Supreme Court of the Russian Federation restricted the subordination of claims acquired from the independent creditors by the affiliated or controlling persons, if such acquisition occurred after commencing the insolvency proceedings

Notably, the formal criteria for affiliation are owning more than a 20% participation interest (20% of shares) or belonging to the same group of companies. However, courts have moved beyond the formal criteria and introduced the so-called factual affiliation. Factual affiliation can stem from the fact that a creditor and a debtor have the same counterparties or the same ultimate beneficial owner. The list of affiliation criteria is not exhaustive.

Notably, the Supreme Court of the Russian Federation restricted the application of subordination rules within individual bankruptcy proceedings. However, courts are instructed to consider claims of the affiliated creditors more carefully in order to prevent inclusion of the false/sham claims into the creditors' register of the individuals.

## 16. Natural Resources (Oil and Gas / Mining)

### 16.1 What is the key feature of subsoil regulation in Russia?

Russia differs from other countries where the private ownership of minerals in the ground exists and where landowners have title to all mineral resources located below their land plots. All Russian subsoil resources in the ground, including oil, gas, gold and other minerals, unless extracted, are owned by the Russian state, irrespective of who holds the title to the relevant land plot.

Russia has adopted a licensing system. A subsoil license is a permit issued by the Russian state to its holder to explore for and/or extract natural resources. As a general rule, a subsoil license grants ownership title to extracted natural resources to its holder.

### 16.2 What is the legal framework for subsoil use?

The Constitution of the Russian Federation stipulates that subsoil use legislation falls within the joint competence of the federal and regional state authorities. However, in practical terms, the regional authorities have competence over deposits of certain commonly occurring mineral resources and insignificant subsoil blocks (so-called subsoil blocks of local significance, which are used for technical purposes).

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

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

The principal piece of legislation regulating operations with precious metals and gemstones in Russia is the Federal Law "On Precious Metals and Gemstones" dated 26 March 1998, as amended (the "**Precious Metals Law**"). The Precious Metals Law establishes the general legal framework for the processing, use and disposal of precious metals and stones, and has specific provisions on the geological survey and exploration and mining of such metals and stones.

### 16.3 What types of licenses can be issued in Russia?

There are the following types of subsoil licenses in Russia: geological survey licenses (covering prospecting and appraisal activities), exploration and production/mining licenses (covering advanced exploration and production activities) and "combined" licenses (covering both geological survey and exploration and production/mining activities).

### 16.4 What is the general term of a subsoil license?

A geological survey license may be granted for a maximum period of five years (seven-year geological survey licenses can be granted in certain Russian regions) or 10 years for offshore fields. The term of a license can be extended if needed for completion of the works. Exploration and production/mining licenses and "combined" licenses can be issued for a term equal to the life of the project. However, in practice, they are usually granted for 20-year or 25-year terms and can generally be extended, provided that there are no violations of the license terms and conditions by the license holder.

### 16.5 Who is in charge of licensing subsoil use?

Subsoil licenses are issued by the Federal Agency for Subsoil Use (the "**Rosnedra**"). Rosnedra is in charge of granting subsoil rights for all onshore deposits, except for "strategic" deposits (please see Section 16.10 below). Rights to strategic deposits (which include all offshore fields) may only be granted based on a special decision of the Government of the Russian Federation.



## 16.6 Are there any restrictions applicable to foreign investors on acquiring subsoil licenses in Russia?

Following amendments to the Subsoil Law enacted in 2022, only Russian companies and individual entrepreneurs may hold subsoil licenses in the Russian Federation, though foreign persons may, subject to certain restrictions, participate in the operation of Russian deposits under agreements on service risks (quasi-operatorship agreement) to be entered into with Russian subsoil license holders. Licenses for strategic deposits may be held only by Russian companies and only subject to additional restrictions which may be imposed by the Russian Government for national security reasons. The licenses for offshore fields may be held only by a Russian company that is more than 50% owned by the Russian state and has at least five years' experience in the development of offshore fields.

Foreign persons that held subsoil rights before the enactment of the aforementioned amendments to the Subsoil Law had to transfer subsoil rights, property and equipment required to carry out activities under their relevant subsoil licenses to a newly established Russian legal entity, and the relevant subsoil license had to be reissued to Russian legal entity accordingly.

Concurrently with the aforementioned amendments to the Subsoil Law, new regulations were enacted pursuant to which a branch/representative office of a foreign company connected with an "unfriendly" state (rather than any foreign company) and satisfying certain other criteria, that is a subsoil license holder in Russia, can be reorganized into a Russian company upon a decision of a Russian state court. The relevant subsoil licenses and other applicable permits should be transferred to such new Russian company and reissued accordingly. Foreign persons receive the same portion of shares in such Russian company as they have in the ancestor foreign legal entity, but their corporate rights in such Russian company may be disenfranchised at a decision of the Russian state court. The companies involved in LNG

projects within the framework of production sharing agreements (the "**PSAs**") are excluded from the scope of the aforementioned regulations.

In practice, there were only a few cases where a foreign company or a branch/representative office thereof directly held subsoil rights in Russia.

## 16.7 How can a subsoil license be obtained?

Geological survey licenses are issued without a tender or auction based on an application of the interested party.

Production/mining licenses and "combined" licenses can be granted:

- through a tender or auction
- under an out-of-auction decree of the Russian Government in certain specific instances (e.g., offshore exploration or shelf exploration/production)
- to a holder of geological rights that made a commercial discovery under a geological survey license

A mandatory prerequisite to the issuance of a strategic deposit license is a decision issued by the Government of the Russian Federation. Such a license may also be issued without a tender or auction.

## 16.8 Can rights under a subsoil license be transferred?

Subsoil rights in Russia are not freely transferable. This means that they cannot be directly sold, pledged or otherwise encumbered.

However, the Subsoil Law permits a transfer of subsoil rights in certain instances (except for a transfer of rights to strategic deposits to companies with foreign participation), which makes such rights transferable to a limited extent. Such instances include:

- transfer of subsoil rights from a parent company to its subsidiary and vice versa and transfer between subsidiaries of the same parent company

- transfer following a merger of the license holder with and into another company
- transfer following a consolidation of the license holder with another company
- transfer following a spin-off or split-off of a new company

Any such transfer of subsoil rights requires the special approval of Rosnedra. Rights to strategic deposits are not transferrable to companies with foreign participation unless otherwise determined by the Government of the Russian Federation for a specific deposit.

### 16.9 How is the transfer of subsoil rights granted under the relevant license effected?

Subsoil licenses are generally non-transferable and can only be transferred to another entity in a limited number of instances (e.g., transfers to a subsidiary or a sister/parent company and vice versa, transfers as a result of a spin-off or split-up, or following part of the bankruptcy sale of the license holder's assets). To implement the transfer of rights granted under the relevant license, the transferee in most instances should:

- comply with all relevant requirements applicable to subsoil license holders established by Russian law
- have all relevant equipment and assets (including in-field infrastructure) required for performance of work contemplated by the relevant license and proper performance of the license obligations (asset transfers to the transferee are a mandatory prerequisite for the transfer of the relevant license)

It could take approximately 140 days to have a subsoil license transferred. The terms of the subsoil use and the license obligations cannot be revised or otherwise amended at the time of the transfer (i.e., the relevant license would be reissued to the transferee on the same terms and conditions as it was granted to the transferor).

## 16.10 What are "strategic" deposits?

In 2008, Russia introduced a set of restrictions for foreign investors in respect of strategic subsoil blocks (subsoil blocks of federal significance). Such restrictions are outlined in Section 3 ("Promoting Foreign Investment in Russia") of this guide.

Strategic deposits include the following:

- subsoil blocks containing deposits of uranium, high-purity quartz, the yttrium group of rare earths, nickel, cobalt, tantalum, niobium, beryllium, hard rock (ore) lithium deposits, hard rock deposits of diamonds or hard rock (ore) deposits of the platinum group of metals with reserves (irrespective of their size) registered in the State Register of Reserves<sup>197</sup>
- subsoil blocks containing, as evidenced by the State Register of Reserves, deposits with:
  - recoverable oil reserves equal to or exceeding 70 million tons
  - gas reserves equal to or exceeding 50 billion cubic meters
  - hard rock (ore) gold reserves equal to or exceeding 50 tons
  - copper reserves equal to or exceeding 500,000 tons
- subsoil blocks located in the inland sea waters, territorial sea waters or on the continental shelf of the Russian Federation (so-called offshore deposits)
- subsoil blocks that can only be developed on land that is used for defense and security

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<sup>197</sup> Starting from 1 January 2006.

The list of subsoil blocks of federal significance is published by Rosnedra, which includes approximately 1,000 strategic deposits, and is updated on a regular basis. It is noteworthy that the list is not exhaustive and any deposit that meets the above criteria will be deemed strategic, irrespective of whether it is included on the list.

### 16.11 Is the extraction of natural resources under production sharing agreements a viable alternative to a subsoil license?

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

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

Due to the above, and due to the PSA tax regime established at the same time, in practice, PSAs have become largely ineffective in terms of attracting foreign investment to Russia.

### 16.12 Is it possible to export natural gas and LNG from Russia?

Gazprom and its wholly owned subsidiaries hold exclusive rights for the export of natural gas. Since 1 December 2013, rights to export liquefied natural gas (the "**LNG**") have been granted to the following categories of exporters in addition to Gazprom and its wholly owned subsidiaries:

- (i) subsoil users holding subsoil licenses for strategic deposits if their subsoil license as of 1 January 2013 envisaged either (i) development of an LNG plant or (ii) recovery of natural gas for further liquefaction at an LNG plant, and production of LNG from natural gas extracted at the aforementioned strategic deposits or other strategic deposits the licenses for which were granted to such subsoil users after 1 January 2013
- (ii) subsoil users holding subsoil licenses for strategic deposits granted to such subsoil users after 1 January 2013 and envisaging LNG production from natural gas, if such subsoil users are more than 50% owned by persons holding by more than 50% in the capital of any of the subsoil users referred to in (i) above
- (iii) Russian companies meeting all of the following criteria:
  - more than 50% owned by the Russian Federation;
  - holders of subsoil licenses in respect of Russian offshore fields; and
  - producers of LNG from natural gas extracted from the fields mentioned above or under PSAs
- (iv) 50%+ subsidiaries of companies meeting the criteria set out in item (ii) above, if such subsidiaries produce LNG from natural gas recovered under PSAs

## 16.13 What is it essential to know about precious metals and gemstones?

Under the Precious Metals Law, precious metals include gold, silver, platinum, palladium, iridium, rhodium, ruthenium and osmium; and gemstones include natural diamonds, emeralds, ruby crystals, sapphires, alexandrites, and natural pearl and unique amber formations. Artificially created materials, even if they have the same properties as

gemstones, are not subject to the Precious Metals Law. Both lists, i.e., of precious metals and gemstones, are exhaustive.

In 2020 a unified state information system (*ГИИС ДМДК [GIIS DMDK]*) was established to monitor all stages of turnover of precious metals, gemstones and products made of precious metals and gemstones.

#### 16.14 Who can refine precious metals?

Precious metals, with the exception of native metals, may be refined by organizations included on a special list of companies authorized to do so, which is maintained by the Government of the Russian Federation. Following the refining process, precious metals may be sold on the domestic market. Export requires a separate export license, which, in practice, is usually granted to banks and major producers.

#### 16.15 Are precious metals and gemstones freely traded?

It is important to note that the Russian authorities enjoy the right of first refusal to purchase precious metals and gemstones from mining companies. The prices for precious metals in such instances are based on world market prices. The pricing of precious stones is carried out by expert commissions based on world market prices.

From 1 September 2022 to 28 February 2023 inclusive, a temporary ban is established on the export from the Russian Federation of waste and scrap of precious metals or metals plated with precious metals, other waste and scrap containing precious metal or precious metal compounds used primarily for the extraction of precious metals, as well as waste and scrap of electrical and electronic products used primarily to extract precious metals, which are essential to the domestic market of the Russian Federation.

#### 16.16 Does Russia have any environmental and climate laws affecting the natural resources industry?

Russia has an extensive system of environmental laws and regulations governing air emissions, water discharges and waste generation. Such laws and regulations have been recently materially revised, in particular,

in terms of requirements to implement so-called "best available technologies."

In October 2021, the Russian Government approved the Low-Carbon Development Strategy until 2050 projecting carbon-neutrality by 2060. Russia has recently launched a two-tier carbon market – creating a national voluntary carbon market and compliance-based emissions trading system in Sakhalin which may be expanded to other regions. Russia continues developing other laws and running strategic low-carbon development and other ESG-related programs.

For further details on the Russian environmental and climate agenda (including energy efficiency, renewable energy, electric vehicles, and hydrogen) please refer to Section 20 ("Sustainability / Environmental, Social, and Corporate Governance") of this guide.

### 16.17 Does Russian law incentivize investments in natural resources projects?

Some types of projects in the natural resources field may be eligible for certain incentives in exchange for major capital investments. For instance, investors in the construction or modernization<sup>198</sup> of LNG facilities may consider entering into an investment protection and promotion agreement (the "**SZPK**") with the authorities.<sup>199</sup>

For further details on SZPK and other Russian investment incentives regimes please refer to Section 3.4 of this guide.

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<sup>198</sup> Including with a view to greater environmental efficiency.

<sup>199</sup> Oil and gas extraction, liquid fuels production (save for LNG and a few other products) and some other industries are not eligible for SZPK.



## 17. Power

### 17.1 How is the Russian power market structured?

The Russian power market has a two-tier structure, as follows:

- **wholesale power and capacity market (the "WPCM")** — This is where power producers of more than 25 megawatts sell power and capacity to major consumers, utilities<sup>200</sup> and grid operators.<sup>201</sup> Power is traded via spot market and bilateral agreements. Capacity is traded separately from power via various types of capacity supply agreements and auctions<sup>202</sup>
- **retail power markets** — This is where (i) utility companies resell power purchased on the WPCM to retail corporate and individual consumers and (ii) power producers of less than 25 megawatts sell power to utilities, consumers or local grid operators

Geographically, the Russian power system is divided into three types of zones:

- **WPCM price zones** stretch across the European part of Russia and the Urals (zone 1) and the western part of Siberia (zone 2). Power prices within the pricing zones are generally unregulated

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<sup>200</sup> Including independent utilities and guaranteeing suppliers (last-resort suppliers). The last-resort suppliers are required by law to enter into a power purchase (supply) agreement with any customer.

<sup>201</sup> Grid operators cannot sell power and may only purchase it for their own needs and to compensate for their grid losses. Grid operators with the status of guaranteeing suppliers (last-resort suppliers) may also purchase power to perform their respective obligations under power supply agreements.

<sup>202</sup> The sale of capacity implies (i) an obligation of a WPCM power supplier to maintain and repair its generation equipment in a standby mode to produce electricity, and (ii) a corresponding right of other WPCM to demand fulfillment of the said obligation in accordance with the terms of the executed capacity supply agreements.

The capacity trade aims to ensure reliable and uninterrupted electricity supply on the wholesale market. Payments for capacity aim to ensure the return of investments into the construction of new or the upgrade of existing generating facilities.

- **WPCM non-price zones** include Kaliningrad, Arkhangelsk, Komi and the southern part of the Far Eastern regions. Such zones imply certain pricing regulation
- **isolated territories** include large parts of Siberia and the Far East technologically disconnected from Russia's national grid. The isolated territories are a retail market-only area and the WPCM does not exist there. Power prices in isolated territories are state regulated

Russia expects to start a new unified power market of Russia and Belarus in January 2024 pursuant to a relevant interstate treaty. Such a unified market may commence operating via trading between Russian and Belorussian authorized organizations.<sup>203</sup>

Russia and other states are also working to build a single power market of the Eurasian Economic Union (the "**EAEU**").<sup>204</sup>

## 17.2 What is the regulatory framework for the power industry in Russia?

The Russian power industry is heavily regulated. The following federal laws determine its core aspects:

- Federal Law "On Electric Power" dated 26 March 2003, as amended (the "**Power Law**")
- Federal Law "On Heat Supply" dated 27 July 2010, as amended
- Federal Law "On Gas Supply" dated 31 March 1999, as amended
- Federal Law "On Energy Saving and Energy Efficiency" dated 23 November 2009, as amended

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<sup>203</sup> Energy Committee of the State Duma submitted respective draft law (agreed by Belarus) to the Government of the Russian Federation on 16 March 2023. See: Big Power News, Draft treaty on unified power market between Russia and Belarus has been submitted to the Government of the Russian Federation (17 March 2023) <<https://www.bigpowernews.ru/markets/document107946.phtml>>.

<sup>204</sup> RG, EAEU will create a unified power market (26 May 2022) <<https://rg.ru/2022/05/26/v-eaes-sozdadut-edinyj-energeticheskij-rynok.html>>.

- various environmental and climate laws having an increasing role in respect of the power sector — being the top contributor to Russia's air pollution and greenhouse gas emissions<sup>205</sup>

The Russian Government details provision of the power laws, particularly, via the following decrees:

- "On Approval of the Rules for the Wholesale Market of Electric Power and Capacity" dated 27 December 2010, as amended (the "**Wholesale Market Rules**")
- "On Functioning of Retail Power Markets, Full or Partial Limitation of Power Use Conditions (with Basics for Functioning of Retail Power Markets, Rules for Full or Partial Limitation of Power Use Conditions)" dated 4 May 2012, as amended
- "On Approval of the Rules for Non-Discriminatory Access to [various industrial] Services and the Rules for Technological Adherence [of consumers, power generators, grid infrastructure objects] to the Electricity Transmission Grid System" dated 27 December 2004, as amended
- "On Pricing in the Sphere of Regulated Prices (Tariffs) (with the Basics for Determination of Prices and Rules for Governmental Pricing Regulation)" dated 29 December 2011, as amended

Another major source of regulation is the Agreement on Accession to the Trading System of the Wholesale Power and Capacity Market (the "**Accession Agreement**") adopted by the Market Council.<sup>206</sup> The Accession Agreement contains numerous annexes, such as regulations and standard documents that underpin the WPCM design and trading mechanisms. Execution of the Accession Agreement is mandatory for any entity joining the WPCM.

In February 2023 the Ministry of Energy adopted the Scheme and Program for the Development of Electric Power Systems of Russia for 2023–2028. It is a key document setting Russia's power system

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<sup>205</sup> See Section 20 of this guide for details on Russian climate, environmental and cleantech policies.

<sup>206</sup> Association "Nonprofit Partnership Council for Organizing Efficient System of Trading at Wholesale and Retail Electricity and Capacity Market."

development objectives.<sup>207</sup> According to it, by 2028 Russia plans to achieve:

- **258.6 GW** – total installed power capacity
- **7.9 GW** – installed capacity of newly commissioned thermal power plants
- **3.09 GW** – installed capacity of newly commissioned renewable power plants
- **2.7 GW** – installed capacity of newly commissioned nuclear plants

## 17.3 What are the main market regulators and commercial infrastructure players?

### 17.3.1 Regulators

The Russian power market is regulated and supervised by various authorities, primarily:

- **Government of the Russian Federation**, which issues a number of cornerstone decrees and regulations elaborating the basic provisions of the Power Law
- **Ministry of Energy**, which is generally responsible for the electric power and heat sector
- **Ministry of Economic Development**, which oversees the power industry's macroeconomic markers, energy efficiency and integration into Russia's climate policy objectives
- **Ministry of Trade and Industry**, which is responsible for various power equipment localization policies, incentives and related matters

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<sup>207</sup> Ministry of Energy Decree of No. 108 dated 28 February 2023 "On Approval of the Scheme and Program for the Development of the Electric Power Systems of Russia for 2023–2028."

- **Federal Antimonopoly Service ("FAS")**, which regulates tariffs for electric power and aims to maintain a competitive environment on the market

### 17.3.2 Commercial and technological infrastructure companies

The following organizations are responsible for the technological and commercial operation of the WPCM:

- **Market Council** supervises the WPCM operation, develops and updates documents such as the Accession Agreements, capacity supply agreements and other standard agreements, and participates in the strategic development of the power market
- **Administrator of Trading System (the "ATS")**<sup>208</sup> administrates the WPCM and facilitates the trades on standard terms by bringing together sellers and purchasers. The ATS is wholly owned by the Market Council
- **Center for Financial Settlements (the "CFS")**<sup>209</sup> acts as an intermediary with respect to payments in the WPCM. The CFS is owned by the Market Council and the ATS
- **System Operator (the "SO")**<sup>210</sup> exercises centralized operational-dispatching management of the Russian Unified Power System. It also auctions the rights to enter into certain types of capacity supply agreements. The SO is wholly owned by the Russian Federation
- **Federal Grid Company (the "FGC")**<sup>211</sup> transmits power via the Russian unified grid. The FSC is a publicly traded entity, though the majority of its shares are indirectly owned by the Russian Federation

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<sup>208</sup> Joint-Stock Company "Administrator of Trading System."

<sup>209</sup> Joint-Stock Company "Center for Financial Settlements."

<sup>210</sup> Joint-Stock Company "System Operator of the Unified Power System."

<sup>211</sup> Public Joint-Stock Company "Federal Grid Company of Unified Energy System."

In December 2022, the State Duma passed in the first reading a draft law to kick-off demand-response management at WPCM by the respective service providers (aggregators). Demand response aims to incentivize power users to adapt their normal load schedule in response to changing power market prices or incentive payments to reduce peak load on power grids.

In January 2023 the Government extended the pilot regulation being the basis for demand-response management on retail power markets.

### 17.3.3 Associations

There are a number of associations in the renewable energy sector that aim to consolidate the efforts of renewable energy market participants. The major one is the Russian Renewable Energy Development Association (the "**RREDA**"). The RREDA unifies major renewable energy generators, equipment manufacturers, several banks and other entities. The RREDA's core objective is to engage with state authorities regarding the development of renewable energy laws and regulations.

Other associations focus on specific forms of renewable power, such as the Russian Association of Wind Industry (the "**RAWI**"), Photovoltaic Industry Association (the "**PIA**") and the Russian Hydropower Association.

## 17.4 How can a foreign investor enter the Russian power market?

### 17.4.1 WPCM

Access to the WPCM requires a number of steps, including the following:

- becoming a member of the Market Council
- executing the Accession Agreement
- registering a group of power delivery points with a capacity of at least 5 megawatts

- equipping each group of delivery points with an automated power metering system

Operations in the WPCM may be subject to some additional requirements, such as the need to win competitive bids for the right to enter into agreements to supply renewable capacity or capacity of upgraded conventional power. Participation in such bids requires the use of localized equipment and compliance with other requirements.

#### 17.4.2 Retail markets

Retail markets have no special entry requirements comparable to the execution of the Accession Agreement prior to joining the WPCM. However, depending on a particular project, there might be additional requirements. For instance, renewable power installations purporting to enjoy the feed-in tariff when selling power to local grid operators must be included in the regional power sector development scheme in order to qualify for respective incentives as set out below.

#### 17.4.3 Other potential considerations

Other than that, foreign investors may also be subject to general clearances (e.g., antimonopoly clearance and strategic company clearance) and restrictions. Please refer to Section 53 ("Promoting Foreign Investment in Russia") and Section 10 ("Property Rights") for further details.

In addition, as a matter of practice, companies carrying out business on the power market often have to deal with information classified as a state secret in Russia. Accordingly, companies need to make sure that the management team members with access to relevant information are duly authorized and, in particular, do not include non-Russian citizens. However, in our experience, this does not prevent foreign investors from investing into and operating businesses in the Russian power sector.

#### 17.5 Is it possible to export power from Russia?

Russian law does not impose any restrictions on participants of the WPCM performing export (as well as import) operations. It also follows from the Accession Agreement that any participant can export power and capacity from the domestic market, provided that it:

- complies with certain provisions of the Wholesale Market Rules and the Accession Agreement
- is registered by the Market Council as a company performing export and import operations

However, in practice, obtaining the right to sell electricity outside Russia has proven to be problematic due to the implicit export monopoly of the state-controlled open joint-stock company Inter RAO UES. The procedure for obtaining the status of export company involves a certain degree of discretion by the Market Council.

Since June 2022 export supplies to the EU have been terminated due to the impossibility of monetary settlements against the background of sanctions. Despite that, System Operator estimates that Russian electricity exports to the EU will reach 6.4 billion kWh in 2023.<sup>212</sup> At the same time Inter RAO UES set a record for electricity supplies from Russia to China and Mongolia in 2022 which increased by 15-20%.<sup>213</sup>

## 17.6 Are there any incentives for the modernization of conventional power stations?

According to some experts, as of today, Russia has an overall net excess (profit) of installed capacity. However, a significant number of conventional installed capacities are materially used up and require modernization. Some capacities are subject to decommissioning.

In February 2019, the Russian Government introduced a major program for the modernization of up to 43 gigawatts of the Russian energy system until 2035 based on localized large-scale gas turbines — commonly referred to as the CSA-2 program.

The program envisages a new stage of the use of standardized long-term capacity supply contracts (the "**CSAs**") and respective capacity payments with a guaranteed investment return rate within 16 years.

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<sup>212</sup> Kommersant, The power of alternating current (13 January 2023) <[https://www.kommersant.ru/doc/5761297?utm\\_source=yxnews&utm\\_medium=desktop](https://www.kommersant.ru/doc/5761297?utm_source=yxnews&utm_medium=desktop)>.

<sup>213</sup> RIA News, Inter RAO set a record for electricity supplies to China and Mongolia (25 January 2023) <<https://ria.ru/20230125/elektroenergiya-1847281165.html>>.



## 17.7 Are there any notable smart power regulatory developments?

In March 2020, the Government supplemented the Russian retail power markets rules<sup>214</sup> with a concept of "active power units" (the "**APU**").<sup>215</sup> APUs are not limited by power source, but presumably can be - renewable power-based.

The APU may consist of a power generating facility up to 25 megawatts and power receiving equipment of industrial enterprises, administrative, business and shopping centers that are located within Russia's national grid and meet certain criteria and requirements, such as the following:

- the APU should not be registered in the WPCM
- only one of the facilities comprising the APU is connected to the grid of the local grid operator
- all facilities are interconnected through power equipment that is not owned by the grid operator
- power production, consumption and balancing by the APU facilities have to be controlled by a smart connection system (equipment and software) that meets certain requirements
- the APU cannot include household residents and some other types of consumers

Until 31 December 2030, Russia will be implementing pilot APU projects with a view of innovating technologies deployment. Companies interested in participating in such projects should apply to the System Operator.<sup>216</sup> The System Operator administers the application review

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<sup>214</sup> Annex 5 to the Russian Government's decree of 4 May 2012 No. 442 "On Retail Powers Markets Operations, Complete and (or) Incomplete Power Consumption Limitation."

<sup>215</sup> In Russian: *активные энергетические комплексы*.

<sup>216</sup> JSC System Operator of the Unified Power System, it exercises centralized operational-dispatching management of the Russian Unified Power System.

jointly with the Russian Ministry of Energy, the FAS, the Market Council and the Infrastructure Center Energynet.<sup>217</sup>

Some say<sup>218</sup> that APUs will be primarily established in special economic zones (the "**SEZ**"), advanced social and economic development territories (the "**ATD**") and other similar territories.<sup>219</sup>

## 17.8 Are there any incentives for renewable energy projects?

Below is a brief description of the incentives for both WPCM and retail segments of the Russian renewables market. Russian corporates are also looking to unleash the potential of corporate power purchase agreements (the "**PPAs**") by adapting the US/EU PPAs models to Russian regulatory and market specifics.

For further details on Russian renewables programs and other elements of sustainability policy, please refer to Section 20 ("Sustainability / Environmental, Social, and Corporate Governance").

### 17.8.1 General

Russian law provides incentives for both retail and wholesale power generators. In both cases, the generators are entitled to the incentives if, among other things, they undergo certain competitive bids selections followed by facility qualification by the Market Council.

### 17.8.2 WPCM

The Wholesale Market Rules enable wind, solar and small hydro power generators to bid, through an auction process run by the ATS, to enter into a capacity supply agreement (the "**CSA RES**"). Generators that enter into CSA RES recoup their investments into WPCM renewable

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<sup>217</sup> Administers the government-approved roadmap for implementation of the energy stream of Russia's National Technological Initiative until 2035.

<sup>218</sup> "Decentralized Power Integrator" (3 October 2018)  
<https://www.kommersant.ru/doc/3758001>.

<sup>219</sup> See Section 3.4 of this guide for additional information on incentives available in such territories.

projects via monthly capacity payments over 15 years with a guaranteed investment return rate.

Participation in a CSA RES bid implies compliance with a number of requirements such as local content of equipment.

### 17.8.3 Retail markets

Renewable power producers with a capacity up to 25 megawatts<sup>220</sup> may sell their power to local grid operators.<sup>221</sup> Such operators are legally required to purchase that power to compensate for their grid losses on a first-priority basis.

The price for such power is defined under regulated tariffs that aim to ensure recoupment of investments over 15 years with a 12% return rate — similarly to capacity payments in the WPCM.

The types of renewable power eligible for this incentive are more extended as compared to the wholesale market, e.g., biomass, biogas and landfill gas projects may also enjoy the incentive.

### 17.8.4 Microgeneration

The Power Law defines the following key features of a microgeneration facility, including renewables-based:

- capacity up to 15 kilowatts
- technological connection to power grid of up to 1,000 volts
- usage for individual household consumption, business needs or sale under retail market rules

Owners of microgeneration facilities are entitled to sell the excess (unused) electricity generated by such facilities to retail purchasers such as utility companies or guaranteeing suppliers. The revenues from such sale are exempt from personal income tax.

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<sup>220</sup> Although some projects are structured in a way that the aggregate capacity exceeds 25 megawatts.

<sup>221</sup> Operating within a territory of a relevant constituent entity of the Russian Federation. In Russian — *территориальные сетевые организации*.

The guaranteeing suppliers are legally obliged to execute the power purchase agreement with the owner of a microgeneration facility that meets applicable requirements. The purchase price for micro-generated power under such agreements cannot exceed the WPCM prices relevant for the guaranteeing supplier.

### 17.9 Are national guarantees of origin or voluntary renewable energy certificates available in Russia?

In 2020, Russian renewables and large hydro producers are already issuing and selling international renewable energy certificates (the "**I-REC**"). The I-REC registry has been administered by I-REC Services BV, a private entity. Nonprofit association "Goal Number Seven" has been acting as the local issuer of I-RECs. In March 2022 I-REC suspended its Russian operations.

Currently, Russian power producers are able to issue and sell certificates using the registry operated by a new private actor – Carbon Zero. There have already been some landmark transactions with Carbon Zero certificates.

In the meantime, Russian legislators are developing a national system of origin guarantees. On 17 November 2022 State Duma passed the draft law on "low-carbon" certificates in the first reading. If the law is passed, Russian renewable, large hydro and nuclear power producers will be able to issue such certificates via a registry operated by the Market Council or other state-authorized operator.

### 17.10 Are there any programs relating to hydrogen production and use?

In June 2020, the Russian Government approved Russia's new Energy Strategy until 2035. According to the strategy, one of the objectives is the development of hydrogen production and consumption in Russia and the Russian Federation becoming one of the world leaders in hydrogen production and export.

In June 2021, the Government approved the Hydrogen Strategy until 2050. It projects that Russia will export up to 0.2 million tons of low-carbon hydrogen by 2024, up to 12 million tons by 2035 and up to 50 million tons by 2050.

The said documents envisage the set up of four regional clusters: (i) Eastern cluster in Sakhalin — for Asia Pacific-directed export and some internal consumption; (ii) Northwestern in Leningrad region, Russia's Baltic shore — for EU-directed exports and decarbonization of local exporters of carbon intensive goods; (iii) Arctic — for low-carbon autonomous energy supplies; and possibly (iv) Southern — in Russia's southwestern sea shores.

For details on Russian hydrogen strategy, please refer to Section 20.2.4 of this guide.

### 17.11 Are there any other incentives for investments in the power sector, including renewables and hydrogen?

Russian law provides for a number of special regulatory regimes incentivizing major capital investments (including in the power sector) through the stabilization of regulatory regimes and offering tax, customs and other benefits. Many of them are potentially applicable to power projects.

Such regimes may derive from: (i) agreements with authorities, such as investment protection and promotion agreements with state authorities; (ii) priority or strategic investments status in a particular region; (iii) residency in territories with special status — SEZs, territories of advanced development and territories with unique status — such as Russian Arctic Zone; and (iv) certain tax and other benefits. For further details, please refer to Section 3.4 of this guide.

## 18. Insurance in Russia

### 18.1 Which law regulates insurance in Russia?

Insurance activities in Russia are mainly regulated by Federal Law No. 4015-1 "On the Organization of the Insurance Business in the Russian Federation" dated 27 November 1992, as amended (the "**Insurance Law**"), and the Civil Code of the Russian Federation (the "**Civil Code**"). In the cases envisaged by the Insurance Law, federal executive authorities may adopt further regulatory acts governing insurance procedures. Since 1 September 2013, the insurance business has been supervised by the Central Bank of Russia (the "**Bank of Russia**"), which is responsible for issuing insurance licenses and monitoring insurers' compliance with applicable regulations.

### 18.2 What are the types of licenses required?

Conducting insurance activities in Russia requires a license. Pursuant to the Insurance Law, insurers must be legal entities incorporated in accordance with Russian legislation (except for foreign insurers, as described in Section 18.4 below) and they need a Russian license to conduct insurance business.

Insurance agents and/or brokers can conduct intermediary activities in the Russian insurance market. Under Russian law, the difference between insurance brokers and agents is that a broker is not allowed to act in the name of or on the instructions of an insurer, and an agent is not allowed to act in the name of or on the instructions of an insured party. In addition, the Bank of Russia must license brokers, whereas agents do not need a license. Brokerage and agency activities may not be combined under Russian law. Brokerage or agency activities related to concluding or performing the insurance policies of foreign insurers that do not have a license in Russia or foreign insurance brokers are not permitted in the territory of the Russian Federation (this restriction does not apply to reinsurance).

### 18.3 Are there any restrictions on foreign investments?

Foreign investors may access the Russian market via their Russian subsidiaries. Russian law bans insurance activities by insurance

companies that are subsidiaries of foreign investors or where more than 49% of their charter capital belongs to foreign investors, unless the foreign investor has been operating as an insurance company in a given locality for at least five years.

Even if the above-mentioned insurance companies with foreign ownership are able to carry out insurance activities, in any case they cannot provide the following insurance:

- certain types of mandatory insurance if paid for by the budget (normally, applicable to some categories of governmental municipal employees)
- in connection with state or municipal procurement contracts
- insurance protecting the proprietary interests of state and municipal organizations

At the same time, Article 6(10) of the Insurance Law provides an exemption to these restrictions. This exemption applies to subsidiaries of foreign companies and to companies with foreign capital exceeding the 49% limit that were established before 22 August 2012 and, at that moment, were entitled to provide the currently restricted types of insurance.

There is a quota for the maximum foreign capital compared to the aggregate capital of insurance companies operating in Russia. Under the terms negotiated upon Russia's accession to the World Trade Organization (the "WTO"), this quota was set at 50% of the aggregate capital of insurance companies. Should the amount of foreign capital invested into the sector exceed this quota, the regulator is no longer allowed to issue licenses to insurance companies that are affiliates of foreign insurers or are more than 49% foreign-owned.

#### 18.4 Can foreign insurance companies carry out insurance activities in Russia?

From 22 August 2021, foreign insurers from WTO member states can carry out insurance activities in the Russian Federation. To operate in the Russian market, foreign insurance companies must obtain a license from the Bank of Russia and open an accredited branch office.

Foreign insurance companies are granted the status of an insurer on a par with Russian insurance companies, pursuant to obligations undertaken by the Russian Federation when it joined the WTO. However, the business activities of foreign insurance companies are subject to a number of restrictions.

They cannot provide mandatory insurance coverage (with the exception of third-party vehicle liability insurance), insurance for state and municipal tenders or property insurance for state and municipal organizations, as well as several other types of insurance.

To open a branch in the Russian Federation, a foreign insurance company must:

- be registered in a WTO member country
- have the right, in that country, to provide the same types of insurance that it intends to provide in Russia, and must have had such right for at least eight years (for life insurance) or five years (for other types of insurance and/or reinsurance)
- have at least five years' experience providing such types of insurance through its branches in other countries
- have assets worth at least USD 5 billion
- not be registered in an offshore jurisdiction, and not have among its shareholders and controlling parties any organizations registered in an offshore jurisdiction

A foreign insurance company can operate in the Russian Federation only if an agreement was concluded between the Bank of Russia and the relevant regulator in the country where the insurance company is registered. In addition, the 50% limit on foreign participation in the aggregate charter capital of insurance companies, mentioned in Section 18.3, applies. If the limit is exceeded, the Bank of Russia ceases to issue licenses to foreign insurance organizations or accredit branches of foreign insurers in Russia.

The foreign insurance company bears liability for the obligations of its Russian branch. Russian law also requires such company to maintain a guarantee deposit for its branch in a special ruble bank account. The



total amount of such deposit is determined as the aggregate of the minimum guarantee deposit (RUB 300 million, indexed depending on the insured property) and the calculated amount of the guarantee deposit (determined based on actuarial calculations).

Foreign reinsurers not licensed locally may still provide reinsurance services for Russian insurers without obtaining a license in Russia. In reinsurance matters, Russian insurers have traditionally worked closely with foreign reinsurers. However, a Russian insurance company that intends to reinsure risks, irrespective of whether the reinsurer is a Russian or non-Russian company, is required to offer 50% of the risks that it wants to reinsure to the Russian National Reinsurance Company (the "**RNRC**").

The Bank of Russia established an exception to such mandatory transfer of risks to the RNRC. Until December 31, 2023, the requirement does not apply to insurance payment obligations under insurance contracts if (i) the participation share of one party to the contract in the capital of the other party is not less than 25%, and (ii) the reinsurer has an insurance license in Russia.

## 18.5 How are the insurance market and products regulated?

The Insurance Law contains a general description of the organization of the Russian insurance market, licensing requirements, the operation and liquidation of insurance businesses, requirements relating to the financial stability of insurers, and the regulation of other participants in the Russian insurance market such as insurance brokers and dealers.

The Civil Code establishes the types of insurance, the concept and compulsory terms of insurance contracts, the rights and duties of parties to such contracts, rules for changing the parties and beneficiaries to insurance contracts, rules for the termination of insurance contracts, and other fundamental insurance-related regulations. In particular, Article 934 of the Civil Code establishes the basis for personal (life and health) insurance and Article 929 establishes the basis for proprietary insurance (property insurance, liability insurance and business risks insurance).

Insurers are obliged to provide tools for online interaction between insurers and customers. In particular, a customer may apply for insurance or receive payments through the insurer's official website. In

2019, Article 940 of the Civil Code was amended, specifically allowing policies to be issued in electronic form. Moreover, in 2020, financial platforms were established to serve as a tool for electronic document flow between the insurance market participants.

## 18.6 What are the different types of insurance in Russia?

Russian law provides for two basic types of insurance: personal insurance (such as life, health and medical insurance) and proprietary insurance (insurance of property, liability insurance and business risks insurance). Life insurance may not be combined with proprietary insurance, i.e., an insurer may offer either life, health and medical insurance or health, medical and proprietary insurance.

The law also mentions the possibility of issuing insurance policies incorporating investment elements into life insurance. Such policies are sold mostly by banks acting as insurers' agents, and the policies are subject to specific information disclosure standards set forth by the Bank of Russia.

The Civil Code extends its effect with certain exemptions to export credit insurance and investments against business and/or political risks. The Russian Agency for Export Credit and Investment Insurance serves as a tool of the Russian Government in this sphere.

## 18.7 What are special economic measures in the sphere of insurance?

Until 31 December 2023, Russian insurers are prohibited from entering into transactions with insurers, reinsurers and insurance brokers that are residents of "unfriendly" states, or persons controlled by residents of "unfriendly" states save for transactions related to export of food and mineral fertilizers (Federal Law No. 55-FZ dated 14 March 2022). The ban also applies to transfers of funds under contracts concluded before the entry into force of this law. In exceptional cases, such transactions can be carried out on the basis of a permit issued by the Bank of Russia.

In addition, restrictions are established by Presidential Decree No. 737 dated 15 October 2022 for transactions that directly or indirectly entail the establishment, change or termination of rights of ownership, or the use and/or disposal of more than one percent of shares or participation

interest in the capital of a Russian insurer, or of more than one percent of votes attributable to such shares or participation interests if at least one of the parties (beneficiaries) to the transaction is a resident of an "unfriendly" state. Such transactions require the permission of the Government Commission on Control over Foreign Investments in the Russian Federation, with certain exceptions.

## 19. Telecommunications, Information Technologies and Mass Media

### 19.1 Telecommunications

#### 19.1.1 What applicable laws apply and what are the competent state bodies?

The Federal Law No. 126 "On Communications" dated 7 July 2003, as amended (the "**Communications Law**") establishes general rules applicable to the telecommunications sphere in the Russian Federation. The Communications Law governs communications activities in the Russian Federation and assigns certain policy and regulatory functions to various bodies. The Communications Law also establishes a separate procedure for licensing and certification in the sphere of telecommunications.

State regulations on the provision of services and other telecommunication activities are to be introduced by the President, the Government and the Ministry of Digital Development, Telecommunications and Mass Communications (the "**Ministry**") — the federal governmental authority for communications.

The Ministry is the state body responsible for the development and implementation of state policy and regulation with respect to information technologies, telecommunications, mass communications and mass media, broadcasting, the processing of personal data, the protection of children against certain types of information, and other areas. The Ministry is entitled to issue its own regulations, such as setting out requirements for the use of numbering capacity, regulations on the use of radio frequencies, rules for providing communication services to subscribers, etc.

The other state agency in the sphere of telecommunications is the Federal Service for Supervision in the Sphere of Telecommunications, Information Technology and Mass Communications (the "**Roskomnadzor**").

Roskomnadzor is responsible for exercising day-to-day control over communications, mass media, IT, personal data processing, and the

distribution of information, as well as monitoring the use of the frequency spectrum, registering frequency assignments, registering mass media, and issuing licenses in the area of communications and mass media.

The Ministry also organizes the work of the State Commission for Radio Frequencies (SCRF). The SCRF is made up of representatives of various ministries and state bodies. The main task of the SCRF is the allocation of the frequency spectrum. The SCRF is also responsible for scientific and technical research into the use of the frequency spectrum, frequency spectrum demilitarization/conversion, developing a technical policy for the use of the frequency spectrum, and certain issues relating to the electromagnetic compatibility of radio electronic devices.

Any decision of the Ministry, Roskomnadzor, or the SCRF may be appealed in court.

### 19.1.2 What comprises the unified communication network?

The Communications Law establishes that the unified communications network of the Russian Federation consists of the following categories of communications networks located in the territory of the Russian Federation:

- public switched telecommunications network (the "**PSTN**")
- dedicated communications networks
- technological communications networks connected to the PSTN
- special purpose networks and other communications networks for data transfer with the use of electromagnetic systems

The PSTN provides telecommunication services for a fee to any user of communication services in the territory of the Russian Federation. The PSTN is connected to the PSTNs of foreign countries.

A dedicated communications network provides telecommunication services for a fee to a closed user circle or groups of such circles. A dedicated communications network is not connected to the PSTNs or the public communications networks of foreign countries. The owner or another possessor of the network can determine the technological aspects of a dedicated network's construction. A dedicated

communications network can be connected to the PSTN (whereupon it will be recategorized as part of the PSTN) if the dedicated communications network complies with the requirements of the PSTN.

A technological communications network supports the operational activity of enterprises and the management of technological processes used in operations. A technological communications network is not connected to the PSTN and can be connected to the technological communications networks of foreign enterprises only for the execution of a unified/joint technological operation. Although part of the technological communications network can be connected to the PSTN in case such technological communications network has free capacity and the part connected to the PSTN may be technologically, programmatically or manually separated from the technological communications network. In such case, all regulations applicable to the PSTN will apply to the connected part of the network and the part of the technological network will be treated as part of the PSTN.

A special purpose communications network fulfills various needs related to the state, national defense, state security and law enforcement. Such networks cannot be used for the provision of communications, interconnection and transmission of traffic services for a fee unless otherwise provided in law.

### 19.1.3 Is a license required and what are the procedures for obtaining a license?

Communication services can only be provided for a fee on the basis of a license. Among the communication services subject to mandatory licensing are the following:

- local telephone communication services (with or without services via public telephones and points of public access)
- telephone services provided via dedicated communications networks
- international and domestic long-distance telephone communication services
- telegraph communication services

- personal calling services
- radio, cellular or satellite communication services
- provision of communication channels
- data transmission services (including or not including VoIP)
- telematics services

A license may be obtained upon an application. The license should be issued based on the results of an auction or tender in the following cases:

- a communication service requires the use of radio frequencies, and the SCRF determines that the radio frequency spectrum available for the provision of communication services limits the possible number of communications providers in the territory
- the resources of the PSTN in the territory (including numbering capacity resources) are limited and, therefore, the competent state authority decides that the number of communications providers in the territory should be limited

A decision on whether to issue a license is taken by Roskomnadzor within 30 days after the filing of the application. If during the provision of communication services it is proposed to use radio frequencies, including for the purposes of television and radio broadcasting, or to perform cable television broadcasting, wired sound broadcasting, transfer voice data (including through a data transfer network), or to provide communication channels that operate outside either the boundaries of the constituent territory of the Russian Federation or the boundaries of the Russian Federation itself, or to provide postal services, Roskomnadzor should decide whether to issue a license within 75 days from the filing date of the application.

Licenses are issued for a term of up to 25 years.

Roskomnadzor collects a fee of RUB 7,500 for issuing a telecommunications license.

The territory for which the license is valid is specified in the register of licenses. There are no restrictions on the number or type of communications licenses that a single licensee may hold.

The Communications Law does not permit the transfer of a license or of any rights from the licensee to another person. However, Roskomnadzor can amend the information on the licensee in the register of licenses to indicate a legal successor of the licensee as a new licensee.

Roskomnadzor has the right to terminate a license without applying to the courts if the operator is liquidated, if it has ceased its activities as a result of reorganization (except for reorganization in the form of transformation), if it has applied for the termination of the license, if it fails to file its annual report with the regulator relating to its telecommunications services (or if such report contains inaccurate or incomplete information), or if the operator fails to provide telecommunications services for more than six months, or for the non-performance of services from the date specified in the respective license as the commencement date for the provision of services. In certain cases, the license may be cancelled by court.

The license may be suspended if Roskomnadzor discovers a breach of law or the conditions of the license by the operator, or the non-performance of services for more than three months, or the non-performance of services from the date specified in the respective license as the commencement date for the provision of services, or the failure by the operator to correct the violations detected by the regulator, or upon cancellation of the SCRF decision allowing the operator to use radio frequencies necessary for the provision of the telecommunications services.

#### 19.1.4 What are the procedures for the use of radio frequencies?

The Communications Law provides transparent and open frequency allocation procedures and a national frequency allocation table. Allocation of the frequency spectrum is organized in accordance with the Frequency Allocation Table, which must be reviewed at least once every four years.



If a communications provider intends to use radio frequencies to provide communication services, it should comply with the requirements for the allocation of radio frequency bands prior to obtaining the respective communications license and with the requirements for the assignment of radio frequencies and radio frequency channels after obtaining the license.

The SCRF and Roskomnadzor establish the procedures for the allocation of radio frequency bands and the assignment of radio frequencies and radio frequency channels. In practice, the allocation of radio frequency bands and the assignment of radio frequencies and radio frequency channels take at least six months. Radio frequencies, radio frequency bands and channels are allocated/assigned for a term of up to 10 years.

The use of the frequency spectrum is subject to a one-off fee for the allocation of a radio frequency, plus an annual fee for use of the radio frequency.

The Communications Law does not allow the transfer of the right to use a radio frequency from one operator to another operator.

In case of a violation of the terms and conditions set forth in a decision of the SCRF on the allocation of a radio frequency, or in a decision of Roskomnadzor on the assignment of radio frequencies and radio frequency channels, these decisions may be suspended for the period required to eliminate such violation, but not for more than 90 days.

As a rule, a telecommunications provider that intends to use the radio frequency spectrum must obtain: (i) a resolution of the SCRF on the allocation of radio frequency bands; (ii) a report from the radio frequency service agencies on the electronic compatibility of the radio equipment to be used by the operator and of other equipment; and (iii) a resolution of Roskomnadzor on the assignment of radio frequencies and radio frequency channels. However, some radio frequency bands have been allocated by the SCRF for particular purposes in general SCRF resolutions and, therefore, no additional resolution of the SCRF for such radio frequency bands is required. Further, certain radio frequencies may be freely used in Russia without the need for additional authorization. Finally, MVNOs are not required to obtain authorizations for radio frequencies since they use the networks and radio frequencies

of MNOs based on network cooperation schemes agreed upon between the providers.

### 19.1.5 Are radio frequency emitters subject to registration?

Telecommunications facilities and equipment emitting radio frequencies are subject to registration. The authority responsible for such registration is Roskomnadzor. The relevant legislation includes a list of equipment subject to registration (most radio transmitting equipment) and some exclusions from the registration procedure (for example, cellular phones, DECT phones, Bluetooth, etc.).

Prior to registration, decisions of the SCRF and Roskomnadzor on the allocation and assignment of radio frequencies must be obtained (unless the said decisions are not required under Russian law).

A decision on whether to register a device should be taken within 10 business days, if the application and supporting documents were filed by any method other than electronically. If the documents were filed electronically, the decision is sent to the applicant within one business day after the application is filed. The term of the registration shall be established subject to the term of the frequency assignment permit (if any) and may not exceed the term of the SCRF decision on the allocation of the respective radio frequency bands.

### 19.1.6 Do any local storage obligations apply to communication providers?

Communications providers are required to store in Russia the following:

- information (metadata) on the facts of the receipt, transfer, delivery and/or processing of voice data, written text, images, sounds, video and other electronic messages of their customers, for a three-year period after the termination of the said activities
- content of text messages of their customers, voice data, images, sounds, video and other electronic messages of their customers, for up to six months after the termination of the activities on their receipt, transfer, delivery and/or processing. However, telematics and data transfer (except for VoIP) providers must store the content of messages in storage equipment with

capacity equal to the volume of messages transferred and received by the provider's clients for 30 days before the storage equipment is put into operation. The capacity of the storage equipment must be increased annually by 15% within five years after it is put into operation. The procedures for the terms and scope of the storage of the said information are set out by the Russian government. There are no exceptions to the local storage obligation

### 19.1.7 Are communication providers required to broadcast mandatory public TV channels and radio stations?

Communications providers perform the broadcasting of mandatory public TV channels and radio stations based on agreements with the broadcasters of such channels and stations. The President of the Russian Federation approves the list of providers for broadcasting mandatory public channels and stations. Currently, the federal state unitary enterprise "Rossiiskaya Televisionnaya i Radioveschatelnaya Set" is the only authorized provider. The President of the Russian Federation determines the list of mandatory public TV channels and radio stations, which currently includes 10 TV channels and three radio stations.

The requirements for broadcasting mandatory public TV channels and radio stations on a free-of-charge basis (at the expense of the provider) are included in the licensing requirements that must be complied with by communications providers rendering telecommunications broadcasting services.

### 19.1.8 What legal interception rules apply?

Russian law obliges telecommunications providers (legal entities or individual entrepreneurs that provide telecommunications services on the basis of an appropriate license) to provide the state authorities that perform criminal investigations with information regarding their clients and services, including the information mentioned in Section 19.1.6 above and other information required by the said authorities to perform their duties.

Based on these provisions, the authorities responsible for the security of the Russian Federation have developed a set of technical devices for

communications control facilities needed to intercept and/or interrupt communications (known as "**SORM**"). SORM equipment is installed at a provider's premises and operated remotely by the authorities from a special control panel. SORM provides the opportunity to control communications without the participation of the provider. According to the law, such investigations are allowed only under a prior court order or with a post-approval by court in a limited number of cases where there is an imminent threat that a crime may be committed.

These regulations affect communications schemes, because certain telecommunications equipment must be placed on Russian territory and equipped with SORM.

### 19.1.9 What technical regulation requirements apply?

According to the Communications Law, all communications devices used in the PSTN and technological and special purpose communications networks connected to the PSTN are subject to the compulsory confirmation procedure. This is done by either compulsory certification or compulsory declaration of conformity. The list of devices subject to mandatory certification is approved by the Regulation of the Government No. 113 dated 4 February 2022. All other devices are subject to a mandatory declaration of their conformity.

A declaration of conformity is a document in which the applicant confirms that the product it has manufactured corresponds to the conformity requirements. To be valid, a declaration of conformity for the relevant telecommunications device must be registered with the Ministry. A declaration of conformity should be filed for registration by an applicant accompanied with the relevant evidence of the device's conformity obtained with the help of accredited test laboratories.

The competent authority for certification is the Certification Agency. A manufacturer or supplier of a device files an application with the Certification Agency, which carries out the certification test. A certificate on conformity should be issued for one or three years, depending on the certification scheme stipulated in the certification rules. The cost of the whole procedure varies significantly depending on the equipment subject to the certification.

It is impossible to import telecommunications equipment that is subject to a compulsory confirmation procedure and will be sold or used in the Russian Federation without the respective declaration/certificate (as applicable), because the respective document is required by customs for customs clearance of the equipment.

Applications for certificates of compliance may be submitted only by the manufacturers or sellers. Declarations of conformity may be made, however, only by manufacturers or sellers if registered in Russia or a Russian company (individual entrepreneur) authorized by the manufacturer to ensure compliance of the equipment with the applicable regulations.

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

#### 19.1.10 How does Russian law regulate information infrastructure?

From 1 January 2018, the Federal Law "On Safety of Critical Information Infrastructure of the Russian Federation" dated 26 July 2017 (the "**CII Law**") came into force.

The CII Law is aimed at the regulation of the subjects of critical information infrastructure, which are defined very broadly and include state bodies and state enterprises, Russian companies and/or individual entrepreneurs who own/lease/legally possess information systems, information and communications networks, automated management systems operating in the spheres of health protection, science, transport, communications, fuel and energy, banking, financial markets, nuclear power, defense, rocket and space, mining, metallurgical and chemical industries, as well as Russian companies and/or individual entrepreneurs who support interactions among the said systems and networks (the "**CII Subject**"). Thus, so far, any company that owns (leases/possesses) an IT network and operates in the sphere of industry mentioned above falls under the regulation of the CII Law.

The critical information infrastructure includes information systems, information and communications networks, automated management systems of the CII Subjects (the "**CII Object**") and telecommunications networks used to support interactions among the said objects.

The CII Subjects must categorize the CII Objects they own/lease/possess. There are three categories of importance vis-à-vis CII Objects depending on the following:

- social importance — assessment of potential damage that may be inflicted on human health or wellbeing, and of the possibility of stopping/interrupting the operation of life support devices, transport infrastructure, or communications networks, and the maximum time of state service unavailability
- political importance — assessment of potential damage to the interests of the Russian Federation with regard to internal and foreign policies
- economic importance — assessment of potential direct or indirect damage to the CII Subjects and/or budgets of the Russian Federation
- ecologic importance — assessment of the level of impact on the environment
- importance of the CII Object in the provision of state defense, security and law and order

If the CII Object does not meet the criteria of either category, no category is assigned to such CII Object. The Russian government sets out the respective criteria.

Those CII Objects that are assigned a category will be included in a special register.

The CII Law obliges all CII Subjects to notify the competent authority for IT infrastructure security and the Russian Central Bank (in case the subject operates in the banking/financial market spheres) of computer incidents that occur with respect to their CII Objects.

The CII Subjects must establish and maintain a system of security for their CII Objects that are assigned a category and are included in the register of CII Objects.

### 19.1.11 How does Russian law regulate the internet?

Russia has a special regulation aimed at maintaining the sustainable, secure and integrated functioning of the internet in Russia (the "**Runet**").

There are entities responsible for the provision of the sustainable, secure and integrated functioning of the Runet: (i) communication providers; (ii) owners or other possessors of technological communications networks; (iii) owners or other possessors of internet exchange points (IXPs — a set of hardware and software, and/or communications constructions, that provides their owner or another possessor with the ability to connect and transmit traffic between the communications networks if the owner or other possessor of the communications networks has an ASN); (iv) owners or other possessors of telecommunication lines crossing the Russian border; and (v) other persons with their own ASNs (the "**Runet Infrastructure Participants**").

Russian internet access service providers (ISPs) must install certain special technical tools to protect against threats to the sustainability, security and integrity of the internet and the PSTN in Russia (the "**Controlling Facilities**") on telecommunications equipment enabling the transfer of traffic to users' equipment with a speed exceeding 10 Gbps. The Controlling Facilities will be provided to ISPs by the authorities on a free-of-charge basis. Communication providers are not liable for communication failures caused by the Controlling Facilities installed on their networks. In case of threats to the sustainability, security and integrity of the Runet and the PSTN in Russia, Roskomnadzor may perform centralized management over the PSTN. Such centralized management over the PSTN may be performed either through the operation of the Controlling Facilities or by giving mandatory instructions to Runet Infrastructure Participants.

Runet Infrastructure Participants must participate in testing activities (trainings) aimed at maintaining the sustainability, security and integrity of the Runet.

Agreements on the sale (transfer of the rights of possession/use) of telecommunication lines crossing the Russian border must contain information on the aim of using the said line and on the communications devices installed on the line. Owners or other possessors of telecommunication lines crossing the Russian border must inform Roskomnadzor of the purpose of using such line and of the communications devices installed on the line.

Owners or other possessors of IXPs must also register their IXPs with Roskomnadzor.

Communication providers and owners or other possessors of technological communications networks, if they have an ASN, among other things, must:

- use only registered IXPs for the purposes of interconnection with communications providers, owners or other possessors of technological communications networks and other entities in case the said companies have an ASN
- notify Roskomnadzor of: (i) their ASN and the IP addresses contained in the ASN; (ii) cooperation with communication providers and owners or other possessors of technological communications networks and other entities in case the said companies have an ASN; (iii) locations of connecting points of their communications devices to the communications lines crossing the Russian border; (iv) locations of installation of their communications devices connected to the communications lines located abroad; (v) routing of telecommunications; and (vi) infrastructure of their networks, etc.

Owners and other possessors of technological communications networks with an ASN must also: (i) comply with the requirements listed in Section 19.2.8 above if the network may be used to access the internet; (ii) install devices onto their networks for monitoring their compliance with the obligations on banning access to the prohibited information; and (iii) install SORM equipment onto their networks.



## 19.2 Information technologies

### 19.2.1 How does Russian law regulate foreign IT entities doing business in Russia?

The new requirements for foreign tech entities are set forth by Federal Law "On the Activities of Foreign Entities on the Internet in the Territory of the Russian Federation" dated 1 July 2021.

The new regulation applies to two groups of multinationals:

The *first group* includes multinationals that meet the following criteria:

- they own a website (or a webpage) or an "information system" or a "computer program" (jointly called an "information resource")
- such information resource is accessed by more than 500,000 users located in Russia per day; and, at the same time
- any of the following conditions is met:
  - the information resource is in the Russian language or in any local language of the Russian Federation
  - the information resource contains advertising targeting Russian users
  - the multinational processes Russian users' data
  - the multinational receives money from Russian individuals or legal entities

The *second group* of targeted multinationals includes:

- foreign hosting providers or other entities involved in maintaining information resources on the internet that are accessed by Russian users
- businesses involved in internet advertising if the ads target Russian users

- operators of online communications platforms accessed by Russian users

Most importantly, a multinational falling under the new regulation must establish a physical presence in Russia in the form of either a local subsidiary (i.e. a separate legal entity) or a branch or representative office. In addition to, such multinationals are also required to (i) register an account with Roskomnadzor and use it to formally communicate with the Russian authorities; and (ii) set up a special electronic form on their information resource for Russian users.

### 19.2.2 How does Russian law regulate internet communications?

Providers of internet communications programs (companies providing operation of information systems and/or programs for computers that are designated and/or used for the receipt, transfer, delivery and/or processing of the electronic messages of internet users) must:

- at the request of Roskomnadzor, provide a notification of their activities as providers of internet communications programs (such notification may be done voluntarily)
- store, in Russia, information on the details of the receipt, transfer, delivery and/or processing of voice data, written text, images, sounds, video and other electronic messages of internet users (metadata), as well as information on such users, for one year after the termination of these actions
- store, in Russia, the content of text messages of internet users, voice data, images, sounds, video and other electronic messages of internet users for six months after the termination of activities related to their receipt, transfer, delivery and/or processing; the procedures for the terms and scope of storage of such information are set out by the Russian Government
- provide criminal investigation authorities and national defense authorities with this information
- ensure compliance of their equipment and software and hardware tools with statutory requirements so that state

authorities conducting criminal investigations or ensuring national security may perform their functions, and pass measures to prevent the disclosure of organizational and tactical methods of investigations conducted by the said authorities

- provide the Federal Security Service of the Russian Federation with information required for the decryption of the received, transferred, delivered and/or processed electronic messages (in case the company uses encryption for the receipt, transfer, delivery and/or processing of electronic messages of internet users and/or provides such users with the possibility of using encryption)

These requirements do not apply to communications providers to the extent of their licensed activities in Russia.

If providers of internet communications programs fail to comply with the above-mentioned requirements, access to their internet communications programs may be blocked based on a court order.

### 19.2.3 How does Russian law regulate private messaging apps?

Russian law establishes additional requirements for providers of internet communications programs, described in Section 19.2.2 above, operating information systems and/or computer programs that are designated and/or used for exchanging electronic messages solely between the users of such information systems and/or computer programs when: (i) the sender determines the addressee(s); (ii) the internet users do not publish publicly available information on the internet; and (iii) it is not possible to send messages to an unlimited group of persons (respectively — "**IM Programs**" and "**IM Operators**").

IM Operators have the following obligations **in addition** to those imposed on other providers of internet communications programs:

- identify their IM Programs' users using a telephone number provided by a mobile provider based on the identification agreement to be concluded between the mobile provider and the IM Operator

- within a day after receiving a request from a competent state authority, restrict the possibility of the IM Program's user indicated in such request to transfer messages containing information prohibited for distribution or information distributed in violation of Russian law
- provide their IM Programs' users with the option to refuse to receive messages from other users
- provide confidentiality for transmitted data
- provide the opportunity to transmit messages at the initiative of state bodies
- prohibit the transmission of messages to IM Programs' users in cases and in the manner set out by the government

An IM Operator that is a Russian legal entity i) may identify its IM Programs' users independently by identifying their telephone numbers, and ii) must store in Russia information identifying a user's telephone number. Such information may be transferred to third parties, generally only with the user's consent.

#### 19.2.4 How does Russian law regulate social networks?

A social network is any online resource on which users can distribute information through their personal pages (accounts) in the Russian language (or any other official language used in Russia), may distribute ads targeting Russian consumers, and is accessed by more than 500,000 users from Russia a day.

Social networks are required to proactively monitor certain categories of illegal content. Once the social network owner detects illegal content, it is required to immediately block such content. If the social network owner has doubts regarding certain content, it may send the content to Roskomnadzor for review.

The social network must also publish transparency reports on reviewed requests regarding distribution of prohibited content and results of monitoring on an annual basis.

In addition, the law establishes various other requirements for owners of social networks, such as the requirements to implement and use a special counter to track the number of visitors, to set up an electronic form for submitting requests to distribute prohibited content, and to bring the terms of use in line with law requirements.

### 19.2.5 How does Russian law regulate operators of search systems?

A search system is an information system that, at the user's request, performs an internet search for particular information and provides the user with information about the web pages containing the requested information published on websites of other entities/persons, except for information systems used to perform state and municipal duties, provide state and municipal services, and perform other public duties as set out by federal laws.

Operators of search systems distributing ads on the internet targeting Russian consumers at the request of an individual must stop providing data (except for information on certain violations) on web pages providing the requesting individual with access to information that is: (i) distributed in violation of Russian law; (ii) inaccurate; or (iii) outdated/insignificant for the requesting individual due to circumstances or the actions of the individual (so called "right to be forgotten").

### 19.2.6 How does Russian law regulate the distribution of news on the internet?

An owner of a computer program, website and/or web page that is used for processing and distributing news on the internet in the state language of the Russian Federation, state languages of republics of the Russian Federation, or other native languages of people of the Russian Federation, and that may distribute ads targeting Russian consumers and be accessed by more than 1,000,000 internet users in the course of any given day (the "**News Aggregator**"), must, among other things:

- restrict the use of their News Aggregator to commit criminal offenses, disclose state and other secrets, and distribute certain prohibited information

- check the accuracy of publicly important data distributed using the News Aggregator prior to launching such data distribution, and immediately stop distributing the data upon requests from competent state authorities (such requests are sent when the News Aggregator violates applicable laws)
- restrict the use of their News Aggregator for the purposes of concealing or falsifying publicly important data, the distribution of inaccurate publicly important news under the guise of true information, and the distribution of data in violation of Russian law
- restrict distributing news to defame a citizen or categories of citizens with regard to their sex, age, race, nationality, language, religion, profession, place of residence, job and political views
- restrict distributing news on a citizen's private life in violation of Russian law
- comply with the prohibitions and restrictions on referendums and elections set out by Russian law
- comply with Russian law requirements applicable to the distribution of mass information
- comply with the rights and legal interests of citizens and companies, including the honor, dignity and business reputation of citizens and the business reputation of companies
- publish on their News Aggregator their email address and name/firm name
- store news distributed by their News Aggregator, information on sources of such news, and the time period of distribution for a period of six months, and provide Roskomnadzor with access to such information
- install a computer program proposed by Roskomnadzor that calculates the number of users of the respective information resource

Roskomnadzor maintains a register of News Aggregators.

Only a Russian legal entity or a Russian citizen may be an owner of a News Aggregator.

### 19.2.7 How does Russian law regulate the provision of audio and visual content?

An owner of an audiovisual service is an owner of a website, and/or web page, and/or information system, and/or computer program that is used to form and/or organize the online distribution of a selection of audiovisual works, provided that it can be accessed for a fee, features advertising targeting Russian consumers and has more than 100,000 visitors located in the territory of Russia in the course of any given day.

Owner of audiovisual services must comply with the following obligations:

- restrict using their audiovisual services from being used to commit criminal offenses, disclose state and other secrets, and distribute certain prohibited information
- mark audiovisual works distributed via the audiovisual service with an age rating sign prior to the commencement of their distribution, unless the respective work has already been marked with an age rating sign by its manufacturer/distributors (except for audiovisual works uploaded onto the audiovisual service by its users)
- comply with the prohibitions and restrictions on referendums and elections set out by Russian law
- comply with Russian law requirements applicable to the distribution of mass information
- restrict the distribution, by their audiovisual service, of TV channels and TV programs not registered as mass media according to Russian law
- publish on their audiovisual service their email address and name/firm name

- install a computer program proposed by Roskomnadzor that calculates the number of the audiovisual service's users

In addition to that, owners of audiovisual services must ensure distribution of mandatory Russian TV channels on their platforms.

All audiovisual services will be included in a register maintained by Roskomnadzor.

Russian law provides for restrictions on foreign control over/shareholding in an audiovisual service. The restrictions are as follows:

- first-tier restrictions: Only Russian citizens (provided that they do not have citizenship of another country) and Russian legal entities will be permitted to own such audiovisual services
- second-tier restrictions: Unless otherwise provided for by an international treaty to which Russia is a party – foreign states, international organizations or a companies under their control, non-Russian individuals, Russian citizens who also have citizenship another country, stateless persons, foreign legal entities, and Russian legal entities with a foreign shareholding exceeding 20%, as well as their respective affiliates (the "**Persons**"), as a rule, may not own, manage or control, either directly or indirectly, more than 20% of shares in (or participation interest in the charter capital of) a legal entity that owns the audiovisual service, **provided that** such Persons own, collectively or individually, an "information resource" (e.g., websites, web pages, information systems and/or computer programs), which is used for the distribution of audiovisual products on the internet, and less than 50% of all users of such information resource are located in Russia, **unless** such Persons obtain consent from the commission to be established by the Russian government. According to the law, such consent is granted where it would be beneficial "to the development of the Russian audiovisual services market"

The second-tier restrictions do not apply to companies that are engaged in certain strategic activities and entities forming one group of persons with the said companies.



Once an audiovisual service is included in the register of audiovisual services maintained by Roskomnadzor, the authority will send a notice to the owner of such audiovisual service. Within two months of the receipt of such notice, the owner of the audiovisual service will be obliged to submit to Roskomnadzor certain documents confirming its compliance with the above-described restrictions.

The regulation does not apply to the following:

- websites registered as Russian mass media
- search systems described in Section 19.2.5 above
- information resources to which audiovisual works are primarily uploaded by internet users

There are four criteria established by Russian law confirming that audiovisual services fall under the last exception mentioned above. The criteria are as follows:

- the information resource provides for the possibility to upload, remove and amend audiovisual works by users
- the information resource provides for the possibility of a rights holder to request the removal of material protected by copyright and neighboring rights and uploaded without their consent
- the number of audiovisual works uploaded by persons who are not owners of audiovisual services within one month exceeds the number of audiovisual works uploaded by an owner of audiovisual services and/or third parties based on license agreements
- uploading and distributing audiovisual works under agreements with rights holders via the information resource does not constitute a major purpose of the information resource establishment and operation

An owner of the information resource onto which audiovisual works are primarily uploaded by internet users must notify Roskomnadzor, either voluntarily or upon Roskomnadzor's request, about information confirming that the resource meets the four criteria mentioned above.

Roskomnadzor will consider the information submitted by the owners within 30 business days after receiving it. Roskomnadzor will then decide whether the resource may be considered an information resource onto which audiovisual works are primarily uploaded by internet users.

### 19.2.8 How does Russian law regulate VPNs, anonymizers and similar online tools?

The distribution of certain types of information is prohibited in Russia. If such information is distributed online in violation of Russian law (e.g., copyright infringing content, drug-related advertising, child pornography, etc.), access to online resources distributing such information may be blocked upon a decision of a competent Russian authority or court. The decision is technically implemented and enforced by Russian ISPs, which must disable access to particular domains, IP addresses and/or URLs.

However, in practice, certain online tools (e.g., anonymizers or web caching services) enable Russian users to access prohibited content and circumvent the restrictions implemented by Russian ISPs, whether deliberately or not. The purpose of the existing regulation is to exclude such practice and implement enforcement mechanisms against the owners of such tools for their failure to comply.

The regulation does not fully prohibit all anonymizers, VPNs or other online tools and services; it only establishes additional obligations for owners of such tools to avoid these tools being used to circumvent restrictions established by law.

The regulation may be generally summarized as follows:

- owners of communications networks or online resources that are used for accessing prohibited content (the "**Access Tools**") must not use their networks/resources in Russia to access the prohibited content. Since the wording is rather broad, such Access Tools can include, among other things, VPNs and cloud filtering services
- Roskomnadzor cooperates with the federal state authorities conducting criminal investigations or ensuring state security for the purposes of obtaining information on Access Tools

- Roskomnadzor identifies the Access Tool's owner and sends it a notification in the Russian and English languages requiring such owner to connect their Access Tool to the governmental IT system containing the list of communications networks and online resources, access to which must be blocked within Russia (the "**System**")
- the Access Tool's owner must connect to the System within 30 business days of the receipt of the notification mentioned in item 3 above
- within three business days after the owner of the Access Tool receives access to the System, it must ensure that its Access Tool is no longer used to access the prohibited content
- if the owner of the Access Tool fails to fulfill its duties, Roskomnadzor issues a decision to prohibit access to the respective Access Tool in Russia. The details of such Access Tool are then added to the list of prohibited content
- access to the respective blocked Access Tool may be subsequently restored after the owner fulfills the relevant duties and notifies Roskomnadzor thereof

The above-described regulation does not apply to Access Tools if:

- the group of users of such tools is predetermined by their owners
- the tools are used by a legal entity for the technological purpose of maintaining its operations

### 19.2.9 How does Russian law regulate classifieds?

An owner of a website or webpage, or information system, or computer program intended and/or used to organize the interaction of their users for the purpose of purchasing and selling, exchanging and/or transfer of movable and/or immovable property for use, performance of work, provision of services, search for suitable work and/or necessary employees by providing their users with the opportunity to independently place announcements in the state language of the Russian Federation,

the state languages of the republics of the Russian Federation or other languages of the peoples of the Russian Federation on the sale, exchange and/or transfer of movable and/or immovable property, performance of work, provision of services, search for a suitable job and/or the necessary employees, thematically grouped according to the content of such announcements, as well as by providing their users with the opportunity to independently response to such announcements and access to which during the day is more than 100,000 Internet users located on the territory of the Russian Federation (the "**Classified**") must, among other things:

- ensure that their Classifieds are not used to commit crimes and other violations
- install audience counters from among those proposed by the regulator

Roskomnadzor maintains the register of Classifieds.

Only Russian legal entities and citizens (who are not also citizens of any other country) may own Classifieds.

If the Classified violates Russia law, access to it may be banned.

### 19.2.10 Are there any requirements for analyzing an online audience?

In 2021 Russia introduced a new law on the analysis of visitors of certain types of online resources. The law applies to online media, audiovisual services, news aggregators and potentially some other online resources.

The law envisages the establishment of a special organization to analyze visitors of information resources. The owners of the respective resources must install special software to enable the organization to conduct the analysis and/or provide the said organization with the information necessary for the analysis.

### 19.2.11 Under what scenarios could a company face an online block in Russia?

Russian law sets out the rules for banning websites (online resources in certain cases) that violate Russian law. The banning procedures differ slightly, depending on the reason for the ban. Please see below the cases where a website (or an online resource in certain cases) may be blocked.

- case 1 — distribution of the following information/materials:
  - pornographic materials with images of minors and/or materials attracting minors to take part in entertainment events of a pornographic nature
  - information on the methods of development, production and use of drugs, psychotropic substances and their precursors, new psychoactive substances that are potentially dangerous, places where they can be acquired, and information on methods and places for cultivating drug-containing crops
  - information on methods for committing suicide, and information promoting suicide
  - information on minors who were victims of unlawful acts (omissions), the distribution of which is prohibited by federal law
  - information violating Russian laws and regulations on gambling
  - information containing offers on the retail sale for shipping of alcohol products, and/or alcohol-containing food products, and/or ethyl alcohol, and/or alcohol-containing inedible products, the retail sale of which is restricted or prohibited by applicable laws

- information aimed at persuading minors to commit unlawful acts, or other involvement endangering their or third parties' health and wellbeing
- information containing an offer on retail sale of medicinal products, including remotely, the retail sale of which is limited or prohibited, and/or information containing an offer on retail sale of medicinal products, including remotely, by entities who do not have a license/permission to conduct such activities
- information about persons with respect to whom confidentiality must be ensured under the laws on state protection of judges, officials of law enforcement and regulatory bodies as well as laws on state protection of victims, witnesses and other participants of criminal proceedings
- information on the methods for the home-made manufacture of explosives and explosive devices, or the illegal manufacture or alteration of weapons or main parts of firearms, as well as the illegal manufacture of ammunition, with the exception of information on production methods for cartridges for civilian long-barreled firearms
- information promoting "non-traditional sexual relationships" or preferences; pedophilia or gender transition
- information distributed over the internet and considered prohibited for distribution by a court decision in effect
- information considered, in the decision of a bailiff and executor of justice which has come into force, as discrediting the honor, dignity and business reputation of citizens and the business reputation of companies
- case 2 — distribution of information, in an indecent form, that offends human dignity and public morality and expresses explicit

disrespect toward society, state and official state symbols of the Russian Federation, the Constitution of the Russian Federation or its state authorities

- case 3 — distribution of information that denigrates the honor and dignity of a person or undermines his/her reputation and is associated with the accusation of the person of committing a crime
- case 4 — distribution of information in violation of copyright or neighboring rights
- case 5 — distribution of information promoting mass riots, extremist activities, participating in public events conducted in violation of applicable regulations, false information on acts of terrorism and other unreliable information of public importance distributed as reliable information ("fake news") that creates the threat of inflicting harm to human health and/or wellbeing and to property, the threat of mass violation of public order and/or public safety, or the threat of creating impediments to the operation of or the termination of the operation of vital infrastructure objects, transport and social infrastructure, credit institutions, energy systems, industrial or telecommunications facilities, and/or resulted in the abovementioned and other grave consequences, fake news on the use of the Armed Forces of the Russian Federation for the purpose of protecting the interests of the Russian Federation and its citizens and for maintaining international peace and security, as well as containing data on the exercise by state bodies of the Russian Federation of their powers outside the territory of the Russian Federation for those purposes, or information aimed at discrediting the use of the Armed Forces of the Russian Federation for the purpose of protecting the interests of the Russian Federation and its citizens and for maintaining international peace and security, including calls to prevent the use of the Armed Forces of the Russian Federation for those purposes, as well as aimed at discrediting the exercise by state bodies of the Russian Federation of their powers for outside the territory of the Russian Federation for the indicated purposes, information containing calls for the introduction, in relation to the Russian Federation, its citizens or Russian legal entities, of political, economic and/or

other sanctions, information containing justification for extremist activities, including terrorist activities, offers to purchase a fake document granting rights or releasing from obligations, information materials of a foreign or international non-governmental organization whose activities are recognized as undesirable on the territory of the Russian Federation and information allowing access to the said information and materials, and information breaching certain banking regulations

- case 6 — distribution of information in violation of the requirements of the legislation of the Russian Federation on elections and referendums, and/or campaign materials produced and/or distributed in violation of the requirements of the legislation of the Russian Federation on elections and referendums
- case 7 — breach of applicable rules by providers of internet communications programs
- case 8 — processing information in violation of Russian personal data laws
- case 9 — breach of applicable rules by owners of audiovisual services
- case 10 — breach of requirements applicable to owners of Access Tools
- case 11 — violation of the procedures for the operation of foreign mass media to perform the functions of foreign agents or Russian legal entities incorporated by them
- case 12 — non-compliance with the requirements for foreign IT companies listed in Section 19.2.1 above;
- case 13 — breach of the applicable laws by foreign agents.

Each case mentioned above has a separate mechanism for the cooperation of Russian authorities, hosting providers and ISPs to ban a particular website/online resource. ISPs are required to install special devices on their networks for control over their compliance with the banning obligations.



## 19.3 Mass media regulation

### 19.3.1 What applicable laws apply and who are the competent state bodies?

The Law "On Mass Media" dated 27 December 1991, as amended (the "**Mass Media Law**"), and the Communications Law govern broadcasting activity in the Russian Federation.

The Mass Media Law regulates activities in the sphere of broadcasting and sets requirements for mass media.

Roskomnadzor is the state authority that exercises control over broadcasting. Roskomnadzor registers mass media and issues licenses for broadcasting activities.

### 19.3.2 Is mass media subject to registration?

Under the Mass Media Law, mass media covers printed periodicals, web periodicals, TV and radio channels, TV programs, radio and video programs, newsreel programs, and other forms of regular distribution of mass information under a permanent name.

Mass media established in the territory of the Russian Federation is subject to registration by Roskomnadzor.

Foreign companies have limited rights to establish mass media.

The following restrictions apply to foreign investors:

- unless otherwise provided by an international treaty to which Russia is a party, foreign states, international organizations and organizations under their control, foreign legal entities, and Russian legal entities with foreign shareholding (jointly or severally) may not be founders/participants of mass media and may not act as editorial boards or broadcasting companies. Unless otherwise provided by an international treaty to which Russia is a party, foreign citizens, stateless persons and Russian citizens with citizenship in another state (jointly or severally) may not be founders or participants of mass media and may not act as editorial boards

- unless otherwise provided by an international treaty to which Russia is a party, foreign states, international organizations and organizations under their control, foreign legal entities, Russian legal entities with foreign shareholding of more than 20%, foreign citizens, stateless persons or Russian citizens with citizenship in another state (jointly or severally) may not own, govern or control, directly or indirectly (including via entities under their control or by way of holding in aggregate more than a 20% shareholding in such entities), more than a 20% shareholding in the charter capital of an entity that is a shareholder or participant of a founder of mass media, a mass media editorial board or a broadcasting company

Establishment by the above-listed entities of any other forms of control over the founder of a mass media, its editorial board or a broadcasting company, as well as over entities that are shareholders/participants of the mass media founder, its editorial board or a broadcasting company, as a result of which the said persons may directly or indirectly own or govern such founder, editorial board or broadcasting company, exercise control over them, or actually determine decisions passed by them, is prohibited.

Transactions that result in a violation of the above-mentioned restrictions are void.

Furthermore, if a mass media's editorial board, a broadcasting company or a publisher receives funds from a foreign state, an international organization, a foreign organization, a foreign agent, a foreign citizen, a stateless person or a Russian entity whose founders/participants/shareholders are the aforementioned entities, it must once per quarter (no later than the 10th day of the month following the reporting period) provide information on the funds received from the said entities to Roskomnadzor.

The above-mentioned notification obligation does not apply in case of receiving funds:

- from the mass media founder
- as a result of advertisement distributions

- as a result of distributing products of the respective mass media
- in the amount of less than RUB 15,000 received as a lump sum

For registration purposes (including for the purpose of amending the registered data), an applicant must submit the following documents to Roskomnadzor or its territorial agency:<sup>222</sup>

- an application for the state registration of the mass media containing information on the payment of the registration fee (RUB 8,000 for mass media products distributed throughout Russia, outside Russia or throughout the territory of two or more constituent regions of Russia, and RUB 4,000 for mass media products distributed throughout one constituent region of Russia/municipal unit)
- identification documents and documents confirming the registration address of an applicant (if the applicant is an individual)
- foundation documents of an applicant (if the applicant is a legal entity)
- extract from the shareholders' register or participants' register
- documents confirming the right to use the domain name of the internet site in case of the establishment of a periodical on the internet
- the charter of the mass media editorial board or the agreement between the mass media founder and the editorial board (chief editor) (in case of changing the registered data)
- documents confirming the transfer of the rights and obligations of the mass media founder to a third party, order on appointment of the chief editor or another document confirming their authorities (in case of changing mass media participants)

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<sup>222</sup> An application should be filed with Roskomnadzor if the mass media products are to be distributed throughout and outside Russia. If the distribution of such products is to be limited to the territory of one or several constituent territories/municipal units, the application should be filed with the territorial division.

- documents confirming registration with the system of individual (personalized) recording

The review period is normally 30 business days. Mass media is deemed registered after making an entry on such mass media to the mass media register.

The founder of the mass media should start the manufacture of the mass media products within one year from the date of the mass media registration. If it misses the prescribed term, the mass media registration will be deemed invalid.

The grounds for refusal to register mass media are limited to the following:

- if the application was filed on behalf of a person or legal entity that does not have the right to establish mass media in accordance with the Mass Media Law
- if the application contains false information
- if the name, tentative theme and/or specialization of the mass media may be deemed an abuse of the freedom of mass media as determined by the Mass Media Law
- if the responsible authority had already registered mass media with the same name and form of transmission

A refusal to register mass media should be provided in written form and specify the grounds for refusal under the Mass Media Law.

The application may be returned to the applicant without review in the following cases:

- if the application was filed in breach of the requirements of the Mass Media Law
- if the application was filed on behalf of the founder by an unauthorized person
- if the state registration fee was not paid

### 19.3.3 What other steps are required to be performed for the purposes of mass media distribution?

A Russian legal entity conducting such business activity would require mass media registration, the establishment of an editorial commission and the necessary staff to be recruited. An editorial commission is the organization or persons manufacturing and publishing the mass media. The founder of the mass media should approve a charter for the editorial commission of the mass media and/or enter into an agreement with its editorial department. In addition, if there is more than one founder, a founders' agreement is required.

### 19.3.4 Is broadcasting activity subject to licensing?

Russian legislation distinguishes between broadcasting itself and the provision of telecommunication services for the purposes of cable or wireless broadcasting, and each activity requires a separate license — a mass media license and telecommunications license. The requirements for obtaining a telecommunications license are listed above.

### 19.3.5 How to obtain a mass media license?

A mass media license provides the broadcaster with the right to distribute mass media products, registered in accordance with the Mass Media Law, using technical broadcasting equipment and observing the license conditions. A broadcaster is understood as a Russian legal entity creating and distributing a TV or radio channel under a broadcasting license.

If a broadcaster is also the editorial board of a TV or radio channel, it is allowed, in accordance with a broadcasting license, to distribute the TV/radio channel throughout the territory of the Russian Federation using any type of broadcasting method, including terrestrial air broadcasting, satellite broadcasting and cable broadcasting (a universal license).

If a broadcaster is not an editorial board of a TV or radio channel, it is allowed, in accordance with a broadcasting license, to distribute the TV/radio channel in the territory of the Russian Federation using specific broadcasting methods in compliance with the rights granted to the broadcaster by the editorial board.

The Mass Media Law sets the licensing procedure and licenses are issued for a term of up to 10 years.

In order to obtain a license, an applicant should file an application with Roskomnadzor. The application should contain, among other things, the following information:

- name of the TV or radio channel for broadcasting and the details of the certificate on the channel mass media registration
- subject matter of the TV or radio channel
- broadcasting territory of the TV or radio channel
- broadcasting capacity of the TV or radio channel (in hours)
- estimated broadcasting period and the date of the commencement of the broadcasting of the TV or radio channel
- information on the broadcasting method of the TV or radio channel (satellite, air, cable broadcasting or other)

In addition, the following documents should be filed with Roskomnadzor:

- statement from the shareholders' register (for applicants that are joint stock companies), or another document providing information on the participation interests of the founders (participants) of a legal entity in its charter capital (for applicants established in forms other than joint stock companies, except for limited liability companies), as well as documents confirming compliance with foreign investment restrictions
- charter of the editorial board of the TV or radio channel or the agreement with the editorial board of the TV or radio channel

The review period is 45 business days after the date of filing of the above documents. The cost of a license is RUB 7,500.

The following broadcasting licenses are issued based on a tender:

- licenses for the performance of terrestrial analog radio broadcasting if the population in the broadcasting area is

100,000 or more, or if broadcasting is performed in the capitals of the constituent territories of the Russian Federation

- licenses for the performance of terrestrial analog TV broadcasting
- licenses for the performance of terrestrial digital broadcasting
- licenses for the performance of satellite broadcasting with the use of orbital and frequency resources

### 19.3.6 Who can qualify as foreign agents?

A foreign agent is understood as a person/entity that receives foreign support and/or that is under foreign influence in other forms and is involved in political activity, targeted collection of information in the field of military or military-technical activities of the Russian Federation, distribution of messages and materials intended for a mass audience and/or participation in the creation of such messages and materials, other types of activities established by law.

The Russian Ministry of Justice maintains the register of foreign agents.

Material distributed by foreign agents must be marked with the respective sign.

Foreign agents are also subject to special reporting.

### 19.3.7 Is it necessary to assign age ratings to informational products?

Russian legislation obliges the manufacturers and/or distributors of information to classify and mark information distributed in Russia in terms of age groups who may have access to such information. These obligations are contained in the Federal Law "On Protection of Children Against Information Causing Harm to Their Health and Development" dated 29 December 2010 (the "**Child Protection Law**").

The Child Protection Law sets out requirements for the distribution of information causing harm to the health and/or development of children. Such information is divided into (i) information that is prohibited for distribution among children, and (ii) information restricted for distribution

among children depending on their age. Distribution of both categories of information in Russia is generally prohibited without a special information sign indicating the age category that may have access to such information (age marking).

These age markings are the following five types:

- "0+" (for children under 6 years old)
- "6+" or in the form of the warning "For children older than 6 years old" (for children who are 6 years old or more)
- "12+" or in the form of the warning "For children older than 12 years old" (for children who are 12 years old or more)
- "16+" or in the form of the warning "For children older than 16 years old" (for children who are 16 years old or more)
- "18+" or in the form of the warning "Prohibited for children" (with respect to information prohibited for distribution among children)

The classification of products is the responsibility of the manufacturers/distributors and must be done before the products are distributed in Russia. The law also sets requirements for the experts who can participate in the classification of products.

The Child Protection Law contains contradictory provisions regarding the necessity to mark information with an age marking. On the one hand, there is a general exception stating that it is not necessary to put an age marking on information distributed via the internet (except for information distributed via websites registered as mass media and audiovisual services described in Section 19.2.7 above). However, on the other hand, Russian law contains a rule that states that TV listings and other catalogs of information products must be marked with age markings, including if published online. It is not clear how the said contradictory provisions should be interpreted in conjunction with each other. Therefore, we recommend placing age markings on online catalogs of information products and the products contained therein.

The Child Protection Law also states that a website that is not registered as mass media may show an age marking and/or a warning on the



restriction of the distribution of information through the website among children depending on their age. The owners of the website may perform such classification.

### 19.3.8 Can information resources restrict access to publicly significant information?

In accordance with the so called "anti-censorship" law, an owner of an online information resource intended and/or used by Russian citizens or legal entities for disseminating information in Russian or other native languages used in Russia may be recognized as involved in violations of fundamental human rights and freedoms, the rights and freedoms of Russian citizens, including those guaranteeing freedom of the media in case of restricting by the resource's owner of distribution by Internet users of socially significant information in Russia on the basis of nationality, language, origin, property position, profession, place of residence and work, or attitude to religion, and/or in connection with the imposition by foreign states of political or economic sanctions against the Russian Federation, citizens of the Russian Federation or Russian legal entities, or the imposition by the owner of a resource of other restrictions that violate the right of Russian citizens to freely seek, receive, transfer, produce and distribute information in any legal way.

## 20. Sustainability / Environmental, Social, and Corporate Governance ("ESG")

### 20.1 Russian ESG legal and policy framework

#### 20.1.1 Is sustainability / ESG a topical issue for Russian policy-makers and corporates?

Russia is running a set of policies that largely overlap with the United Nations Sustainability Development Goals (the "**SDGs**"), though SDGs are not explicitly referred to in the documents underpinning such programs.

Many Russian businesses are also implementing numerous ESG-transformation initiatives, driven by tightening environmental and other regulations, corporate social responsibility and broader "stakeholder capitalism" developments.

Many Russia's notable business associations<sup>223</sup> have ESG committees and working groups. In 2022 Russia's leading businesses with accumulated revenue of more than RUB 10 trillion founded a National ESG Alliance – to boost transition of Russian economy towards sustainable models.

#### 20.1.2 National projects

On 7 May 2018, the Russian President signed Decree No. 204 "On National Goals and Strategic Objectives of Russian Development until 2024" (the "**May Decree**").

Pursuant to the May Decree, the Government developed 13 national projects aimed at achieving the goals set by the May Decree. Each project includes several federal programs setting development targets intersected with SDGs, including in the following areas:

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<sup>223</sup> Including, Russian Union of Industrialists and Entrepreneurs, Chamber of Commerce and Industry Russia, Association of Russian Managers, as well as International Chamber of Commerce, American Chamber of Commerce, Association of European Business, Russian-French Chamber of Commerce (CCIFR), German-Russian Chamber of Commerce (AHK).

- environment – overlapping with SDG 6 (clean water and sanitation), 7 (affordable and clean energy), 12 (responsible consumption and production) and 13 (climate action)
- backbone infrastructure – targeting modernization and expansion of transport corridors (including the Northern Sea Route), airports, seaports and railways –overlapping with SDG 8 (decent work and economic growth) and 9 (industry, innovation and infrastructure)
- housing and urban habitat – targeting SDG 10 (reduced inequalities) and 11 (sustainable cities and communities)
- healthcare – overlapping with SDG 3 (good health and well-being)
- other areas such as digital economy, roads, demography, education, science, small and medium entrepreneurship and culture (art) that also overlap with several SDGs

The national projects are conceptually aligned with the national development goals until 2030 (outlined below).

In January 2023 the Russian President instructed the Government to update national projects and other state programs with a view to expand the use of AI in various industries and social domain <sup>224</sup>.

### 20.1.2.1 National development goals 2030

On 21 July 2020, the Russian President signed Decree No. 474 "On National Development Goals until 2030" (the "**Decree 474**") aiming to reshape national projects and expand them until 2030:

- population preservation, human health and well-being
- self-realization and talent development opportunities
- comfortable and safe life environment

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<sup>224</sup> List of instructions following the results of the conference "Journey into the world of artificial intelligence" (29 January 2023): <http://www.kremlin.ru/acts/assignments/orders/70418>.

- decent, efficient work and successful entrepreneurship
- digital transformation

### 20.1.2.2 Governmental initiatives 2030

In October 2021, the Russian Government approved 42 initiatives of Russia's development until 2030, grouped into six core areas: Technological Breakthrough, Digital Transformation, Construction, Environment, Government for Citizens, and Social Affairs.

Some of those initiatives are SDG-related. By a way of example:

- technological Breakthrough kicked-off several federal programs such as Clean Power (hydrogen and renewables) and Electric and Hydrogen Vehicles
- environment kicked-off programs like Circular Economy, Low-Carbon Development Policy and "Major Clean-up"

### 20.1.2.3 Energy transition and low-carbon development

In September 2021, the Russian Government commenced a plan to adapt the Russian economy to global energy transition by 2030. The plan is aimed at implementing the national development goals.

In October 2021, the Government approved the Low-Carbon Development Strategy until 2050. The strategy defines Russia's strategic vision of possible paths and targets of decoupling economic growth from GHG emissions with prospects of carbon neutrality by 2060.

Despite the market disruptions in 2022, Russia confirmed its pledge to carbon neutrality, subject to adjustments in respect of the particular paths to achieve that.<sup>225</sup>

### 20.1.3 What are the business opportunities associated with Russia's SDG-related policies?

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<sup>225</sup> Low-carbon development strategy to be revised due to sanctions (19 February 2023): <https://www.kommersant.ru/doc/5839349>.

The above initiatives arguably trigger multiple business opportunities relating to:

- **greenfield projects** — building new power, waste, water, and various social, healthcare and other infrastructure, as well as production of Russia-localized high-tech and other high-end equipment and goods
- **brownfield projects** — technological upgrade of industrial, infrastructure, housing and other facilities, including with a view to reduce emissions, increase energy or broader environmental efficiency
- **supply of related goods, works, service and finance** – needed to implement those greenfield and brownfield projects
- **innovations / R&D** — relating to technologies and products with environmental and social effects

Businesses implementing certain ESG-related projects may be entitled to tax, customs and other benefits – such as regulatory stabilization and exemptions, subsidies and preferential-term loans. Such benefits may be available to residents of territories with special status or parties to investment agreement with the authorities. For further details, please refer to Section 3.4 of this guide.

## 20.2 Environment

Over the last few years, Russia has made significant progress with national energy transition and with climate and environmental laws and policies, in particular in terms of:

- developing a national carbon market and other greenhouse gas regulations, as well as a low-carbon development strategy projecting carbon neutrality by 2060 (Section 20.2.1)
- further tightening the general environmental law, implementing best available technologies (BAT), integrated emission reduction programs and installing automated emissions control systems (Section 20.2.2)

- incentivizing renewable energy on wholesale and retail markets (Section 20.2.3)
- defining a national hydrogen policy and kicking off pilot projects (Section 20.2.4)
- implementing and improving energy efficiency laws and programs (Section 20.2.5)
- implementing and improving waste management laws, including "extended producer responsibility," a ban on the disposal of certain types of waste, and state programs aiming to boost waste treatment infrastructure (Section 20.2.6)
- incentivizing electric (including hydrogen-powered) vehicles and alternative fuels (Section 20.2.7)
- adopting national green and adaptation project taxonomy and commencing development of the social taxonomy (Section 20.4.5)
- implementing a major national project, "Environment," several environmental national development goals and other strategic development goals (Section 20.2.8)

## 20.2.1 What are the cornerstones of Russian climate law, policy and voluntary market?

Russia participates in international climate treaties and is rapidly developing its national laws targeting greenhouse emissions. At present, Russia has launched a two-tier carbon market: a nationwide voluntary market and a cap-and-trade system in Sakhalin to be possibly extended to other regions.

Russian companies have experience in implementing joint projects under the first round of the first commitment period of the Kyoto Protocol. Some companies have also implemented emission reduction projects in international voluntary carbon markets and those under Russia's emerging domestic system).

### 20.2.1.1 International climate treaties

### UNFCCC and Kyoto Protocol

Russia signed the United Nations Framework Convention on Climate Change (the "**UNFCCC**") in 1992 and ratified it in 1994. In 1999, Russia signed the Kyoto Protocol (the "**KP**") to the UNFCCC and ratified it in 2004. Russia's ratification of the KP was crucial for its entry into force.

Russia only participated in the first round of the first commitment period of the KP. Many Russian businesses showed significant interest in participating in joint-implementation projects (the "**JIs**") under the KP. A number of foreign companies purchased emission reduction units generated through JIs, more than 150 applications for participation in the JIs were filed and more than 100 projects were approved.

The projects covered multiple industries, including oil and gas, metallurgy, chemicals and forestry.

### Paris Agreement

Russia signed the Paris Agreement (the "**PA**") in April 2016 and adopted<sup>226</sup> it in September 2019. In November 2019, the PA entered into force in Russia.

The PA requires its member states to submit so-called nationally determined contributions (the "**NDCs**"). NDCs represent a given country's national strategies for greenhouse gas (the "**GHG**") emission reductions contributing to the PA objectives.<sup>227</sup> The first NDCs, submitted in 2015, are known as intended nationally determined contributions (the "**INDCs**").

In November 2020, Russia submitted its first NDC, which aims to limit GHG emissions by up to 70% of 1990 levels by 2030, subject to maximum possible absorbing capacity of forests and other ecosystems

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<sup>226</sup> "Adoption" (*принятие*) is one of the options to make an international agreement binding for Russia prescribed by Federal Law "On International Treaties" — distinct from ratification. Russia adopted the PA by a way of Government Decree No. 1228 dated 21 September 2019 "On Approval of the Paris Agreement."

<sup>227</sup> Article 2 of the PA establishes a long-term goal of holding the increase in the global average temperature to well below two degrees Celsius above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels.

and the sustainable and balanced socioeconomic development of the Russian Federation.

Some experts argue that Russia is very well positioned for bilateral and broader international cooperation under Article 6 of the PA in terms of implementing climate projects within its territory.

### 20.2.1.2 National climate laws

In 2009, then President Dmitry Medvedev approved the Russian **Climate Doctrine**. The doctrine was one of the first documents of its kind that recognized the importance of climate change. It also declared a number of long-term objectives such as increasing energy efficiency, developing renewable energy, enhancing vehicle fuel efficiency, protecting and improving the quality of GHG sinks and reservoirs (including sustainable forestry), and implementing financial and fiscal policies to incentivize GHG reductions.

Subsequently, Russian authorities produced a number of other climate-related enactments and their drafts. The most recent and notable ones include:

- in December 2019, the government adopted a **National Climate Change Adaptation Plan until 2022**. The document provides a timeline of various law-making and organizational actions, such as the development of adaptation plans for specific industries and regions
- in August 2020, the Ministry of Economic Development prepared a draft of the **Climate Project Concept**, which aims to conceptualize the basis for issuance, registration, market release and retiring of carbon units. The concept highlighted the regulators' objective: to enable climate projects under Russia's domestic (to be developed) and existing international voluntary standards, as well as under international climate treaties with Russian participation
- in February 2021, the Russian Ministry of Education and Science kicked off the **carbon polygons and farms** trial project. The polygons aim to ensure scientifically validated stocktaking of the absorptive capacity of Russian plants and forests, soil,



swamps and other natural systems. The farms aim to implement carbon sequestration projects

- in 2021, Russia adopted the Federal **Law on Limiting GHG Emissions**. The law does not put a nationwide price on carbon; however, it introduced the following:
  - **mandatory carbon reporting:** companies must commence reporting on 1 January 2023 if their annual GHG emissions exceed 150,000 tons and if they meet the criteria of "regulated entities."<sup>228</sup> Companies with emissions between 50,000 and 150,000 tons will commence reporting on 1 January 2025
  - **voluntary climate projects:** the law sets out the basic principles of Russia's nationwide climate projects and carbon offsets trading
- in October 2021, Russian President Vladimir Putin announced that Russia plans to become **carbon neutral no later than 2060**
- following that announcement, the Russian government approved Russia's **Low-Carbon Development Strategy until 2050**. The strategy defines Russia's strategic vision of possible paths and targets of decoupling economic growth from GHG emissions<sup>229</sup>
- in March 2022, Russia<sup>230</sup> passed a federal law on the trial of **regional cap-and-trade systems**. The Sakhalin Oblast would be the pioneer region to set up such a system. Kaliningrad Oblast, Irkutsk Oblast, Khabarovsk Krai, Khanty-Mansi Autonomous Okrug, Altay Krai, Bashkiria and some other

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<sup>228</sup> Established in the Government Decree No. 355 dated 14 March 2022.

<sup>229</sup> The baseline scenario of the strategy focuses on, among other things, the implementation of energy- and resource-efficient technologies in all sectors of the economy and the setup of a legal infrastructure for climate projects. The intensive scenario implies an additional reduction of the carbon intensity of manufactured goods, energy, works and services through: (i) the introduction of national GHG regulation; (ii) the increase in renewable energy generation; (iii) the transformation of the wholesale and retail electricity markets under the increasing influence of energy (among others, renewable energy consumers); (iv) the implementation of large-scale electrification and digitalization of transport and industrial technologies; and (v) carbon capture, usage and storage.

<sup>230</sup> Lower chamber of the Russian Parliament.

Russian regions have also shown interest in developing a similar system

- in 2021-2023 the Russian Government, the Ministry of Economic Development, the Ministry of Environment and other state authorities passed several **regulations<sup>231</sup> and guidelines<sup>232</sup> to jump-start carbon reporting and carbon trade** nationally and regionally (in Sakhalin)

### 20.2.1.3 Carbon market developments

In September 2022, the first domestic climate projects and respective offsets were registered in Russia's carbon registry in accordance with the Law on Limiting GHG Emissions. As of 19 April 2023, the registry listed four climate projects.

In December 2022, there was a landmark transaction with carbon offsets generated under the CDM<sup>233</sup> standard facilitated by a private actor – Carbon Zero.

Russia is aiming to build a common carbon market with other member-states of the Eurasian Economic Union (the "EAEU"),<sup>234</sup> as well as with CIS<sup>235</sup> and BRICS<sup>236</sup> countries.

### 20.2.2 What are the essentials of Russian general environmental law and BAT requirements?

Russian environmental law consists of numerous codes,<sup>237</sup> laws<sup>238</sup> and regulations adopted at the EAEU, federal and regional levels. The law

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<sup>231</sup> Such as Government-approved regulations regarding carbon registry, climate projects eligibility criteria, projects validation and verification, penalties for Sakhalin entities participating in local ETS and failing to comply with emission caps, etc.

<sup>232</sup> For instance, national guidelines on GHG management based in ISO standards – GOST R ISO 14064-2-2021 (based on ISO 14064-2:2019) and GOST R ISO 14080-2021 (based on ISO 14080:2018).

<sup>233</sup> Clean Development Mechanism, one of Kyoto Protocol mechanisms.

<sup>234</sup> Eurasian Economic Union, formerly known as Customs Union, an economic integration union of Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia.

<sup>235</sup> Commonwealth of Independent States – union of post-Soviet countries. It includes the EAEU and some countries such as Azerbaijan and Uzbekistan.

<sup>236</sup> Inter-state group including Brazil, Russia, India, China and South Africa.

<sup>237</sup> Such as Air, Water, Land and Forestry Codes.

provides for various environmental quality and pollution standards, and a charge for negative environmental impact.

Major industrials and other emission-intensive industries are currently implementing capital-intensive projects for major environmental efficiency improvements by introducing BAT and reducing emissions under the national project Environment.

The overall trend in Russian environmental law, enforcement and court practice is a substantial tightening. In April 2023, Mrs. Victoria Abramchenko, the Deputy Prime Minister in charge of Russia's environmental policy, announced an intent to introduce turnover based fines for industrial polluters that fail to mitigate their emissions by 2027. The amount of such fines (if the relevant law is passed) may vary from 0.1% to five percent of the polluting entity's annual turnover depending on its progress in environmental modernization activities.

#### 20.2.2.1 What are the primary types of environmental regulations?

The key components of environmental protection include:

- environmental standards and limits— including those based on BAT
- licensing requirements for specific types of activities
- economic regulation — including a charge for negative environmental impact
- various environmental expertise requirements
- environmental reporting, industrial environmental monitoring and state supervision
- requirements for specific types of activities such as construction, agriculture, waste management, water supply and other activities

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<sup>238</sup> Such as the environmental protection law (cornerstone law) and separate laws on air protection, waste, sanitary-epidemiological welfare, environmental expertise, energy efficiency and other areas.

- liquidating accumulated environmental damage

The list of regulated polluting substances is defined in Government Resolution No. 1316-r dated 8 July 2015. The substances are divided into three main categories, namely those relating to air (254 items), waste (249 items) and soil pollution (63 items).

### 20.2.2.2 What kind of environmental standards does Russia law provide?

Federal Law No. 7-FZ "On Environmental Protection" dated 10 January 2002 (the "**Environmental Protection Law**") differentiates:

- **environmental quality standards**<sup>239</sup> — including standards set for chemical environmental indicators (including maximum permissible concentrations standards), physical environmental indicators (including radiation), biological environmental indicators (including those relating to groups of plants, animals and other organisms) and some other environmental quality standards
- **permissible environmental impact standards** — including permissible emissions and discharges, permissible natural components extraction standards, permissible physical<sup>240</sup> and anthropogenic impact standards, waste disposal standards and waste placement limits, technological and technical standards

Conceptually, compliance with permissible environmental impact standards aims to ensure compliance with environmental quality standards.

The applicability of the standards varies depending on the type of negative environmental impact facility (the "**NEIF**") and its hazard class.

### 20.2.2.3 What do businesses have to pay for a negative environmental impact?

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<sup>239</sup> In Russian — *нормативы качества окружающей среды*.

<sup>240</sup> Heat, noise, vibration, ionizing emission, electromagnetic field strength, etc.

Russian environmental law stipulates a negative environmental impact charge<sup>241</sup> for:

- air pollutant emissions by stationary (fixed) sources of such emissions
- water pollutant disposal
- waste storage and burial

All legal entities and individual entrepreneurs conducting activities with a negative impact on the environment must pay the charge. Regional operators/municipal solid waste operators<sup>242</sup> pay the charge for waste placement (disposal).

The volume of emissions, volume of pollutants disposal or mass of waste form the payment base for the charge.

The entities (entrepreneurs) calculate the to-be-paid amount themselves by multiplying such payment base by a rate set by a governmental decree with regard to respective pollutants (waste classes). Below is a table with the examples of rate values for 2023. These are the 2018 rates with the additional 1.26 ratio of increase.<sup>243</sup>

No.	Pollutant/waste class	Charge rate (RUB per ton, 2022)
<b>Air emissions</b>		
1.	Nitrogen dioxide	174.89
2.	Benzapyrene	6,895,940.56
3.	Hydrogen phosphide	6,896.61

<sup>241</sup> In Russian — *плата за негативное воздействие на окружающую среду*.

<sup>242</sup> The charge for the negative environmental impact for waste placement (disposal) should not be confused with the "environmental fee" payable by manufacturers (importers) of goods and packaging. See Section 20.2.6 for details of the "environmental fee" and other waste-related issues.

<sup>243</sup> Government Decree No. 435 "On the Application in 2022 of the Rates of Payment for Negative Impact on the Environment" dated 20 March 2023.

4.	Methylmercaptan	68,959.42
5.	Sulfur dioxide	57.20
<b>Water pollution</b>		
1.	Acrylonitril	92,677.03
2.	Hydrazine hydrate	2,499,326.93
3.	Vinylchloride	93,718,840.34
4.	Sodium	8.44
5.	Mercury	92,677,287.81
<b>Waste disposal</b>		
1.	I class (extremely hazardous)	5,851.06
2.	II class (very hazardous)	2,507.65
3.	III class (moderately hazardous)	1,672.02
4.	IV class (low hazard class) <sup>244</sup>	835.63
5.	V class (almost not hazardous):	
	Extracting industries	1.39
	Processing industries	50.53
	Other	21.80
<b>Solid utility waste</b>		
6.	IV class (low hazard class)	100.59

<sup>244</sup> Save for IV class utility solid waste.

The rates are subject to increasing and decreasing ratios aimed at incentivizing businesses to decrease their environmental impact:

- increasing and decreasing ratios relate to implementation of BAT and may vary from 0 to 100
- decreasing ratios may apply to waste disposal in case of its prior decontamination<sup>245</sup>

#### 20.2.2.4 Is Russian law familiar with the concept of BAT?

##### Overview

The concept of BAT was introduced in 2014 in a newly added Article 28.1 of the Environmental Protection Law.

The overall declared goal of the legislation linked to BAT is to decrease the administrative burden for entrepreneurs and to decrease the number of audits, reporting obligations and permissions to be obtained due to the implementation of the risk-oriented approach. The BAT concept is closely linked to NEIF categorization (it primarily affects NEIF category I), the development of technological parameters and standards, the replacement of certain environmental permits with the so-called "integrated environmental permits," the development of environmental efficiency programs, and automated emissions control. Details on these and related aspects of the BAT reform are set out in the following sections.

##### NEIF categorization and BAT definition

For the purposes of environmental compliance, all NEIFs in Russia are categorized as part of their registration in the state NEIF register.<sup>246</sup>

The implementation of BAT is mandatory for NEIFs of category I. NEIFs of categories II and III are not subject to mandatory requirements for

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<sup>245</sup> Schedule 3 of Government Decree No. 913 "On the Rates of Payment for Negative Impact on the Environment and Additional Coefficients" dated 13 September 2016.

<sup>246</sup> The criteria for attributing facilities to a relevant category is established by Government Decree No. 2398 dated 31 December 2020. The criteria were updated in 2021. The document is limited to 1 January 2027.

BAT implementation but may implement them and enjoy certain economic and tax preferences.

The Environmental Protection Law defines BAT as the technologically advanced production of goods (or performance of works or provision of services), which are determined based on:

- achievements of modern science and technology
- the best combination of criteria for achieving environmental goals, subject to the technical feasibility of its application

The rules for determining technological processes, equipment, technical methods and techniques as BAT are approved by the government of the Russian Federation. The Ministry of Trade and Development have also developed respective methodological guidelines.

#### Areas of BAT implementation

The areas of BAT implementation were initially established by Government Resolution No. 2674-r of 24 December 2014 and have been updated a number of times. The areas can be split into two categories:

- **economic activities sectors**, such as mining and processing of metal ores, metal production, oil and gas extraction, coal and anthracite extraction and processing, electric and heat energy generation, utilization and decontamination of waste [**Utilization** is a Russian legal term that is close in meaning to recycling. It is defined in Section 20.2.6.5 below], production of cellulose, paper and cardboard, production of main organic chemical substances, products of fine organic synthesis and polymers, textiles production, poultry breeding, production of food, beverages, milk and dairy products and other sectors
- **cross-sector technological processes**, such as energy efficiency improvement, sewage water treatment, use of industrial cooling systems, elimination of accumulated environmental damage and other processes



### BAT reference books

Specific BAT for various industries and technological processes are included in the information and technical reference books on BAT (the "**Reference Books**").

The Reference Books were developed by technical working groups, coordinated by the Ministry of Industry and Trade. The books were approved and published by the Federal Agency on Technical Regulating and Metrology of the Russian Federation.<sup>247</sup>

The Reference Books are subject to regular update in line with new technologies, economic and environmental indicators used in industry, and international and domestic experience.

### Technological parameters and standards

For each BAT implementation area, separate **technological parameters**<sup>248</sup> are calculated, i.e., indicators of concentration of pollutants, the volume and/or mass of emissions and pollutant discharges, waste generation, water consumption and energy resources per unit of time or unit of production (work and service).

Technological parameters that are mandatory for use in the relevant industry are not determined directly in the Reference Books, but in the regulations approved by the Ministry of Environment, taking into account the Reference Books.

Based on the technological parameters, economic entities independently develop **technological standards**<sup>249</sup> for each NEIF, i.e., standards for emissions and pollutant discharges, and permissible physical impacts.

### BAT implementation

The BAT implementation process includes designing, reconstructing and technically retooling the NEIF, installing equipment and applying any or all of the following:

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<sup>247</sup> Rules for determining a technology as the BAT, as well as the development, updating and publication of information and technical references on the BAT, approved by Government Decree No. 1458 dated 23 December 2014.

<sup>248</sup> In Russian — *технологические показатели*.

<sup>249</sup> In Russian — *технологические нормативы*.

- technologies described in the Reference Books
- technologies where the environmental impact indicators should not exceed the established technological indicators of BAT

### Integrated environmental permit

Legal entities and individual entrepreneurs operating NEIF category I are required to obtain an integrated environmental permit<sup>250</sup> (the "IEP"). Owners of NEIF category II do not need to obtain an IEP but in certain cases may obtain it at their discretion.

The Federal Service for Supervision of Natural Resource Usage of the Russian Federation (the "**Rosprirodnadzor**") issues IEPs on the basis of an application of an economic entity regarding a separate NEIF for a period of seven years, with the possibility of further extension.<sup>251</sup> An IEP should be obtained in the following cases:

- the NEIF is included in the so-called List 300 — until 31 December 2024 (List 300 was approved by the Ministry of Environment on 18 April 2018 and included NEIFs of category I, whose contribution to total emissions and discharges of pollutants in the Russian Federation is not less than 60%)
- all other NEIF category I — until 1 January 2025

According to statistics available on the Rosprirodnadzor website, 117 business enterprises have already obtained IEPs as of November 2022.<sup>252</sup> Out of these, 82 are not on the List 300.

The IEP should contain, among other things, technological standards, standards for permissible emissions and discharges of highly toxic substances, standards for permissible physical impacts, standards for waste generation and limits on their placement, and an agreed program of industrial environmental monitoring.

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<sup>250</sup> In Russian — *комплексное экологическое разрешение*.

<sup>251</sup> Government Decree No. 143 dated 13 February 2019. The document becomes invalid from 1 March 2023 due to Government Decree No. 1386 dated 04 August 2022 entry into force.

<sup>252</sup> Federal Service for Supervision of Natural Resource Usage of the Russian Federation, List of Objects of Negative Impact on the Environment, for which IEPs have been issued (12 January 2022): <<https://rpn.gov.ru/opendata/7703381225-objectker>>.

*Environmental impact declaration for objects of category II*

Owners of NEIF category II are required to submit an environmental impact declaration.

This declaration is to be submitted to Rosprirodnadzor once every seven years (unless technological processes and emission parameters are changed) and should contain information on the negative environmental impact, industrial environmental monitoring, declared emissions, pollutant discharges and disposed waste.

*Environmental efficiency improvement program and environmental protection plan*

If compliance with technological or permitted standards for NEIF is impossible, then an environmental efficiency improvement program (the "**Program**") or environmental protection plan (the "**Plan**") should be developed for NEIF.

The Program should be developed for NEIF category I and attached to the IEP, whereas the Plan should be developed for NEIF category II and III. The Program and the Plan establish a list of measures for the reconstruction and technical retooling of facilities, including BAT implementation, timing of their implementation, amount and sources of funding.

*Automated emission control*

Industrial environmental monitoring for NEIF category I should include automatic monitoring of emissions, discharges and pollutant concentrations. For this, stationary sources of such NEIF must be equipped with the following:

- automatic measuring instruments for recording emissions, discharges and pollutant concentrations
- technical equipment for recording and transmitting information on the volume and/or mass of emissions, discharges and pollutant concentrations to the state register of NEIF maintained by Rosprirodnadzor

The Government of the Russian Federation establishes the list of relevant stationary sources.<sup>253</sup>

The deadline for the creation of an automatic control system may not exceed four years from the date of receipt or revision of the IEP.

### *Incentives and penalties relating to BAT*

#### *A. Charge for negative environmental impact*

As noted, the charge for negative environmental impact varies. In respect of BAT, the following ratios apply:

- **0** — in respect of the volume and mass of polluting substances within the technological standards following the implementation of BAT
- **1** — in respect of the volume and mass of polluting substances within the permissible environmental impact standards
- **25** — in respect of the volume and mass of polluting substances within the temporarily allowed emissions and discharges established by the Program or the Plan
- **100** — in respect of the volume and mass of polluting substances in excess of the volume and mass established for NEIF categories I and II

The charge for the negative environmental impact may be decreased by the amount of expenses relating to the implementation of the Program or the Plan.

#### *B. Investment tax credit*

Companies implementing actions to decrease their negative environmental impact may apply for investment tax credit of 100% of the equipment purchased for BAT implementation purposes. Additional details regarding such tax credit are provided in Section 20.2.5.8 relating to energy-efficiency incentives.

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<sup>253</sup> Government Decrees No. 262 and No. 263 dated 13 March 2019.

### *C. Increased depreciation ratio*

For the purposes of corporate profits tax, taxpayers may increase the basic depreciation rate by a special ratio (not exceeding 2) in respect of fixed assets being treated as facilities operated in case of BAT application according to the list approved by Government Resolution No. 1299-r dated 20 June 2017.

If BAT is implemented for the purposes of energy efficiency improvement, taxpayers may also enjoy the increased depreciation ratio applicable to facilities of high energy efficiency. For more details, please refer to Section 20.2.5.8.

### *D. Green bonds-related subsidies*

Corporates issuing bonds to finance BAT implementation may be entitled to a subsidy for compensation of interest payments under green bonds. For additional information on Russian green and sustainable finance developments, please refer to Section 20.4.5.

### *E. Special investment contracts: BAT and modern technologies*

Russian industrial policy law entitles an investor to enter into a special investment contract (the "**SPIC**") for the implementation or development of a technology that is used in technological operations and the production of internationally competitive industrial goods.

To be eligible for SPIC purposes, such technology must be included in the list of modern technologies approved by the government. The current version refers to certain technologies overlapping with BAT. For general information on SPICs, please see Sections 3.3 and 3.4 of this guide.

## 20.2.3 Does Russia develop renewables and incentivize their use?

Yes. Below we provide an overview of the Russian renewable energy sources (the "**RES**") market, the available incentives for RES and those being developed in the wholesale and retail power markets, microgeneration, smart power, renewable energy certificates and opportunities for corporate renewable power purchase agreements. These incentives are generally relevant for RES projects connected to

the national grid (Unified Power System) within the so-called price zones and in some cases non-price zones of the wholesale market.<sup>254</sup> Some experts argue that RES in isolated (off-grid) Russian areas are already competitive with conventional power and do not require any state-run incentives.

For a general description of the Russian energy system, the basics of the market structure, its participants and regulators, please refer to Section 17 ("Power") of this guide.

### 20.2.3.1 What is the current state of the Russian RES market?

Taken broadly, the Russian RES market includes two core segments: power generation and equipment manufacturing.

#### Power generation

The total installed capacity of renewable power stations as of 1 January 2023 is **5.78 gigawatts**.<sup>255</sup> This does not include hydroelectric power plants<sup>256</sup> comprising more than 50 gigawatts or about 20% of Russia's total installed power capacity connected to the national power grid.<sup>257</sup> The Russia Renewable Energy Development Association estimates that Russian generators will commission an additional 438 megawatts of RES power in 2023.<sup>258</sup>

Renewable power stations that are part of the wholesale market include wind, solar and small hydroelectric. Waste-to-energy projects are also generally eligible to operate on the wholesale market. Retail power stations may also include other energy sources such as biomass, biogas

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<sup>254</sup> The Russian wholesale power market is geographically divided into three types of zones: (i) price zones — the European part of Russia, the Urals and the western part of Siberia; (ii) non-price zones — Kaliningrad, Arkhangelsk, Komi and the southern part of the Far East regions; and (iii) isolated territories — large parts of Siberia and the Far East.

<sup>255</sup> Based on statistics of Russia Renewable Energy Development Association <[https://reda.ru/statistics\\_of\\_renewable\\_energy\\_in\\_russia](https://reda.ru/statistics_of_renewable_energy_in_russia)>.

<sup>256</sup> With a capacity exceeding 50 megawatts.

<sup>257</sup> Information review "Report on the functioning of the Unified Energy System of Russia in 2022 (based on live data)" (13 January 2023) <[https://www.soups.ru/fileadmin/files/company/reports/disclosure/2023/ups\\_rep2022.pdf](https://www.soups.ru/fileadmin/files/company/reports/disclosure/2023/ups_rep2022.pdf)>.

<sup>258</sup> Russia intends to commission 438 megawatts of renewable energy capacity in 2023 (14 February 2023) <https://tass.ru/ekonomika/17049249>.

and landfill gas. Some corporates and municipalities are also using renewables in isolated (off-grid) territories.

Recently, the Russian authorities have been considering expanding the use of renewables with a view toward Russia's carbon neutrality goals and major plans for hydrogen.

### Equipment manufacturing

To be eligible for statutorily provided incentives, investors have to comply with localization requirements for solar, wind and small hydroelectric power stations. Such requirements have been tightening over the years.

Such requirements have effectively triggered a number of landmark cross-border joint venture projects relating to the localization in Russia of the manufacture of wind power components such as towers, impeller blades and nacelles. The government has incentivized such investments through SPICs.<sup>259</sup>

## 20.2.3.2 What are the primary incentives for RES projects?

### General

Depending on the nature and scale of potential RES projects, investors may consider the following:

- investors in wholesale market RES facilities that have won a specific competitive selection may recoup their investments through regulated payments for "power capacity" under the capacity supply agreements
- on retail markets, local grid operators<sup>260</sup> are statutorily required to purchase electricity from qualified RES generators under regulated tariffs for compensation of their grid losses on a first-priority basis

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<sup>259</sup> Please see Sections 3.3 and 3.4 of this guide for further information on SPICs and other investment-incentivizing tools.

<sup>260</sup> Operating within a territory of a relevant constituent entity of the Russian Federation. In Russian — *территориальные сетевые организации*.

- Russia is currently developing its national low-carbon certificates system for RES, large hydroelectric and nuclear generators.
- International Renewable Energy Certificates (I-RECs) became available for Russian generators in 2020. In 2022 I-REC suspended its Russian operations. Per today Russian generators may sell and consumers may purchase certificates registered by Carbon Zero – Russia’s domestic private entity
- some incentives are also available for microgeneration

Sections 20.2.3.3 and 20.2.3.4 separately outline the availability of corporate power purchase agreements (PPAs) in Russia and possible interplay between RES and the pilot projects with "active power units."<sup>261</sup> Section 20.2.3.5 outlines general tax and other investment benefits potentially relevant for RES projects.

*Wholesale market — return of investments through regulated capacity payments*

*A. "Capacity" concept*

The wholesale market rules provide that generation capacity and electricity be traded as separate types of goods. The sale of capacity implies:

- the obligation of a wholesale market participant to maintain and repair its generation equipment in stand-by mode to produce electricity
- the corresponding right of other wholesale market participants to demand fulfillment of that obligation in accordance with the terms of the capacity supply agreements

The capacity trade aims to ensure reliable and uninterrupted electricity supply on the wholesale market. Payments for capacity aim to ensure a return of investments in the generating facilities. Some argue that historically the capacity payments allowed Russian energy systems to overcome the deficit of power capacity.

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<sup>261</sup> In Russian — активные энергетические комплексы.



### *B. Capacity supply agreements*

Among other options, the capacity can be sold under standardized capacity supply agreements (*договор о предоставлении мощности (ДПМ)*) (the "**CSA**"). The parties to a CSA are:

- supplier of capacity — represented by the Centre for Financial Settlements (the "**CFS**")<sup>262</sup> under a commercial representation agreement between the CFS and the supplier<sup>263</sup>
- buyer of capacity — also represented by the CFS under a commercial representation agreement between the CFS and the buyer
- Administrator of Trading System (the "**ATS**")<sup>264</sup> — as a commercial operator of the wholesale market

Under a CSA, the renewable energy producer (supplier) commits to build up and commission a respective renewable energy facility within a certain period. The producer also commits to produce a certain minimum amount of electricity every year.

In 2022, due to disruptions in the logistics and organization of financing caused by sanctions, the Government granted CSA RES projects selected before 1 January 2022 a 24-month penalty-free grace period for commissioning. For those investors who were not affected by the withdrawal of foreign manufacturers from the Russian market, this grace period was 12 months.<sup>265</sup>

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<sup>262</sup> The CFS is an intermediary for payments on the wholesale capacity and electricity market. The Market Council and ATS own CFS.

<sup>263</sup> A standardized agreement is part of the agreement for adhesion to the wholesale market trading system.

<sup>264</sup> Joint-stock company "Administrator of Trading System" administrates the wholesale power and capacity market and facilitates the trades on standard terms by bringing together sellers and purchasers. ATS is wholly owned by the Market Council.

<sup>265</sup> Russia Renewable Energy Development Association, CSA RES projects granted with a penalty-free deferral for two years (23 May 2022) <https://rreda.ru/novosti/tpost/h3zld6ija1-proektam-dpm-vie-dali-neshtrafemuyu-ots>.

CSAs are concluded in accordance with a form developed by the Market Council.<sup>266</sup> The form of the CSA for RES (the "**CSA RES**") differs from CSAs relating to conventional power.<sup>267</sup>

### *C. Payments under CSA*

In 2013, the government adopted Decree No. 449 "On Incentive Mechanisms to Promote RES on the Wholesale Power and Capacity Market." It introduced a **15-year term** for capacity supply under the CSAs, as well as establishing the rules and formulas to define the payments under CSAs for the capacity of the renewable energy generating facility.

Payments under the CSAs are deemed to be the backbone incentive for the Russian wholesale RES market. According to the CFS, the aggregate payments under all CSAs RES only in December 2021 amounted to RUB 1,357 million.<sup>268</sup>

The payments aim to ensure a return of investments in a given renewable energy facility. The formula of the payments relating to the capacity of wind, solar or small hydroelectric facilities differs from the one set for waste-to-energy facilities. However, both formulas provide for a **12% investment return rate**.<sup>269</sup>

Some investors are considering securitizing payments under the CSAs RES by issuing bonds backed by capacity payments, effectively being a green (sustainable) finance arrangement.

### *D. Scale of CSA RES 1.0*

The CSA RES program relating to RES projects commissioned for 2014 to 2024 is commonly known as **CSA RES 1.0**. Government Resolution No. 1-r "On Approving the Main Areas of Focus of the Power Sector

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<sup>266</sup> Association "Nonprofit Partnership Council for Organizing Efficient System of Trading at Wholesale and Retail Electricity and Capacity Market."

<sup>267</sup> CSAs are commonly used to support investors not only in renewables but also in conventional power.

<sup>268</sup> Report on implementation of commitments with the payment date falling on 28 December 2021 <<https://cfrenerg.ru/upload/iblock/96f/Otchet-ob-ispolnenii-obyazatelstv-v-datu-platezha-28.12.2021-g.pdf>>.

<sup>269</sup> In Russian — *базовый уровень доходности инвестированного капитала*.

Energy Efficiency Based on Renewable Energy Sources" dated 8 January 2009 (the "**Decree 1-r**"), defined the scale of CSA RES 1.0.

Decree 1-r establishes the **target capacity values** for RES projects commissioned for 2014 to 2024. Such values effectively limit the maximum capacity of projects to be selected in a given year. The aggregate target for solar, wind and small hydroelectric commissioned until 2024 is **5,385.1 megawatts**.

As of today, the CSA RES 1.0 selections are completed.

#### *E. CSA RES 2.0 — program extension until 2035*

In October 2019, the government amended the Decree 1-r, effectively extending the CSA RES until 2035. The amended Decree 1-r introduced new localization and export targets for equipment to be used by RES projects commissioned for 2025 to 2035. The targets will be increasing from 2025 to 2035.

In June 2021, the government defined the annual "basic support limits caps." Such caps are effectively the upper thresholds for the aggregate capacity payments that the CSA RES parties may collect at wholesale power and capacity market in a given year. In turn, that defines the amount of capacity to be auctioned by ATS for a given commissioning year.

The maximum volume of payments for capacity under the CSA RES 2.0 is RUB 360 billion. According to various estimates, this amount will secure commissioning up to 8 gigawatts of RES.<sup>270</sup>

The below table provides a breakdown of these caps per year for wind, solar and small hydroelectric.

#### *F. Selection of RES projects eligible for CSA RES*

##### Stage 1

The ATS reviews the applications in terms of compliance with the requirements detailed in the rules for competitive selections of RES

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<sup>270</sup> "The Ministry of Energy estimates the volume of commissioning under CSA RES 2.0 at more than eight GW" (23 September 2021) <<https://peretok.ru/news/generation/24011/>>.

projects<sup>271</sup> and the agreement for accession to the wholesale market trading system (the "**Accession Agreement**")<sup>272</sup> such as:

- capacity of the RES facility — which should be **no less than 5 megawatts**
- minimum **localization and export requirements** for equipment established by Decree 1-r
- requirements regarding **security** relating to the applicant's future obligations under the CSA RES
- execution of all agreements required under the Accession Agreement

Projects complying with the above requirements are further assessed at Stage 2.

#### Stage 2

ATS selects projects with the lowest "efficiency factor" defined in rubles per megawatt-hour within support limits set for a given year.

In 2022 ATS postponed the CSA RES 2.0 project selection because of the withdrawal of some foreign technological (mainly wind) companies from Russia and other market disruptions.

ATS conducted selections in March-April 2023 with the total capacity payment caps of about RUB 17 billion, of which:

- RUB 8.48 billion have been earmarked for wind farm projects commissioning in 2025-2029
- RUB 6.18 billion - for combined heat and power plants commissioning in 2024-2026

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<sup>271</sup> Rules of conducting the competitive selection of investment projects relating to construction (reconstruction, modernization) of generation facilities operating based on RES (Chapter XV of the Rules of the Electric Power and Capacity Wholesale Market).

<sup>272</sup> In Russian — *Договор о присоединении к торговой системе оптового рынка*. Execution of the Accession Agreement is a mandatory step to obtain the status of a wholesale market participant.

- RUB 2.32 billion - for small hydroelectric power plants commissioning in 2027-2029<sup>273</sup>

The selection proved to be successful. During the first bidding round, 135 applications were filed, exceeding the allocated capacity payments cap by 4.5 times.

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<sup>273</sup> Peretok.ru, The second selection of projects under CSA RES 2.0 is scheduled for 22 March-7 April (2 February 2023) <https://peretok.ru/news/engineering/25850/>.

CSA RES 2.0 — Key indicators and outcomes

Solar						Power
Applications approved	Applications filed <sup>274</sup>	Localization (scores)	Efficiency factor (RUB million)	Annual support limits (RUB million)	Indicator	
3	7	95	10,991	2,989		2023
13	23	95	10,574	2,887		2024
16	26	110	10,046	2,608		2025
17	36	110	9,594	2,469		2026
18	23	110	9,110	2,338		2027
15	20	120	8,683	2,026		2028
13	13	120	8,282	476		2029
11	28	120	7,901	451		2030
10	21	120	7,541	428		2031
0	0	120	7,202	405		2032
0	0	120	6,885	384		2033
		120	6,582	365		2034
		120	6,297	346		2035
<b>116</b>	<b>197</b>	<b>N/A</b>	<b>N/A</b>	<b>18,172</b>		<b>Total</b>

<sup>274</sup> Reference is made to the commissioning year, not to the number of applications submitted to ATS in a given year. For instance, there were seven applications to enter into CSA for solar projects with a planned commissioning in 2023 and 23 applications with a commissioning date in 2024.

Wind						Power
Applications approved	Applications filed	Localization (scores)	Efficiency factor (RUB/MWh)	Annual support limits (RUB million)	Indicator	
0	0	-	-	-	2023	
1	1	-	-	-	2024	
2	2	87	6,291	3,870	2025	
6	6	87	5,990	3,632	2026	
5	5	87	5,706	3,407	2027	
20	25	87	5,439	3,192	2028	
23	31	87	5,189	2,994	2029	
15	47	87	4,951	2,804	2030	
19	30	102	4,725	2,625	2031	
14	48	102	4,512	2,453	2032	
7	25	102	4,313	2,295	2033	
		102	4,123	2,144	2034	
		102	3,942	2,000	2035	
<b>112</b>	<b>220</b>	<b>N/A</b>	<b>N/A</b>	<b>31,416</b>	<b>Total</b>	

Small hydro-electric						Power
Applications approved	Applications filed	Localization (scores)	Efficiency factor (RUB/MWh)	Annual support limits (RUB million)	Indicator	
0	0	-	-	-	2023	
0	0	-	-	-	2024	
0	0	85	8,546	-	2025	
3	3	85	8,259	-	2026	
0	0	85	7,982	1,484	2027	
2	2	85	7,717	1,425	2028	
2	2	85	7,465	1,369	2029	
1	1	85	7,218	-	2030	
2	2	95	6,981	-	2031	
1	1	95	6,754	-	2032	
3	6	95	6,537	-	2033	
		95	6,326	-	2034	
		95	6,122	-	2035	
14	17	N/A	N/A	4,278	Total	



*Retail markets — first-priority power purchase by grid operators for compensation of grid losses*

*A. General description*

The government introduced incentives for retail RES projects in Decree No. 47 dated 23 January 2015.<sup>275</sup> The incentive operates in a way that local grid operators<sup>276</sup> are statutorily required to purchase power from qualified RES generators under regulated tariffs for compensation of their grid losses on a first-priority basis.

The capacity of the generating facilities eligible for such an incentive generally cannot exceed 25 megawatts.<sup>277</sup> However, the types of eligible RES are more extended as compared to the wholesale market, e.g., biomass, biogas and landfill gas projects may enjoy the incentive.

*B. Eligibility criteria*

The key milestones for a RES generation facility to obtain the incentives on the retail markets are:

- inclusion in the so-called Scheme and Program of Prospective Regional Electric Power Development (the "**Regional Scheme**") upon the results of a competitive bid organized by regional authorities
- execution of a PPA with the local grid operator for compensation of its grid losses prior to RES facility commissioning
- passing qualification by the Market Council — once the RES facility is built and commissioned — and obtaining a qualification certificate, after which the facility becomes "qualified" (qualification includes localization verification)

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<sup>275</sup> In particular, this decree amended Government Decree No. 1178 dated 29 December 2011 "On Pricing in the Field of Regulated Prices (Tariffs) in Electrical Energy Industry."

<sup>276</sup> Operating within a territory of a relevant constituent entity of the Russian Federation. In Russian — *территориальные сетевые организации*.

<sup>277</sup> However, some projects are structured in a way that the aggregate capacity exceeds 25 megawatts.

- establishment of a tariff for the sale of electricity to the local grid operator

### *C. Project selection*

Federal regulation establishes some basic rules, principles and criteria for the selection of projects for inclusion in the Regional Scheme, such as minimization of electricity costs for end consumers, minimization of negative environmental impact and publicity.

The only quantitative criterion is that the planned volume of electricity production from a RES in a given region (constituent entity) cannot exceed five percent of the total volume of the regional grid companies' losses operating in such region.

Regional authorities establish specific procedural requirements subject to federal regulations, such as Decree 1-r establishing localization standards, upper thresholds of capital and operational expenditures for each power generation type.<sup>278</sup>

### *D. Tariffs*

Regional authorities establish the tariffs for the sale of electricity to the grid companies in accordance with the guidelines of the Federal Antimonopoly Service, subject to a **15-year payback period and a 12% basic investment return rate**.

## *Renewable energy certificates (the "RECs")*

### *A. National RECs system*

In November 2022, the State Duma passed in the first hearing the draft amendments to the Power Law<sup>279</sup> establishing Russian certification system for low-carbon power:

- renewable energy certificates are electronic documents that confirm the fact of RES and nuclear power generation at a

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<sup>278</sup>The upper thresholds of CAPEX and OPEX established in Decree 1-r for retail market projects are different from those set for the wholesale market, though for some years they can match.

<sup>279</sup> Federal Law "On Electric Power" dated 26 March 2003, as amended. Draft.

qualified facility in a given amount during a given period. The certificates serve to evidence the rights associated with the environmental attributes of such power<sup>280</sup>

- an organization to be defined by the Market Council is expected to issue the certificates upon an application from a power generator and to record the transfer and redemption (retirement) of certificates
- generators can sell the certificates under sale-purchase agreements jointly with power (bundled certificates) or separately from it (unbundled certificates)
- the redemption of certificates entitles their holders to inform third parties that the goods, work or services of such holders are linked to low-carbon power and respective environmental attributes

### *B. I-RECs*

In 2020-2022 Russian RES and large hydroelectric producers have been able to issue and sell international renewable energy certificates (the "**I-REC**"). I-REC platform has been administered by I-REC Services B.V., a private company incorporated in the Netherlands. The non-profit association Goal Number Seven Association has been acting as the local issuer of I-RECs.

In the two years of its operation, the I-REC registry has registered 86 Russian power plants and 3.5 million certificates.<sup>281</sup>

I-REC suspended Russian operations in March 2022.

### *C. Carbon Zero*

In 2022 Russian power producers became able to issue and sell certificates using the registry operated by a new private actor – Carbon

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<sup>280</sup> Positive features of low-carbon power production, such as the reduction of negative anthropogenic effects on the environment and human health.

<sup>281</sup> Official web-site of Goal Number Seven <<https://www.gns.center/i-rec?lang=en>>.

Zero.<sup>282</sup> There have already been some landmark transactions with Carbon Zero certificates.<sup>283</sup>

### Microgeneration

The Russian Power Law defines the following key features of a microgeneration facility, including RES-based:

- capacity up to 15 kilowatts
- technological connection to power grid of up to 1,000 volts
- usage for individual household consumption, business needs or sale under retail market rules

Owners of microgeneration facilities are entitled to sell the excess (unused) electricity generated by such facilities to retail purchasers such as utility (power supply) companies<sup>284</sup> or guaranteeing suppliers.<sup>285</sup> The revenue from such sales is exempt from personal income tax.

The guaranteeing suppliers are statutorily obliged to execute the PPA with the owner of a microgeneration facility that meets the applicable requirements. The purchase price for micro-generated power under such agreements cannot exceed the wholesale market prices relevant to the guaranteeing supplier.

According to the media, the Ministry of Energy is proposing to launch a national program on the development of microgeneration.<sup>286</sup> The program may set a target of 1 gigawatt of microgeneration capacity by 2030.

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<sup>282</sup> Available at the official site <<https://carbonzero.ru/>>.

<sup>283</sup> Moselectroshield, Green Certificates (10 April 2022)

<https://www.moselectroshield.ru/about/projects/zelyenye-sertifikaty/>.

<sup>284</sup> In Russian — *энергосбытовые компании*.

<sup>285</sup> In Russian — *гарантирующий поставщик*. A utility (power supply) company having the status of a guaranteeing supplier. Guaranteeing suppliers have to execute power supply (power purchase) agreements with any potential consumers.

<sup>286</sup> "Pick up a beam: in the Russian Federation there may be subsidies for solar panels for citizens" (21 October 2021) <<https://iz.ru/1238221/valerii-voronov/podobrat-luch-v-rf-mogut-poiavitsia-subsidii-na-solnechnye-batarei-dlia-grazhdan>>.

### 20.2.3.3 Are corporate renewable PPAs available in Russia?

Russian law allows generators and consumers to enter into direct PPAs on the wholesale and retail markets.

As of today, the number of corporate consumers purchasing power on the wholesale market is fairly limited. Most of them are purchasing power on retail markets. At the same time, most of the RES generators are selling power on the wholesale market. For that reason, some corporates with RES procurement and carbon footprint targets are entering into multitier contractual arrangements involving utility companies.

Virtual (synthetic) PPAs are so far generally unknown on the Russian market. Further assessment is required of the regulatory and financial feasibility of their implementation and enforceability.

#### Wholesale PPAs

The wholesale generator and wholesale consumer are entitled to enter into a so-called bilateral (free) PPA<sup>287</sup> (the "**Wholesale Direct PPA**"). Separate Wholesale Direct PPAs can be executed in respect of power volumes deviating from the planned power production or consumption.

There is no specific form for Wholesale Direct PPAs. However, they have to contain a number of mandatory provisions<sup>288</sup> and be registered by ATS.

The parties to the Wholesale Direct PPA are generally free to define the power purchase price. Payments under the Wholesale Direct PPAs have to be made through CFS.

#### Retail PPAs

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<sup>287</sup> In Russian — *свободный двусторонний договор купли-продажи электрической энергии (СДД)*.

<sup>288</sup> Defined in the Rules of Registration and Recording of the Free Bilateral Power Purchase Agreements (Annex 6.1 to the Accession Agreement).

A retail market power purchase (supply) agreement is between a retail generator and retail consumer (the "**Retail Direct PPA**"). Retail Direct PPAs are not subject to a specific form or pricing regulations. However, the agreements have to contain a number of statutorily defined provisions.<sup>289</sup>

The parties to a Retail Direct PPA have to maintain a power supply agreement (or execute a new one) with the guaranteeing supplier. Such an agreement aims to ensure a reliable standby power supply, as well as transmission of information on power production and consumption between the parties.

### Multi-tier contractual arrangements

Such arrangements provide for the following chain of contracts and actions:

- a corporate consumer and generator execute a memorandum of understanding or a similar type of arrangement highlighting the consumer's willingness to purchase RES-based power
- the consumer enters into a power purchase (supply) agreement (the "**Retail Utility PPA**") with a power supply (utility) company<sup>290</sup>
- the utility company enters into (amends) an agreement with a grid company for power delivery to the consumer's power receiving equipment. Such a location forms the delivery point cluster (DPC)<sup>291</sup>
- the utility company registers the DPC on the wholesale market
- the utility company enters into the Wholesale Direct PPA with the wholesale renewable generator indicating the DPC used for power supply to the corporate consumer under the Retail Utility PPA

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<sup>289</sup> Defined in Government Decree No. 442 "On Retail Powers Markets Operations, Complete and (or) Incomplete Power Consumption Limitation" dated 4 May 2012.

<sup>290</sup> In Russian: *энергосбытовая компания*.

<sup>291</sup> DPC may be formed of one or several supply (delivery) points.

Such arrangements are sometimes questioned in terms of power pricing certainty for consumers and sufficiency to meet corporate RES targets.

#### 20.2.3.4 Are there any notable smart power developments relevant for RES?

In March 2020, the government supplemented Russian retail power markets rules<sup>292</sup> with a concept of "active power units" (the "**APU**").<sup>293</sup> APUs are not limited by power source, but presumably can be RES-based.

APUs may consist of a power generating facility up to 25 megawatts and power receiving equipment of industrial enterprises, administrative, business and shopping centers that are located within Russia's national grid and meet certain criteria and requirements, such as:

- the APUs should not be registered in the wholesale market
- only one of the facilities comprising the APU is connected to the grid of the local grid operator
- all facilities are interconnected through power equipment that is not owned by the grid operator
- power production, consumption and balancing by APU facilities have to be controlled by a smart connection system (equipment and software) that meets certain requirements
- APUs cannot include household residents and some other types of consumers

Until 31 December 2030, Russia will be implementing pilot APU projects with a view toward innovating technology deployment. Companies interested in participating in such projects should apply to the System Operator.<sup>294</sup> The System Operator administers the application review

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<sup>292</sup> Annex 5 to Government Decree No. 442 dated 4 May 2012 "On Retail Powers Markets Operations, Complete and (or) Incomplete Power Consumption Limitation."

<sup>293</sup> In Russian: *активные энергетические комплексы*.

<sup>294</sup> JSC System Operator of the Unified Power System (the "**System Operator**"). Exercises centralized operational-dispatching management of the Russian Unified Power System.

jointly with the Russian Ministry of Energy, the Federal Antimonopoly Service, the Market Council and the Infrastructure Center Energynet.<sup>295</sup>

Some believe<sup>296</sup> that APUs will be primarily set up in SEZs, advanced social and economic development territories (the "ATDs") and similar territories.<sup>297</sup>

### 20.2.3.5 Are there any tax and other investment incentives relevant for RES?

Investors in RES projects may consider executing a PPA with Russian authorities to stabilize the regulatory regime applicable to the project and possibly obtain some other benefits. They may also consider locating the RES project in SEZs or ATDs to enjoy some tax, customs and other benefits. For further details on IPPAs, SEZs and ATDs please see Section 3 ("Promoting Foreign Investment in Russia").

Owners of RES-based power facilities may also be entitled to an investment tax deduction (ITD), investment tax credit, property tax exemption and accelerated depreciation similar to investments in energy efficiency projects. For further details of such incentives, please see Section 20.2.5.

## 20.2.4 Does Russia have a national hydrogen strategy?

### 20.2.4.1 Energy strategy 2035

In June 2020, the Russian government approved a new energy strategy through 2035. One of the strategy's major goals is for Russia to become a world leader in hydrogen production and export. It also established specific export targets of 0.2 million tons by 2024 and **two million tons by 2030**.

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<sup>295</sup> Administers the government-approved roadmap for the implementation of the energy stream of Russia's National Technological Initiative until 2035.

<sup>296</sup> "Decentralized power integrator," (3 October 2018) <<https://www.kommersant.ru/doc/3758001>>.

<sup>297</sup> See Section 3.4 of this guide for additional information on incentives available in such territories.



To achieve these targets, the government intends to implement or incentivize the following:

- investments in production, transportation and consumption of hydrogen and hydrogen-based energy mixes
- increase of hydrogen production based on natural gas, including using renewable and nuclear power
- development of Russian low-carbon technologies to produce hydrogen by methane pyrolysis, electrolysis and other means, including by way of foreign technology localization
- internal market demand for hydrogen fuel cells in transportation, as well as use of hydrogen and hydrogen-based energy mixes as energy storage and conversion tool to increase efficiency of centralized power supply systems
- international partnerships in the hydrogen field and expansion to global markets

#### 20.2.4.2 Hydrogen roadmap 2024

In October 2020, the government approved an action plan (the "**Roadmap 2024**") for hydrogen development through 2024 noting:

*The Russian Federation has significant potential in hydrogen power, namely its proximity to European and Asia-Pacific markets, its resource base (natural gas, oil, coal, underused electric power capacities) and its scientific background in hydrogen production, transportation and storage.*

Apart from various organizational and regulatory actions, the Roadmap provided for the implementation of high-priority pilot hydrogen projects that envisage:

- the development, production and use of pilot equipment for carbon free hydrogen production
- the development, manufacturing and testing of gas turbines for methane-hydrogen fuel

- the development of hydrogen-run railway transport prototype
- the development of pilot sites for low-carbon hydrogen production at hydrocarbon processing facilities or natural gas production facilities
- nuclear-based hydrogen production

#### 20.2.4.3 Hydrogen development concept 2050

In August 2021, the Russian government approved the Concept for Hydrogen Development (the "**Hydrogen Concept**"). The Hydrogen Concept reaffirmed Russia's objectives set by the energy strategy, set more ambitious export targets through 2050, and defined the following timeline:

- **stage 1 (2021-2024) — export target of 0.2 million tons.** During this period, Russia plans to achieve the following:
  - establish hydrogen clusters
  - implement pilot hydrogen projects, including those based on electrolysis power by low-carbon power and those based on fossil fuels coupled with carbon capture and storage
  - develop industrial technologies, including for producing hydrogen via water electrolysis and out of fossil fuels, hydrogen energy mixes, utility scale storage and transportation, fuel cells, turbines and hydrogen power stations, fueling installations, vehicles and robotics (hydrogen tech and products)
  - conduct relevant R&D activities
  - develop relevant regulations and incentives
- **stage 2 (2025-2035) — export target of 2 to 12 million tons.** During this period, Russia plans to achieve the following:
  - launch the first utility scale hydrogen production facilities

- kick off pilot hydrogen consumption on Russia's domestic technologies
- implement hydrogen technologies in petrochemicals, electric power, metallurgy, housing, transportation and other industries
- scale up production and export of domestic hydrogen tech and products
- **stage 3 (2036-2050) — export target of 15 to 50 million tons.** During this period, Russia plans to achieve the following:
  - secure Russia's role as one of the largest global exporters of hydrogen, its energy mixes, hydrogen tech and products to Asia Pacific and the EU
  - commence wide implementation of hydrogen technologies in transportation, power and industry

#### 20.2.4.4 Regional clusters and international partnerships

The Hydrogen Concept envisages establishing four hydrogen clusters:

- **Eastern cluster** — established to export hydrogen to Asia and develop hydrogen transportation and power infrastructure. Russian authorities, major businesses and experts are considering establishing the Eastern cluster in the Sakhalin region<sup>298</sup>
- **Northwest cluster** — established to export hydrogen to the EU and reduce Russian exporters' carbon footprint. The cluster is planned for setup in St. Petersburg and the Leningrad region<sup>299</sup>

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<sup>298</sup> "Sakhalin is the first in Russia to begin the transition to hydrogen fuel" (25 November 2021) <<https://rg.ru/2021/11/25/reg-dfo/sahalin-pervym-v-rossii-nachal-perehod-na-vodorodnoe-toplivo.html>>.

<sup>299</sup> "A hydrogen cluster in the Leningrad region is supposed to be created in the area of the port of Ust-Luga" (5 October 2021) <<https://portnews.ru/news/319517/>>.

- **Arctic cluster** — established to ensure the low-carbon energy supply of Russia's Arctic Zone and to export hydrogen (potentially via Northern Sea Route). It is proposed to create the Arctic cluster in the Arkhangelsk region for the production of "green" hydrogen with a capacity of 1 million tons<sup>300</sup>
- **Southern cluster** — this may be set up in Russia's south, which has a developed infrastructure, high natural gas availability, renewables potential and proximity to major export cities

Currently, the Eastern cluster appears to be leading the way. More broadly, the authorities are considering making Sakhalin a pilot region for low-carbon development, in which hydrogen will be of relevance.

Pursuant to the Russian President's instructions,<sup>301</sup> federal authorities are developing proposals to produce hydrogen and ammonia using tidal power in Russia's Far East.<sup>302</sup>

#### 20.2.4.5 Other notable developments

On 6 October 2021, the Russian government approved a series of Russian strategic development initiatives through 2030, including the "Clean Energy (renewables and hydrogen)" initiative, which is part of the "Technological Breakthrough" section of these initiatives. The authorities are now developing a federal project to detail the "Clean Energy" initiative.<sup>303</sup>

On 15 October 2021, the Ministry of Industry and Trade of the Russian Federation released a Russian Atlas listing more than 40 low-carbon hydrogen and ammonia projects across Russia prepared in cooperation

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<sup>300</sup> "In Pomorie, it was proposed to create a cluster for the production of 'green' hydrogen with a capacity of one million tons" (17 November 2021) <<https://tass.ru/ekonomika/12948205>>.

<sup>301</sup> List of instructions following the East Economic Forum plenary meeting No. Pr-1971 approved by the President of the Russian Federation on 16 October 2021.

<sup>302</sup> "The Far East may become an exporter of hydrogen to the Republic of Korea" (25 November 2021) <<https://tass.ru/ekonomika/13018149>>.

<sup>303</sup> List of Social-Economic Development Initiatives of the Russian Federation until 2030, website of the Russian government.

with businesses. The Russian Atlas aims to be a reference point for investors.<sup>304</sup>

Also on 15 October 2021, the Russian President instructed the government to examine the feasibility of hydrogen and ammonia production centers being powered by tidal power plants, including the Penzhinskaya (Okhotsk Sea, Kamchatka and Magadan regions), Tugurskaya (Okhotsk Sea, Khabarovsk region) and Mezenskaya (White Sea, Arkhangelsk region) facilities, and engaging foreign partners to set up such centers.<sup>305</sup>

In March 2022, the Russian Ministry of Trade and Industry released a draft governmental decree to subsidize hydrogen-related R&D activities conducted by Russian businesses.

In January 2023, the Eurasian Economic Commission issued recommendations encouraging EAEU member-states to cooperate in hydrogen production, storage and transportation projects, as well as respective technology development/R&D activities.

In January 2023, the Russian Government signed a set of agreements with Russian major businesses for cooperation in cross-cutting technologies, including energy storage and hydrogen.<sup>306</sup>

In February 2023, several entities from the Rosatom, Rusnano and Gazprombank groups established the National Hydrogen Development Alliance to coordinate the efforts of business and science in achieving Russia's hydrogen programs.<sup>307</sup>

## 20.2.5 What are the basics of Russian energy efficiency laws and policies?

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<sup>304</sup> [Russian Atlas of Hydrogen and Ammonia Production Projects](#), website of the Russian Ministry of Trade and Industry.

<sup>305</sup> [Instructions following Eastern Economic Forum plenary session](#), website of the Russian President.

<sup>306</sup> The Government signs final package of agreements for cooperation in high-tech industries development <http://government.ru/news/47551/>.

<sup>307</sup> Interfax, Structures of Rosatom, Rosnano and GPB established an alliance for the development of hydrogen energy (20 February 2023) <<https://www.interfax.ru/business/887076>>.

Russian law provides for energy efficiency requirements for the sale of goods, lighting, construction and public procurement. The government is implementing an integrated energy efficiency improvement plan and some other state-run initiatives overlapping with the Russian climate policy and BAT. Some types of energy efficiency projects can be implemented under energy service agreements. Companies implementing energy efficiency projects may be entitled to tax benefits.

### 20.2.5.1 Where does Russia generally stand in terms of energy efficiency?

#### *Current status*

In January 2023, the Ministry of Economic Development issued a report outlining the status of energy efficiency across various Russian regions and industries as of 2021 (the "**EE Report**").<sup>308</sup> The EE Report highlights that Russia is progressing in terms of its energy efficiency and energy saving. In 2021, the energy intensity of Russian Gross domestic product (the "**GDP**") increased compared to the 2019 and 2020 level; however, these minor changes were affected by an increase in energy consumption during lockdown whereas the economy was growing during 2021. The Ministry of Economic Development stressed that despite a minor increase during lockdown, the overall trend within the last five years shows a decrease which has largely resulted from capital intensive energy efficiency projects (both completed and ongoing) that were privately funded (including by foreign investors).

The Ministry of Economic Development admits that Russia's progress on energy efficiency still lags behind the world average. Improvement in the coming years is linked to multisector technological upgrades, which is expected to jump-start economic development while reducing carbon emissions.

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<sup>308</sup> Full version of the EE Report is available on the Ministry of Economic Development's website at

<[https://www.economy.gov.ru/material/directions/investicionnaya\\_deyatelnost/povyshenie\\_energoeffektivnosti/gosudarstvennyy\\_doklad/gosudarstvennyy\\_doklad\\_o\\_sostoyanii\\_ener\\_gosberezheniya\\_i\\_povyshenii\\_energeticheskoy\\_effektivnosti\\_v\\_rossiyskoy\\_federacii\\_za\\_2021\\_god.html](https://www.economy.gov.ru/material/directions/investicionnaya_deyatelnost/povyshenie_energoeffektivnosti/gosudarstvennyy_doklad/gosudarstvennyy_doklad_o_sostoyanii_ener_gosberezheniya_i_povyshenii_energeticheskoy_effektivnosti_v_rossiyskoy_federacii_za_2021_god.html)>.

Key laws and strategic objectives

In 2009, Russia passed the Federal Law "On Energy Efficiency and Energy Saving" No. 261-FZ dated 23 November 2009 (the "**Energy Efficiency Law**"). It established some core energy efficiency requirements for the sale of goods, building, lighting and public procurement as detailed below. It also introduced a concept of energy service agreements (Section 20.2.5.6).

In 2014, the government approved the state program Energy Efficiency and Power Development.<sup>309</sup> Its current version includes five subprograms running until 2024. The program intends to upgrade power, oil and gas, coal and peat sectors, as detailed in the table below.

In 2018, the government approved an Integrated Action Plan for Energy Efficiency Improvement (the "**Integrated Plan**"). It provides for a 12% reduction of the GDP energy intensity by 2025 and a 23% reduction by 2030 as compared to 2016 levels. In 2020, the Ministry of Economic Development released the draft amendments to the Integrated Plan that suggest a new 20% GDP energy intensity reduction goal by 2030 as compared to 2017 levels (the "**Draft EE Plan**"). In 2021, the Draft EE Plan was updated, suggesting a 30% GDP energy intensity reduction goal. The Draft EE Plan emphasizes the following:

- technological upgrades in electric and heat power, industrial technologies, energy-efficient materials, residential and public buildings, housing and utilities, transportation and the budget sectors
- development of energy-efficiency requirements of BAT implementation, expansion of requirements for household appliances efficiency, tightening efficiency requirements for thermal insulation materials and constructions, and smart resources consumption metering
- boosting development of energy service agreements, soft-term "green" financing of energy efficiency projects and some other incentives

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<sup>309</sup> Subsequently renamed as Power Development.

The EE Report also suggests developing a national "white certificates" market — effectively allowing the trading of verified energy efficiency progress outcomes.

The Russian Low-Carbon Development Strategy through 2050 contemplates that energy efficiency should materially contribute to Russia's carbon neutrality goals.<sup>310</sup> The Government is updating the Draft EE Plan, including with a view to focus on GHG emission reductions in line with the Low-Carbon Development Strategy.

### 20.2.5.2 What are the energy efficiency requirements for the sale of goods?

#### Energy Efficiency Law

The Energy Efficiency Law requires producers and importers to grade certain household appliances and other goods with an energy efficiency class in technical documentation, labels and tags.

The requirement applies to refrigerators, laundry and dishwashing machines, TV sets, air conditioners, elevators and some other goods.<sup>311</sup> The principles for defining an energy efficiency class are generally harmonized with Regulation (EU) 2017/1369 of the European Parliament and of the Market Council.

Conceptually, the Energy Efficiency Law provides that the production and sales of energy-inefficient goods may be restricted or limited in case there is an adequate supply of energy-efficient alternatives.

#### EAEU technical regulation

On 8 August 2019, Russia and other member states of the EAEU adopted the Technical Regulation "On Energy Efficiency Requirements of Energy Consuming Devices" (the "**EE TR**").

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<sup>310</sup> Order of the Government of Russia No. 3052-p dated 29 October 2021 <http://static.government.ru/media/files/ADKkCzp3fWO32e2yA0BhtlpyzWfHaiUa.pdf>.

<sup>311</sup> Defined in Government Decree No. 1222 "On Types and Characteristics of Goods That Require Energy Efficiency Grading in Their Technical Documents, Their Labels, Their Tags and Principles for Defining Energy Efficiency Class by Producers, Importers of Goods" dated 31 December 2009.



The document applies to 18 types of energy consuming devices, including refrigerators, TVs, certain household and office equipment, laundry and dishwashing machines, drying machines, vacuum cleaners, air conditioners, computers and servers, certain types of bulbs and other devices.

The EE TR provides that the energy consuming devices (to which it applies) can be released to market only after passing the respective conformity assessment procedures and respective labeling.

Depending on the type of device, the conformity assessment procedures may take the form of either certification or declaration of conformity. Bulbs, computers and servers are subject to conformity certification. Most other devices are subject to conformity declaration.

The EE TR was to have come into effect on 1 September 2022, but in 2022 its enactment was postponed until 1 March 2025. According to the Eurasian Economic Commission, this will make it possible to update a number of the technical regulation's requirements. In addition, certain regulations needed to implement the EE TR are still being developed, for instance, energy efficiency standards and labels for power-consuming devices.<sup>312</sup>

### 20.2.5.3 What are the energy efficiency requirements for lighting?

The Energy Efficiency Law restricted the sale of 100-watt incandescent bulbs as of January 2011.

In December 2020, the government established energy efficiency and other requirements for illuminating devices and bulbs used in an alternating current circuit for lighting purposes.<sup>313</sup> Most of the

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<sup>312</sup> Enactment of EAEU Technical Regulation "On Requirements to Energy Efficiency of Power-Consuming Devices" postponed (17 May 2022) <https://eec.eaeunion.org/en/news/perenesen-srok-vstupleniya-v-silu-tekhreglamenta-eaes-o-trebovaniyakh-k-energeticheskoy-effektivnost/>.

<sup>313</sup> Government Decree No. 2255 approving Requirements for Illuminating Devices and Bulbs Used in Alternating Current Circuit for Lighting Purposes dated 24 December 2020.

requirements apply from 1 January 2021<sup>314</sup> until the 24-month period after the entry into force of the EE TR,<sup>315</sup> but no later than 1 January 2026.

Energy service agreements (see Section 20.2.5.3) often envisage lighting improvements, including those of municipalities.

#### 20.2.5.4 What are the energy efficiency requirements for buildings?

The Energy Efficiency Law establishes a general rule that buildings and other structures should meet applicable energy efficiency requirements during commissioning and subsequent operations. The buildings safety law<sup>316</sup> also requires that buildings have to be designed and built in a way that ensures efficient use of energy resources.

The Russian Ministry of Construction, Housing and Utilities established<sup>317</sup> a number of energy efficiency indicators, performance standards and requirements for heating, ventilation, electricity consumption, insulation and lighting applicable to various types of buildings and other structures.

State construction supervisory authorities assign energy efficiency classes to apartment buildings. The energy efficiency class must be marked on the facades of newly commissioned buildings.<sup>318</sup>

In September 2021, the government approved regulations establishing energy efficiency requirements for buildings, structures and rules for

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<sup>314</sup> Requirements for lamps with LEDs for outdoor lighting took effect from 1 April 2021, LEDs for industrial facilities and some other lighting appliance from 1 July 2021 and LED bulbs from 1 October 2021.

<sup>315</sup> EE TR will establish some energy efficiency requirements for electric bulbs, respective manuals and labeling.

<sup>316</sup> Federal Law No. 384-FZ "On Technical Regulation on Buildings and Structures Safety" dated 30 December 2009.

<sup>317</sup> Order of the Russian Ministry of Construction, Housing and Utilities No. 1550/pr approving the Energy Efficiency Requirements for Buildings, Structures, Installations dated 17 November 2017.

<sup>318</sup> As provided in the Order of the Russian Ministry of Construction, Housing and Utilities No. 399/pr approving the Energy Efficiency Class Determination Rules for Multiapartment Buildings dated 6 June 2016.

determining the energy efficiency class of apartment buildings. The regulations came into effect on 1 March 2022.<sup>319</sup>

In addition, a growing number of buildings are certified in compliance with BREEAM,<sup>320</sup> LEED<sup>321</sup> and DGNB<sup>322</sup> standards incorporated into Russia's legal system by the "Green" national standard.<sup>323</sup> Russia also has certain other national standards for green.<sup>324</sup>

### 20.2.5.5 Are there any energy efficiency requirements in public procurement?

The Energy Efficiency Law requires that state and municipal authorities and institutions comply with energy efficiency requirements upon procurement of goods, work and services.

The Russian Government has defined the list of goods that are subject to energy efficiency requirements in public procurement.<sup>325</sup> It includes:

- various light bulbs, TVs, air conditioners, computers, office equipment, passenger and commercial vehicles, electric engines and some other goods specially listed by the government
- goods that are subject to energy efficiency grading
- goods used to create parts of buildings and other structures (including engineering utility systems) that affect their energy efficiency

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<sup>319</sup> Government Decree No. 1628 approving the Rules for Establishing Energy Efficiency Requirements for Buildings, Structures, Installations and Requirements for the Energy Efficiency Class Determination Rules for Multiapartment Buildings dated 27 September 2021.

<sup>320</sup> Building Research Establishment Environmental Assessment Method.

<sup>321</sup> Leadership in Energy and Environmental Design.

<sup>322</sup> Deutsche Gesellschaft für Nachhaltiges Bauen.

<sup>323</sup> GOST R 70346-2022 "Green" standard. "Green" residential building. Assessment method and criteria for design, construction and maintenance. dated 9 September 2022.

<sup>324</sup> GOST R 54964-20-12 "Compliance Assessment: Environmental Requirements for Real Estate Sites" and STO NOSTROY 2.35.4-2011 "Green Construction: Residential and Public Buildings."

<sup>325</sup> Government Decree No. 1221 approving the Rules for Establishing Energy Efficiency Requirements for Goods, Works and Services Upon State and Municipal Procurement dated 31 December 2009.

The Ministry of Economic Development establishes specific energy efficiency requirements for public procurement, for example:

- only goods with energy efficiency class A are eligible<sup>326</sup>
- non-LED lighting can account for no more than 25% of all lighting appliances procured for buildings and roads illumination in 2020<sup>327</sup>

From November 2021, energy efficiency requirements were established for new types of goods: electric motors, TVs, water pumps, room fans and air conditioners.<sup>328</sup>

Such requirements effectively restrict or limit the procurement of goods, work or services that may result in inefficient energy consumption.

Some experts also advocate the development of wider standards for green procurement in general, not only in terms of energy efficiency.

#### 20.2.5.6 What are energy service agreements?

The Energy Efficiency Law introduced energy service agreements (the "ESA").

Under the ESA, a contractor performs certain kinds of work that improve the efficiency of the customer's energy consumption. The ESA's validity period has to be long enough to achieve energy savings values determined in the ESA.

Payments for the ESA work can be linked to savings resulting from greater energy efficiency achieved under the ESA. In case the contractor does not have sufficient funds to finance the ESA work, it may seek finance from banks, their factoring or separate energy service subsidiaries.

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<sup>326</sup> Order of the Ministry of Economic Development No. 88 dated 9 March 2011.

<sup>327</sup> Order of the Ministry of Economic Development No. 229 dated 4 June 2010.

<sup>328</sup> Order of the Ministry of Economic Development No. 131 dated 22 March 2021.

Agreements for the supply or transmission of energy resources<sup>329</sup> may incorporate ESA terms and conditions. There are also some examples of ESAs implemented with the use of RES.

State or municipal authorities may execute ESAs. In that case, ESAs are subject to additional mandatory requirements, some changes to which came into force on 1 January 2022.<sup>330</sup>

According to the EE Report, 989 ESAs were executed in 2021. The Draft EE Plan provides for greater use of ESAs.

### 20.2.5.7 Is there any interplay between energy efficiency and BAT?

There are a number of BAT Reference Books (relating a particular industry) containing energy efficiency requirements, as well as a separate cross-industry reference book ITC 48-2017 "On Improvement of Energy Efficiency in Economic Activities."

The Draft EE Plan provides for reducing the use of outdated and inefficient equipment, technologies and household appliances. This is to be achieved by setting energy efficiency and carbon emission caps in the BAT Reference Books and EAEU technical regulations.

For further details on BAT, please see Section 20.2.2.4.

### 20.2.5.8 Are there any tax incentives for the implementation of energy-saving technologies?

The Energy Efficiency Law and the Russian Tax Code encourage the use of energy-efficient and energy-saving technologies through investment tax credits, increased depreciation ratio and tax exemptions.

#### Investment tax credit (the "ITC")<sup>331</sup>

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<sup>329</sup> Except for gas, which is not used as a motor fuel.

<sup>330</sup> Federal Law No. 360 "On Amendments to Certain Legislative Acts of the Russian Federation" dated 2 July 2021.

<sup>331</sup> The current procedure for obtaining an ITC is generally complicated. There are limited examples of companies taking advantage of it.

An ITC can be granted in case of:

- **R&D** or modernization efforts to upgrade production facilities in terms of higher energy efficiency
- **investments** in the creation of assets of the highest energy efficiency class (including apartment buildings) or into renewable energy generating facilities, or into heat or electric power generating facilities with an efficiency output of more than 57%, or other facilities or technologies with high energy efficiency<sup>332</sup>

Effectively, the ITC allows extending the deadline for the tax payment. The ITC is repaid by step-by-step payments of the credit amount and accrued interest. The credit may be granted with respect to corporate profit tax and certain regional<sup>333</sup> and local taxes.<sup>334</sup> The credit period can be from one to five years.

The interest rate shall be more than one-half and lower than three-quarters of the refinancing rate of the Central Bank of Russia. The refinancing rate equals the so-called key rate of the Central Bank. Currently, the key rate amounts to 7.5% (as of 24 March 2023).

#### Increased depreciation ratio

Taxpayers may increase the basic depreciation rate by a special ratio (not exceeding 2) in respect of either:

- fixed assets being treated as facilities of high energy efficiency according to the list approved by Government Decree No. 600
- other facilities of a high energy efficiency class (except for buildings), if such facilities are referred to by a specific energy efficiency class

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<sup>332</sup> The list of facilities and technologies of high energy-efficiency is approved by Government Decree No. 600 dated 17 June 2015.

<sup>333</sup> Such as corporate property tax and transport tax.

<sup>334</sup> Such as land tax.

If energy efficient facilities meet the criteria of BAT, the taxpayers may also enjoy an increased depreciation ratio. For more details, please refer to Section 20.2.2.4.

### ITD

The Russian Tax Code entitles regional authorities to establish an ITD for corporate profits tax purposes of 85% to 100% of expenses for the acquisition (creation) of fixed assets or infrastructure.<sup>335</sup> This enables corporations to reduce the amount of profits tax itself (and not just a tax base) instead of default depreciation of fixed assets.

### Tax exemptions

The Russian Tax Code exempts newly built facilities with a high energy-efficiency class from corporate property tax for three years from the day of registration of such facilities.<sup>336</sup>

## 20.2.6 What are the key features of the Russian waste management system?

Russia is transitioning from a landfill-based waste management system toward a more sustainable and circular one. That implies a ban on landfilling of certain waste types, waste utilization requirements for producers and importers and several state-run programs aimed at boosting the development of waste processing and utilization infrastructure.

Municipal solid waste (the "**MSW**")<sup>337</sup> markets are largely focused around "regional operators" competitively selected in each of Russia's regions. Waste operations in each region are carried out in accordance with "territorial schemes" — currently pending synchronization through federal waste stream schemes.

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<sup>335</sup> Article 286.1 of the Russian Tax Code.

<sup>336</sup> Article 381 of the Russian Tax Code.

<sup>337</sup> MSW includes domestic waste, product waste and waste generated by corporates of alike constituency.

Depending on the waste class, most of the operations with waste are subject to licensing, reporting and some other obligations. Some waste operations require BAT<sup>338</sup> implementation.

Producers (importers) of goods and packaging have to pay an environmental fee. Producers (importers) of vehicles have to pay a utilization fee. Waste dumping is subject to a negative environmental impact charge.

### 20.2.6.1 What are Russia's key objectives in terms of waste and circular economy?

Currently, most of Russian waste goes to landfills. That is particularly the case for MSW. To address this, the government is running a number of initiatives, such as:

- **Priority project Clean Country (2017-2025)** — is aimed at developing pilot waste-to-energy, recycling and other infrastructure projects in Tatarstan and the Moscow region, and can be expanded to other Russian regions. The project is expected to trigger demand for Russian-manufactured equipment and major construction works due to substantial localization requirements. The Russian authorities, development institutions and project participants are considering building an additional 25 thermal waste disposal facilities
- **Waste Industry Strategy 2030**<sup>339</sup> — is aimed at substantially increasing sorting, recycling and neutralization of various waste types (not only MSW). The 2030 performance targets include building 70 environmental technological clusters, <sup>340</sup> multifunctional facilities for industrial waste neutralization and numerous other waste infrastructure facilities. The strategy also aims to reduce infrastructure-related equipment waste down to 10%

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<sup>338</sup> See Section 20.2.2.4 for details.

<sup>339</sup> Strategy for development of the industry for treatment, recycling and disposal of industrial and consumer waste for the period up to 2030 approved by Government Resolution No. 84-r dated 25 January 2018.

<sup>340</sup> In Russian — *экотехнопарк*.



- **National project Environment 1.0 (2018-2024)**<sup>341</sup> — is aimed at liquidating 75 most hazardous sites of accumulated environmental damage, to recover 191 illegal landfills, to commission 37.1 million tons of MSW processing capacities, 23.1 million tons of MSW utilization capacities and seven technological facilities for most hazardous waste treatment. The project implies 60% MSW sorting and 36% recycling by 2024
- **National project Environment 2.0 (2030)** — is aimed at upgrading the national project Environment 1.0 and setting some new environmental targets until 2030. In terms of waste, such targets include a 50% reduction in MSW landfill depositing and 100% MSW sorting
- **Major cleanup and circular economy (2030)**<sup>342</sup> — is aimed at, in particular, liquidating multiple landfills and materially increasing the use of recycled materials
- **Waste sorting roadmap** — is aimed at reconfiguring MSW treatment infrastructure (such as liquidating garbage chutes and installing food waste disposers) and waste reuse<sup>343</sup>

### 20.2.6.2 How can business benefit from Russian waste infrastructure objectives?

Investors in waste infrastructure projects typically do so under concession agreements. They may also consider executing an IPPA with Russian authorities to stabilize the regulatory regime applicable to the project and possibly obtain some tax and other benefits, as well as

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<sup>341</sup> The project includes 11 federal programs, three of which relate to waste. See Section 20.2.7 for further details on the national project.

<sup>342</sup> Government Resolution No. 2816-r "On the Approval of the List of Initiatives for the Socio-economic Development of the Russian Federation until 2030" dated 6 October 2021.

<sup>343</sup> Website of the Ministry of Natural Resources and Environment

[https://www.mnr.gov.ru/press/news/utverzhdena\\_dorozhnaya\\_karta\\_po\\_vvedeniyu\\_razdel\\_nogo\\_sbora\\_tko/](https://www.mnr.gov.ru/press/news/utverzhdena_dorozhnaya_karta_po_vvedeniyu_razdel_nogo_sbora_tko/).

seeking additional support and coordination from the Russian Environmental Operator.<sup>344</sup>

IPPAs and some other types of investment-incentivizing agreements (such as SPICS) may also be relevant for projects implying waste equipment localization or goods production using recycled waste. For further details on IPPAs and other investment incentives, please see Section 3.4 of this guide (Promoting Foreign Investment).

Additionally, investors in waste projects may be entitled to an ITD or an investment tax credit similar to investments in energy efficiency projects. For further details of such incentives, please see Section 20.2.5.8.

### 20.2.6.3 How is waste categorized and why is it important?

Each legal entity operating in Russia must identify the types of waste it generates in a "waste passport," a document confirming waste characteristics. Waste class generally defines the applicability of reporting, licensing and other statutory obligations to a respective waste operation.

The Waste Law<sup>345</sup> establishes five classes of waste depending on their hazardous environmental effect:

- **class I** — extremely hazardous
- **class II** — very hazardous
- **class III** — moderately hazardous
- **class IV** — low hazardous
- **class V** — almost not hazardous

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<sup>344</sup> Effectively, a governmental development institution coordinating waste reform and facilitating investments in the waste industry.

<sup>345</sup> Federal Law No. 89 "On Industrial and Consumer Waste" dated 24 June 1998 (the "Waste Law").

The Federal Classificatory Catalogue of Waste<sup>346</sup> outlines the most common types of waste and their hazardous classes. Waste types not included in the catalogue can be added using a specific classification procedure.

#### 20.2.6.4 What types of operations with waste require a license?

Except for accumulation of one's own waste, all commercial operations with waste of hazard classes I to IV require a license. Operations with waste of hazard class V do not require licensing.

The Waste Law provides for the following types of operations involving waste:

- **collection** (*сбор*) — receipt of waste for further treatment, utilization/recycling, decontamination and placement
- **accumulation** (*накопление*) — depositing waste for up to 11 months
- **transportation** (*транспортирование*) — moving waste out of respective property
- **treatment** (*обработка*) — preliminary processing of waste for its further utilization, including sorting, separation and cleaning
- **decontamination** (*обезвреживание*) — decrease of waste mass, changing its composition, physical and chemical features (including burning)<sup>347</sup> and/or neutralization
- **placement** — storage and burial of waste: storage (*хранение*) implies depositing waste in specialized facilities for longer than 11 months for the purposes of utilization, decontamination and burial; And burial (*размещение*) implies isolation of waste not being subject to further utilization in specialized storage facilities

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<sup>346</sup> Such a catalogue forms part of the State Waste Cadastre. Apart from the catalogue, the cadastre also includes the state "Register of waste placement facilities" and the "Database on waste and technologies of utilization and decontamination of various types of waste."

<sup>347</sup> Except for the use of solid municipal waste as a renewable energy source.

in order to prevent the release of hazardous substances into the environment

- **utilization** (*утилизация*) — as detailed below

#### 20.2.6.5 What is utilization under Russian waste laws?

Waste utilization includes its:

- **recycling** — reuse, including the use of waste for the same purposes
- **regeneration** — return to production cycle upon respective preparations
- **recuperation** — extraction of valuable components for subsequent use
- **energy utilization** — use as renewable energy source **following** extraction of valuable components

#### 20.2.6.6 What types of waste are restricted from burial?

Currently, the government bans burying (dumping) 182 types of waste.<sup>348</sup> The ban was implemented gradually. The banned waste types include:

- from 1 January 2018: scrap (salvage), mercury, fluorescent and LED lamps, waste from mercury thermometers and valves
- from 1 January 2019: glass, polyethylene and polypropylene packaging, pneumatic and rubber tires and paper waste
- from 1 January 2021: ATMs, mobile phones, two-way radios, modems, voice recorders, barometers, microwave ovens, printers, scanners, computer system units and calculators

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<sup>348</sup> Government Resolution No. 1589-r approving the List of Production and Consumption Waste Types Containing Valuable Substances and Restricted for Burial dated 25 July 2017.

### 20.2.6.7 What are the purposes of waste management schemes?

MSW market reform implies the accumulation of all information on waste generation sources and amounts, waste streams and other logistics, existing and planned waste treatment infrastructure, and planned upper limits of waste treatment tariffs on two levels:

- **territorial MSW operation scheme** — relating to a particular region (constituent entity) of the Russian Federation
- **federal MSW operation scheme** — aiming to synchronize territorial schemes of all Russian regions. In December 2022, an electronic model of the federal MSW operation scheme appeared. It displays 1240 prospects, including 419 for waste treatment and 243 for composting. A unit for monitoring the activities of regional operators is also being formed

By now, all regions have developed territorial schemes for waste operation. The Russian Environmental Operator is developing the federal scheme.

### 20.2.6.8 What is the role of regional operators and the Russian Environmental Operator?

#### Regional operators

Regional operators are commercial entities granted this status for up to 10 years upon tender procedures conducted by each Russian region. Some regions have several such operators.

The regional operators carry out their activities in compliance with a territorial MSW scheme. The MSW scheme also defines the territory of their operations. Operations in several regions are possible if the regions agree.

Conceptually, the regional operators are meant to be a one-stop shop for MSW collection, transportation, treatment and disposal. Each entity generating MSW is statutorily required to contract a regional operator for MSW disposal. The regional operator can perform a full-cycle service

with waste or subcontract other entities. All regions have shifted to this contractual system from January 2022.

### The Russian Environmental Operator

Among other things, the Russian Environmental Operator reviews and coordinates the implementation of territorial MSW schemes, facilitates investments in the waste industry, develops incentives for the MSW industry and generally acts as a "competence center" coordinating MSW reform.

As part of the reassessment of the extended producer responsibility system (as detailed below), the Russian Environmental Operator may be authorized to administer the environmental fee proceeds to further finance the development of MSW infrastructure.

In October 2021, the Russian Environmental Operator developed a federal waste management scheme. The scheme integrates information on existing and planned waste processing infrastructure.

### 20.2.6.9 How does extended producer responsibility (the "EPR") operate in Russia?

#### Utilization duty

EPR implies a statutory obligation of producers and importers to ensure the utilization of their goods and packaging following their use by:

- setting up its own waste infrastructure
- contracting a regional operator, other MSW operator, the Russian Environmental Operator or an association established by (or jointly with) other producers and importers
- paying an environmental fee<sup>349</sup> as detailed below

The EPR covers **40 broad-ranging groups of goods** including petrochemicals, computers and IT equipment, household appliances, batteries, tires, numerous plastic goods, rubber tires, clothing, textiles,

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<sup>349</sup> In Russian — *экологический сбор*.

kitchenware, newspapers and other printed outputs, glassware, etc. It also covers **10 common groups of packaging** including those made of steel, aluminum, polymers, paper and cardboard, glass, wood and cotton. Importantly, the EPR **does not apply to vehicles**, which are subject to a separate "utilization fee"<sup>350</sup> as detailed below.

The percentage of goods and packaging (of all items released to market) subject to mandatory utilization is commonly known as the **utilization standard**. The standard is set annually for each group of goods and packaging. The standards set for goods and packaging in 2022 vary from 10% to 45%.

### Environmental fee

The environmental fee is defined as a multiple of the volumes of goods produced or imported by the applicable utilization standard and fee rate per ton.

The fee rates vary significantly depending on the group of goods and packaging. Below are some examples of the fee per ton for certain goods and packaging:

- clothing — RUB 11,791
- tires — RUB 7,109
- computers, IT equipment, household devices — RUB 26,469
- glass packaging — RUB 2,564
- polymer packaging — RUB 3,844

### EPR reassessment

In December 2020, a governmental working group conceptually agreed on the scope of EPR reassessment.<sup>351</sup> Among other things, it aims to:

- ensure full utilization of packaging

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<sup>350</sup> In Russian — *утилизационный сбор*.

<sup>351</sup> Government website <<http://government.ru/news/41183/>>.

- increase the environmental fee rate for non-environmentally friendly goods
- revise the environmental fee rates. In particular, to introduce new groups of packaging and vary the rates for them — with a view to de-incentivize the production of nonrecyclable packaging. The rates should be defined mindful of capital and operational expenditures required to build and operate waste sorting and recycling infrastructure
- increase utilization standards for goods by no less than 10% annually and heading toward full utilization
- ban the production of packaging that cannot be fully recycled or is difficult for extraction (unless there are no available substitutes) and require the use of recycled material upon packaging production
- set aggregate utilization targets, initially for packaging, electric and household appliances, batteries and rechargeable power cells, tires and petrochemicals (oils). The targets are seen as macro indicators aimed at ensuring the achievement of the MSW objective set by national project Environment 2.0 for 2030: 100% sorting and a two-times reduction of landfilling
- develop separate waste collection and accumulation (including through recycling kiosks and waste reception sites) and digitalize the waste market

#### 20.2.6.10 Is Russian business engaged in voluntary waste-related initiatives?

A number of Russian corporates implement their own zero waste strategies. Some of them are developing takeback programs, recycling infrastructure and other initiatives.



Several major FMCG <sup>352</sup> and packaging producers established the Industry for Ecology (RusPec) Association to coordinate waste utilization and other extended producer responsibility issues.

In 2021 the all-Russian public organization Business Russia, the Russian Environmental Operator and RT-Invest (part of the Rostec group) signed the Zero Waste Charter to coordinate waste-related efforts between waste producers, recyclers and consumers.

In 2022 some prominent Russian companies<sup>353</sup> established the National Association for Recycled Materials Use Development (ARVIS) focusing on industrial waste such as bottom ash and halite waste.

In September 2022, REO launched an online exchange for recycled materials. <sup>354</sup> As of April 2023, it has registered more than 640 companies.

#### 20.2.6.11 What is the utilization fee?

The utilization fee is payable by producers and importers of vehicles. Its amount is defined as a multiple of the base rate and utilization ratio.

The utilization ratio materially varies depending on the engine volume, age and gross weight of a given vehicle. Upon expiration of three years from the date of manufacture of a given vehicle, the utilization fee may be increased by two or even four times.

The base rate for light motor vehicles <sup>355</sup> is RUB 20,000, <sup>356</sup> for self-propelled vehicles — RUB 172,500<sup>357</sup> and for other vehicles — RUB 150,000.

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<sup>352</sup> Fast moving consumer goods.

<sup>353</sup> Including Siberian Generating Company and several entities of Rosatom, Rushydro, Phosagro and Inter RAO groups.

<sup>354</sup> "Electronic Exchange for Recycling Launched in Russia" (12 September 2022) <<https://tass.ru/ekonomika/15726205>>.

<sup>355</sup> Vehicles used for passenger transportation with no more than eight seats excluding the driver.

<sup>356</sup> Government Decree No. 1291 "On the Utilization Fee for Wheeled Vehicles (Chassis) and Trailers for them and On Amending Some Acts of the Government of the Russian Federation" dated 26 December 2013.

Automakers being parties to special investment contracts (see Sections 3.3 and 3.4) may be entitled to a new deferral of the utilization fee until the end of 2023.<sup>358</sup>

The below table provides an illustrative calculation of the utilization fee based on current base rates and ratios. In January 2021, the Russian Ministry of Trade and Industry announced plans to increase the utilization fee by 25% in the first quarter of 2021.<sup>359</sup> However, at present, the fees have not been increased. Effective January 2023, the government increased the ratios up to five times for some road construction and other specialized vehicles, such as commercial vehicles with gross weight of 20-50 tons, wheeled vehicle chassis with gross weight of 20-50 tons, trailers).<sup>360</sup>

Vehicle type	Ratio	Fee (RUB)
<b>Self-propelled vehicles<sup>361</sup></b>		
Road graders	3.2	552,000
Mobile cranes	11.5	1,983,750
Tractors	1.5	258,750
<b>Light motor vehicles</b>		
Electric engines vehicles	1.63	32,600

<sup>357</sup> Government Decree No. 81 "On the Utilization Fee for Self-propelled Vehicles and (or) Trailers for them and On Amending Some Acts of the Government of the Russian Federation" dated 6 February 2016.

<sup>358</sup> Government Decree No. 313 "On Amendments to Clause 22 of the Rules for Collection, Calculation, Payment and Recovery of the Utilization Fee for Wheeled Vehicles (Chassis) and their Trailers, as well as the Return and Offset of Overpaid or Excessively Recovered Amounts of the Fee" dated 27 February 2023.

<sup>359</sup> "Russia to Increase Utilization Fee for Vehicles" (29 January 2021)

<<https://1prime.ru/business/20210129/832925599.html>>.

<sup>360</sup> Government Decree No. 2132 "On Amendments to Certain Acts of the Government of the Russian Federation" dated 24 November 2022.

<sup>361</sup> The figures differ depending on horsepower capacity and age of a given vehicle. The figures provided in the table relate to new (less than three years old) vehicles with a minimal horsepower capacity.

Vehicles with engine volume up to 1,000 cc	2.41	48,200
Vehicles with engine volume up to 2,000 cc	8.92	178,400
<b>Other vehicles</b>		
Commercial vehicles with gross weight of 2.5-3.5 tons	2	300,000
Commercial vehicles with gross weight of 8-12 tons	2.92	438,000
Commercial vehicles with gross weight of 12-20 tons	3.31	496,500

## 20.2.7 Does Russia incentivize the use of electric vehicles and alternative fuels?

### 20.2.7.1 Electric vehicles (the "EVs")

#### EVs and e-charging market essentials

Russia is rapidly catching up with mature EV markets in terms of the number of vehicles and e-charging infrastructure. For instance, Moscow city already operates a fleet of more than 1,000 electric buses — the largest in Europe.<sup>362</sup> Electric transport (including subway) already accounts for about 80% of passenger traffic in Moscow.<sup>363</sup>

In 2022, 2,000 EVs were manufactured in Russia domestically and 439 fast charging stations were built in 12 pilot regions. The government estimates that the EVs production rate will increase up to about 18,000

<sup>362</sup> Moscow mayor's website (1 February 2022) <<https://www.mos.ru/mayor/themes/2299/8045050/>>.

<sup>363</sup> "Sobyanin promised to transfer all Moscow city services to electric vehicles" (8 February 2023) <<https://ria.ru/20230208/sobyanin-1850436631.html?in=t>>.

units per year in 2023 and to 36,000 units per year in 2024.<sup>364</sup> In 2023, 28 more regions will join the project to create e-charging infrastructure.<sup>365</sup>

Russia is also incentivizing the development of Russian-made hydrogen-powered vehicles.<sup>366</sup> The first hydrogen buses will soon begin to operate in Moscow in test mode.<sup>367</sup>

According to research data, more than a third of the surveyed residents of Russia would like to switch to an electric car.<sup>368</sup> In 2022, Russians purchased 2,998 new electric cars, which is 33% more than a year earlier – a record for the Russian market.<sup>369</sup>

Some Russian businesses are increasing the number of fast-charging stations and developing their own EVs charging software.<sup>370</sup> Some of them are planning to retrofit used cars into electric ones. The first tests to replace an internal combustion engine with an electric motor manufactured at a Russian car factory will begin in spring. These businesses expect that it will be possible to install electric kits in any car model in the future.<sup>371</sup>

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<sup>364</sup> "Andrey Belousov held a strategic session on the development of electric transport in Russia" (9 February 2023) <<http://government.ru/news/47738/>>.

<sup>365</sup> Government Resolution No. 4307-r dated 28 December 2022.

<sup>366</sup> "Putin commissioned development of hydrogen-fueled city buses" (30 December 2020) <<https://www.vedomosti.ru/economics/news/2020/12/30/853093-putin-poruchil-sozdat-gorodskoi-avtobus-na-vodorodnom-toplive>>.

<sup>367</sup> The first hydrogen buses will start operating in Moscow (30 May 2022) <<https://tass.ru/ekonomika/14767111?ysclid=le8je5ewaq371585996>>.

<sup>368</sup> "Russians have become more active in buying electric cars" (6 February 2023) <<https://rg.ru/2023/02/06/rossiiane-stali-aktivnee-pokupat-elektromobili.html?ysclid=le86o3a5ng826348908>>.

<sup>369</sup> The market of new electric vehicles in Russia in 2022 set a record (13 January 2023) <<https://www.autostat.ru/news/53604/?ysclid=le8k87rygs841396998>>.

<sup>370</sup> En+ has transferred its electric charging stations to Russian software (2 March 2023) <<https://www.interfax.ru/business/889393>>.

<sup>371</sup> Used cars in the Russian Federation will begin to be retrofitted into electric cars (6 March 2023) <<https://iz.ru/1478489/anastasiia-ivova/tokovaia-terapiia-poderzhannye-avto-v-rf-nachnut-pereosnashchat-v-elektrokaru>>.

Apart from domestic use of EVs, Russia aims to export them. For example, there are certain plans to export the Russian-made EV Atom. Its prototype is expected to be released in 2023.<sup>372</sup>

### Governmental strategy

#### *A. Essentials*

In August 2021, the Russian government approved the Concept for Production and Use of EVs through 2030.<sup>373</sup> The concept aims to achieve the following:

- kick off production and incentivize greater use of EVs
- develop production of their components and charging infrastructures
- make the most of the potential of Russia's precious metals and other raw materials, such as lithium, nickel, copper, cobalt and aluminum, given the demand for them in the EV industry
- launch brand new EV-related products such as post-lithium batteries based on sodium and hydrogen fuel cells, including those for heavy vehicles
- develop crosscutting technologies in the areas of battery recycling, new materials, cybersecurity, navigation, smart driving and various IT solutions

#### *Milestones and targets*

The concept will be implemented in two stages. The first stage will run from **2021 until 2024** and should result in the launch of at least 25,000 locally manufactured EVs and 9,400 e-charging stations, of which no less than 2,900 should be fast-charging.

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<sup>372</sup> Kamaz reported that Atom electric vehicles are planned to be exported (22 December 2022) <<https://tass.ru/ekonomika/16667757?ysclid=le8h8jmixc244646521>>.

<sup>373</sup> Government Resolution No. 2290-r dated 23 August 2021.

The second stage will run from **2025 until 2030** and should result in the following:

- the share of EVs reaching at least **10%** of the total vehicle production
- the launch of fuel cell production for **traction batteries**
- the launch of the production of **cathode and anode materials**
- the establishment of at least **72,000 e-charging stations**, including **28,000 fast-charging stations**
- the establishment of at least **1,000 hydrogen charging stations**
- the creation of at least 39,000 high-skilled jobs in **electrochemistry, electromechanics, electronics** and **production of EVs**

### *C. Market data and projections*

In addition to the above targets, the concept projects three scenarios for the EV market by 2030:

- **slow response:** no incentives for EV or infrastructure. In that case, Russia will be producing about 100,000 EVs by 2030. The total number of EVs will not exceed 540,000, which is 5% of the total EVs in the market
- **balanced:** maximum incentives for EV infrastructure and demand in the first three years of the respective projects' implementation. In that case, Russia will be producing about 220,000 EVs by 2030. The total number of EVs will exceed 1.4 million, which is 15% of the total EVs in the market
- **accelerated:** proactive incentives for the infrastructure and demand of EVs, as well as restrictions on combustion engines. In that case, Russia will be producing about 220,000 EVs by 2030. The total number of EVs be approximately 3.23 million, which is 30% of the total EVs in the market

According to the media,<sup>374</sup> the implementation of the concept will require RUB 591 billion. The government expects that the private sector will fund more than 80% of this amount, namely RUB 499 billion.

#### *D. Incentives*

The concept envisages that the authorities may incentivize the development of the market, in particular, via the following:

- **SPICs**, which they may enter into with investors in the localized production of EVs, their engines, batteries, hydrogen fuel cells, cathode and anode material, various electronics and other equipment; SPICs may enable investors to stabilize the regulatory and tax regime for their projects, as well as be eligible for certain subsidies and other incentives
- **consumer demand stimulus** for domestic EVs through federal and regional incentives such as lower rates of transport tax, parking fees, free rides on toll roads and lower interest rates under consumer loans to purchase EVs
- **removing regulatory barriers** by improving the technical regulations and standards

A number of programs are already in place to stimulate the development of the EV market. For example, the Russian government included EVs in preferential leasing and car loan programs.<sup>375</sup> The government also finances the costs of purchasing and installing fast charging stations for EVs on federal highways for three years.<sup>376</sup> Owners of EVs will also be able to use federal toll roads for free until the end of the year.<sup>377</sup>

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<sup>374</sup> "The concept of development of electric transport for almost RUB 600 billion is adopted," (24 August 2021)

<https://www.vedomosti.ru/business/articles/2021/08/23/883259-kontsepsiya-elektrotransporta>.

<sup>375</sup> Government Decree No. 2345 dated 19 December 2022; Government Decree No. 2560 dated 29 December 2021 (ed. of 20 December 2022).

<sup>376</sup> Government Resolution No. 439-r dated 9 March 2022.

<sup>377</sup> "Owners of electric vehicles will not be charged for driving on toll roads from 1 March" (17 February 2023)

According to the Strategy for Developing the Automotive Industry, Russia is to provide at least 15-20% in direct state support for the creation of electric and other promising vehicles in 2022-2025, and 20-25% in 2026-2030 to ensure the competitiveness of the Russian car industry at the global level by 2030-2035 and the possibility of exporting these technologies.<sup>378</sup>

Some selected incentives are available or are being developed on a regional level. For example, owners of EVs in Moscow and St. Petersburg are exempt from parking fees. Owners of EVs in Moscow are also exempt from transport tax until 31 December 2024. Several other regions have also introduced transport tax benefits.

### 20.2.7.2 Bioethanol

In 2018, Russia amended the law on ethyl alcohol production and circulation<sup>379</sup> with a view to incentivize its use. Conceptually, the law contributes to bioenergy development, which would help to address, among others, issues such as overproduction of crops.

The law defines "bioethanol" as denatured ethyl alcohol produced from plant-based edible and/or nonedible raw materials, denaturized subject to certain substance concentrations<sup>380</sup> and containing not more than one percent of water.

One of the key incentives is that **bioethanol is not subject to minimum pricing regulation**, unlike other ethyl substances.

Bioethanol production equipment cannot be used for the production of alcohol or other ethyl substances.<sup>381</sup> Such equipment should also be

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[https://www.economy.gov.ru/material/news/vladelcy\\_elektromobiley\\_s\\_1\\_marta\\_ne\\_budut\\_platit\\_za\\_proezd\\_po\\_platnym\\_dorogam.html?ysclid=leppj15ujq384608585](https://www.economy.gov.ru/material/news/vladelcy_elektromobiley_s_1_marta_ne_budut_platit_za_proezd_po_platnym_dorogam.html?ysclid=leppj15ujq384608585).

<sup>378</sup> Government Resolution No. 4261-r dated 28 December 2022.

<sup>379</sup> Federal Law No. 448-FZ "On Amendments to the Federal Law "On State Regulation of the Production and Turning of Ethyl Alcohol, Alcohol and Alcohol Containing Products and on Limiting Consumption (Drinking) of Alcohol Products" dated 28 November 2018.

<sup>380</sup> Concentration of crotonaldehyde — no more than 0.2%, toluene — no more than 0.6%.

<sup>381</sup> Save for nonedible raw materials.



tooled with automatic metering systems to track the concentration of denaturing substances in bioethanol.<sup>382</sup>

Production and sales of bioethanol are subject to licensing.

### 20.2.8 Is the Russian government running any programs that highlight its strategic development goals that may be relevant for investors?

Russia is running a number of state programs directly or indirectly relating to environmental, climate and cleantech issues.

#### 20.2.8.1 National project Environment 2024 and National Development Goals 2030

Among other national projects, the May Decree established the national project Environment 2024.

According to the project's description, the total amount of funding required for its implementation was estimated at RUB 4,041 billion of which RUB 3,206,1 billion was to come from the private sector.

The project involves 11 federal programs to be implemented from 10 October 2018 until 31 December 2024. The table below outlines the performance targets and funding estimates of each program.

Decree 474 reshaped national projects and expanded them through 2030. Decree 474 has set the following environmental goals through 2030:

- development of an MSW treatment system to ensure **100%** MSW sorting and a **50%** reduction in MSW going to landfills
- **50%** reduction in polluting emissions

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<sup>382</sup> Currently, there is a draft law that aims to replace this obligation with reporting on bioethanol production to the Unified State Automated Information System.

- liquidation of most hazardous sites of cumulative environmental damage and environmental recovery of water bodies, including the Volga river, Lake Baikal and Lake Teletskoe

### 20.2.8.2 Social-economic development initiatives through 2030

In October 2021, the Russian government adopted multiple initiatives on Russia's strategic development through 2030,<sup>383</sup> including several initiatives in the Environment and Technological Breakthrough sections. Each initiative is implemented as a separate federal program.

The Environment section includes the following initiatives:

- **Major Cleanup**<sup>384</sup> — This is aimed at liquidating landfills, sites of accumulated environmental damage, abandoned wells and industrial facilities, and sunken vessels
- **Circular Economy** — This is aimed at expanding waste treatment infrastructure, reducing waste generation, reducing eco-unfriendly packaging and increasing the use of recycled materials. The initiative will be aligned with the tightening of extended producer responsibility<sup>385</sup> and environmental national development goals
- **Low Carbon Development Policy** — This is aimed at fine-tuning national climate laws, developing GHG monitoring and conducting top priority R&D activities
- **Geology: the Legend Rebirth** — This is aimed at increasing regeneration of Russia's mineral resources, including oil, gas, gold, silver, lead, zinc, titanium, chrome and antimony, as well as exploring new deposits and ensuring their sustainable use

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<sup>383</sup> Resolution No. 2816-r approving 42 initiatives of social-economic development of the Russian Federation until 2030.

<sup>384</sup> In Russian — *Генеральная уборка*.

<sup>385</sup> See Section 20.2.6.9 for details.

The Technological Breakthrough section includes the following initiatives:

- **Clean Energy: Hydrogen and Renewables** — This is aimed at kicking off national certificates of power origin (RECs), further incentivizing renewables, and kicking off hydrogen production and export
- **New Nuclear Power, including small reactors for remote territories** — This is aimed at streamlining RUB 190 billion in private and public investments to secure and expand Russia's leadership in nuclear power, increasing the share of nuclear power in Russia's energy balance, and developing zero-waste nuclear technologies and new generation of nuclear fuel
- **Electric and Hydrogen Vehicles** — The details of these are pending development

## National project Environment 1.0. Subject to revision in 2021

No	Federal project	Performance targets until 2024 <sup>386</sup>	Funding <sup>387</sup>
1.	<b>Clean air</b>	<b>22%</b> reduction in total emissions, <sup>388</sup> implementation of automated online emission control systems	<b>RUB 364.2 bn</b>
2.	<b>Clean country</b>	Liquidation of <b>75</b> most hazardous sites of accumulated environmental damage and the restoration of <b>191</b> illegal landfills	<b>RUB 95.3 bn</b>
3.	<b>Integrated MSW treatment system</b>	Commissioning <b>37.1 million tons</b> of MSW processing capacity and <b>23.1 million tons</b> of MWS utilization capacity	<b>RUB 435.9 bn</b>
4.	<b>Infrastructure for class I and II hazardous waste</b>	Commissioning <b>seven</b> technological facilities for treatment, utilization and neutralization of waste of hazardous classes I-II	<b>RUB 34.6 bn</b>
5.	<b>Improvement of Volga river</b>	Construction and upgrade of sewage treatment (purification) facilities to reduce wastewater discharge into the river by <b>2.12 cubic kilometers</b> per year. Liquidation of <b>43</b> objects of accumulated environmental damage. Raising and disposal of <b>95</b>	<b>RUB 180.4 bn</b>

<sup>386</sup> Targets are taken selectively based on passports of federal programs.

<sup>387</sup> Funding is taken selectively based on passport of national project Environment updated by the Ministry of Ecology as of May 2021.

<sup>388</sup> The clean air project envisages the implementation of integrated emission reduction plans and trial emissions quoting in Russia's 12 most polluted cities: Bratsk, Krasnoyarsk, Lipetsk, Magnitogorsk, Mednogorsk, Nizhny Tagil, Novokuznetsk, Norilsk, Omsk, Chelyabinsk, Cherepovets and Chita.

		sunk vessels	
6.	<b>Protection of Lake Baikal</b>	Construction and upgrade of sewage treatment (purification) facilities to process wastewater entering the lake with a capacity of at least <b>350,000 cubic meters</b> per day	<b>RUB 27.8 bn</b>
7.	<b>Unique water resources preservation</b>	Environmental recovery of water resources with an area of at least <b>7,580 hectares</b> , cleaning sections of rivers (reservoirs) and lakes with an area of at least <b>15,200 hectares</b> , cleaning sections of riverbeds with a length of at least <b>260 kilometers</b> and lakes with an area of at least <b>730 hectares</b>	<b>RUB 13.2 bn</b>
8.	<b>Biodiversity preservation and environmental tourism development</b>	An increase in the area of specially protected nature conservation areas by <b>5 million hectares</b> through the setup of at least <b>24 new so-protected areas</b> . Development of infrastructure for ecotourism in national parks	<b>RUB 6.3 bn</b>
9.	<b>Forests preservation</b>	Increase in the ratio of reforestation areas to deforested and dead forest areas <b>up to 100%</b> . Increase of artificial reforestation areas by at least <b>35,000 hectares</b>	<b>RUB 150.5 bn</b>

## 20.3 Social

### 20.3.1 What are the regulatory and policy essentials of Russia's social development?

Russia has quite an extensive set of employment, industrial safety, consumer protection, personal data and other laws and regulations overlapping with the social dimension of sustainable development.

Russia has national guidelines (*GOST*) on social responsibility<sup>389</sup> based on ISO 26000. The document provides a set of recommendations on stakeholder engagement, mechanisms to integrate socially responsible behavior into organizational practices, and multiple other guidelines.

The government is running a set of national projects, federal programs and strategic development initiatives to advance, digitalize and expand infrastructure development, healthcare, education, housing & utilities, state services and other areas – ultimately contributing to social well-being.

The implementation of these initiatives requires massive private sector involvement.

See Section 20.1 for further details on these initiatives and business opportunities associated with them. Also see Section 3.4 for details on relevant regulatory regimes and benefits for investors in certain types of projects with social effects.

### 20.3.2 How familiar are social governance concepts to Russian businesses?

Many of Russia's top businesses have a long history of being the backbone drivers of development in the local areas of their operations, in particular so-called mono-cities.

In 2004, the Russian Union of Industrials and Entrepreneurs (the "**RSPP**") adopted the Social Charter of Russian business. The charter

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<sup>389</sup> GOST R ISO 26000-12 National Standard of the Russian Federation. Guidance on Social Responsibility.

was updated twice, in 2008 and 2021. As of today, the signatories to the charter include 291 companies, associations and NGOs employing around 10 million workers in aggregate.<sup>390</sup> The Charter purports to be the basis for Russian companies' actions in CSR and ESG, in line with the UN Sustainable Development Goals and the UN Global Compact, in particular encouraging businesses to:

- comply with laws and regulations in the field of labor relations and labor protection
- develop a social partnership policy with employees, and create favorable working conditions and social guarantees
- respect the rights of consumers and provide quality products
- increase production efficiency, reduce waste and ensure safety in production processes
- contribute to development of regional economies and social infrastructure

Quite a few Russians are running a variety of social programs relating to territorial development, support for healthcare, education, arts and sports infrastructure & activities, industrial safety, employee well-being, individual external contractors and local communities, systematic charity programs<sup>391</sup> and others.

### 20.3.3 What are the latest social policy highlights addressed to the Russian business community?

In February 2023 the Russian President in his address to the Federal Assembly encouraged the business community to:<sup>392</sup>

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<sup>390</sup> See further details on the Social Charter at RSPP's web-site

<https://rspp.ru/simplepage/sotsialnaya-khartiya-rossiyskogo-biznesa/>.

<sup>391</sup> Including those linked to regular transactions such as taxi rides or food deliveries.

<sup>392</sup> Official web-site of the Russian President – Presidential Address to the Federal Assembly <http://en.kremlin.ru/events/president/news/70565>.

*Launch new projects, earn money, work hard for Russia, invest in enterprises and jobs, and help schools and universities, science and healthcare, culture and sports. In this way, you will increase your wealth and will also win the respect and gratitude of the people for a generation ahead. The state and society will certainly support you. Let us consider this as a message for our business: get moving in the right direction.*

Later in March 2023 during the RSPP's annual congress the President further noted:<sup>393</sup>

*Businesspeople in Russia have always ... assumed huge responsibility for the progress and development of territories, social support, education, healthcare, infrastructure, and charity ...*

*... They are using their entrepreneurial talent – and this is a talent – not only to derive profit and engage in overconsumption but also for the public good ... they are launching special programmes to support their employees and their families. Along with the regional authorities, they are channeling funds into the construction of roads, hospitals, sports and cultural facilities. In a word, they are making life better for all the people around them.*

*We should have more initiatives like this that bring real benefits to our people. Naturally, big, medium and small businesses alike, as well as the regions, should be interested in such projects. They should be feasible if they are implemented through a concerted effort.*

*The state will do all it can to support domestic companies, those who are ready to fight for their business, for the welfare of their teams, the people who work for them and for the good of all Russian citizens.*

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<sup>393</sup> Official web-site of the Russian President - Plenary session of RSPP Congress  
<http://en.kremlin.ru/events/president/news/70688>.



## 20.4 Governance

### 20.4.1 Is ESG concept known to Russian regulators and businesses in connection to governance?

Russia is progressing with laws and guidelines encouraging business and financial institutions to consider ESG factors and risks in their strategy and risk management, disclose non-financial data, sustainable finance, anti-bribery and other governance initiatives. Many of those laws and guidelines are largely based on internationally recognized documents.

Quite a number of Russian corporations and banks are actively implementing various ESG practices in their corporate governance, as well as across multiple business units and operations business – such as supply chain management. Many of them are voluntarily publishing their sustainability/ESG strategies, policies and reports.

### 20.4.2 What are the regulatory essentials of Russia's ESG governance and reporting?

#### 20.4.2.1 Corporate governance code

In 2014 the Central Bank of Russia (the "**CBR**") recommended joint-stock companies with publicly traded shares or bonds to use the Corporate Governance Code earlier approved by the government.<sup>394</sup>

The Code encourages corporates to:

- assess non-financial risks at the Board level – including social, ethical and environmental
- disclose their social and environmental performance data – including their social and environmental policy, and a

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<sup>394</sup> Informational Letter of Central Bank of Russia No. IN-06-52/2463 "On the Corporate Governance Code" dated 10 April 2014.

sustainability report in accordance with globally recognized standards<sup>395</sup>

- disclose the results of technical audits, control systems audits, and management system certification in terms of compliance with international standards
- include social and environmental policy data in their annual reports

#### 20.4.2.2 Impact investments, non-financial reporting and ESG rankings

In 2020 the CBR established a working group on sustainable finance to drive Russia's strategic development in five core areas:

- financial instruments and sustainable development infrastructure
- corporate governance and disclosure
- ESG-risks, micro and macro prudential supervision
- SDG implementation in CBR's operation
- carbon regulation and carbon credits trade

Since then, the CBR has issued a set of ESG-related recommendations and guidelines for companies, with to the goal of creating

*"a single, consistent, principles-based, high-level methodology for non-financial disclosure that can be used by companies and other organizations from a variety of industries and of any size to provide the public with material information about the impact of such organizations on the environment (including on climate), the social domain (including respect for human rights) and the economy, as well as on consideration of ESG factors in the companies' activities and associated risks and opportunities (taking into account industry specifics, and the nature and scale of the company's activities)."*

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<sup>395</sup> Such as Global Reporting Initiative (GRI).

In particular, these documents include a series of informational letters on:

- implementation of responsible investment principles<sup>396</sup>
- consideration of climate risks for insurance companies - encouraging them to raise awareness of the effects of climate risks on their assets and liabilities<sup>397</sup>
- non-financial reporting by public joint-stock companies<sup>398</sup>
- issuers disclosures – encouraging the disclosure of ESG-related data as in material facts (corporate action) notices<sup>399</sup>
- consideration of climate risks by financial markets actors – encouraging them to encounter risks related to low-carbon transition<sup>400</sup>
- ESG factors consideration by the boards of directors of public joint stock companies<sup>401</sup>
- disclosure of information on compliance with the corporate governance code in the annual reports of public joint stock companies<sup>402</sup>

Apart from those, the CBR also issued:

- a conceptual methodology for green finance and responsible investments<sup>403</sup>
- Several Climate Risk Reports - examining the impact of climate risks for Russia's economy and financial markets<sup>404</sup>

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<sup>396</sup> Informational letter No. IN-06-28/111 dated 15 July 2020.

<sup>397</sup> Informational letter No. IN-015-53/1 dated 12 January 2021.

<sup>398</sup> Informational letter No. IN-06-28/49 dated 12 July 2021.

<sup>399</sup> Informational letter No. IN-06-28/56 dated 26 July 2021.

<sup>400</sup> Informational letter No. IN-015-53/1 dated 17 August 2021.

<sup>401</sup> Informational letter No. IN-06-28/96 dated 16 December 2021.

<sup>402</sup> Informational letter No. IN-06-28/102 dated 27 December 2021.

<sup>403</sup> Concept for Establishment a Methodological System for Development of Green finance Instruments and Responsible Investments Projects dated 14 October 2019.

- Model ESG ratings methodology - aiming to unify ESG rating formats<sup>405</sup>
- financial market disclosure standards - providing for additional environmental, climate and other non-financial disclosures in stock prospectuses<sup>406</sup>

### 20.4.3 Non-financial reporting bill

In 2017 the Russian Government approved the Concept for Public Non-Financial Reporting and a Plan for its implementation.<sup>407</sup> Amongst other things, the Plan envisaged the development of the non-financial reporting bill. Since then, the authorities have made several attempts to pass the law on mandatory non-financial reporting.

In the end of 2022, the Russian Ministry of Economic Development resumed working on the bill.

In 2023, the Russian President proposed introducing mandatory non-financial reporting for major companies – which may speed up the development of said bill.

### 20.4.4 How are Russian companies implementing ESG in practice?

Many Russian businesses (mainly public companies) have implemented ESG into their governance practice, for instance via:

- establishing ESG committees with the board of directors and the management board, cross-business units ESG working groups, and separate sustainability departments headed by sustainability directors commonly reporting directly to CEO

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<sup>404</sup> Latest - Report for public consultation dated 21 December 2022.

<sup>405</sup> Report for public consultation dated 17 January 2023.

<sup>406</sup> Regulation No. 714-P "On Disclosure of Information by Issuers of Equity Securities" dated 27 March 2020.

<sup>407</sup> Government Resolution No. 876-r "On the Implementation of Framework of Development Public Non-Financial Reporting and Plan of measures of its Implementation" dated 5 May 2017.

- documenting their corporate purpose, sustainability goals and strategy in ESG policies, as well as in separate policies on environment, climate and biodiversity, ethics, social policy, labor and industrial safety, anti-corruption and antimonopoly compliance, suppliers, local communities and government relations, employee well-being, human rights, diversity & inclusion, etc.
- reporting on sustainability progress in ESG reports, as well as reports on separate areas such as carbon emissions, and other environmental and social performance indicators
- participating in ESG ranking with international agencies (such as Sustainalytics and MSCI) and their Russian peers (such as Akra and National Rating Agency)

## 20.4.5 Are there any notable sustainable finance developments in Russia?

### 20.4.5.1 Green and adaptation projects taxonomy

In September 2021, the Government approved Russia's national taxonomy, which comprises the Main Goals and Directions of Sustainable Development in Russia and the Criteria for Green and Adaptation Projects (the "**Taxonomy**").<sup>408</sup>

The developers of the Taxonomy affirm that the taxonomy is 95% compliant with international practices, subject to treating nuclear power and large hydroelectric as "green" for taxonomy purposes.

The authorities are currently discussing the feasibility of incentives to lenders and borrowers for a broader set of Taxonomy-compliance projects.

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<sup>408</sup> Decree of the Russian Government dated 21 September 2021 No. 1587 "On Approval of Criteria for Sustainable (Including Green) Development Projects in the Russian Federation and Requirements for Verification System for Sustainable (Including Green) Development Projects in the Russian Federation."

### 20.4.5.2 Social taxonomy draft

In 2022 Russia's development finance institution VEB.RF presented a draft Taxonomy of Social Projects, setting criteria for projects that could be financed via social-labeled instruments in twelve areas, including healthcare, education, employment, business support, accessible infrastructure, and affordable and comfortable housing.<sup>409</sup>

The document is conceptually linked to the implementation of national projects, national development goals, and several other strategic initiatives of Russia's development policy (see Section 20.1 for details).

The Social Taxonomy is expected to be adopted in 2023.

### 20.4.5.3 Market developments

In 2019 the Moscow Stock Exchange established a sustainability sector for ESG bonds and other financial instruments compliant with the green Taxonomy, ICMA, and CBI principles of green and social finance.<sup>410</sup>

Currently, the sector includes 18 issues of green bonds, five issues of social bonds and five issues of bonds relating to National Projects and Adaptation Projects.

As of the end of 2022, the aggregate value of ESG loans provided to Russians amounted to approximately RUB 1.85 trillion<sup>411</sup>, and for issued bonds - approximately RUB 525.57 billion.

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<sup>409</sup> VEB.RF, The Draft Criteria (Taxonomy) of Social Projects in Russian Federation <<https://veb.ru/files/?file=4892c186d8e0b08231b7dac83a6fab8e.pdf>>.

<sup>410</sup> MOEX Sustainability Sector <<https://www.moex.com/s3019>>.

<sup>411</sup> Infragreen Analytical Report "ESG, decarbonization and green finance in Russia 2022" <<https://infragreen.ru/news/135727>>.

## 21. E-commerce

### 21.1 What regulations govern business on the internet?

There is a large amount of e-commerce related legislation, including:

- Federal Law No. 152-FZ dated 27 July 2006 "On Personal Data" (the "**Personal Data Law**") and related by-laws
- Federal Law No. 149-FZ dated 27 July 2006 "On Information, Information Technologies and Protection of Information"
- Law No. 2300-1 dated 07 February 1992 "On Protection of Consumers' Rights"
- Resolution of the Government of the Russian Federation No. 612 dated 27 September 2007 "On Approval of the Rules for Remote Sales of Goods"
- Federal Law No. 38-FZ dated 13 June 2006 "On Advertising"
- various financial and administrative regulations applying to internet sales and the provision of financial products and services

### 21.2 Which administrative body is responsible for regulating e-commerce, data protection and the internet?

No administrative body has overall responsibility for the regulation of e-commerce, although a number of such bodies have an interest in ensuring the enforcement of certain laws that apply to e-commerce. For example, the main Russian data protection authority is the Federal Service for Supervision in the Sphere of Telecommunications, Information Technology and Mass Communications (the "**Roskomnadzor**"), which, among other things, has the authority to block access to particular domain names in Russia.

The Federal Antimonopoly Service (the "**FAS**") oversees compliance with advertising regulations and enforcement of the law against unfair competition practices, including those committed on the internet.

Consumer product and product safety issues, including product recalls, control and supervision over compliance with mandatory requirements, including with respect to the sales performed via internet, are dealt with by the Federal Service for the Oversight of Consumer Protection and Welfare (the "**Rospotrebnadzor**").

### 21.3 What rules are applied by Russian courts to determine the jurisdiction for internet-related transactions or disputes in cases where the defendant is resident or provides goods or services from outside the jurisdiction?

The jurisdiction for internet-related transactions is defined by the principles of international private law (conflict of laws). As such, the parties are free to agree that a non-Russian law shall apply to their transaction, provided that there is a foreign element to it. Such foreign element is recognized when a party to a transaction is a non-Russian entity or a contract contains another foreign element, e.g., the object of the contract is located abroad. If it is impossible to identify the applicable law based on the above rules, including the choice of law in a contract, then the law of the country most closely connected to the contractual relations shall apply.

At the same time, when Russian consumers are targeted, a number of Russian regulations shall apply, irrespective of the law chosen by the parties as applicable to their transaction. These include Russian competition, advertising, and data protection regulations, as well as some others. Russian consumer protection laws may also apply if the law governing the contract provides a consumer with less protection compared to Russian regulations.

As to the choice of dispute resolution venue, please note that judgments of courts outside Russia may be enforced in Russia only if there is an existing treaty between Russia and the country where the judgment was issued. There have been some examples where foreign judgments have



been enforced based on the international principle of reciprocity. However, the application of this principle is sporadic and many foreign judgments have not been enforced, irrespective of this argument having been made. Thus, it should not be relied upon in day-to-day business.

At the same time, the parties are free to submit their disputes to local or foreign arbitration, with the latter being generally enforceable in Russia based on the UN convention "On the Recognition and Enforcement of Foreign Arbitral Awards."

Please note, however, that consumers may submit their claims to Russian state courts and such courts normally accept and review such claims on the merits, irrespective of a dispute resolution clause in the parties' agreement.

## 21.4 Is it possible to form and conclude contracts electronically?

Yes, under Russian law a contract may be formed and concluded electronically by: (i) using an electronic signature, including the so-called "qualified electronic signature" (an electronic key registered with a special certifying center); (ii) exchanging electronic documents; or (iii) commencing the performance of the contract terms stated in an offer.

When parties enter into a contract by exchanging electronic documents, each party must be able to verify that the documents were in fact sent by the other contracting party.

The authentic determination requirement is considered fulfilled when the parties use an electronic signature. When the parties do not utilize an electronic signature, e.g., if they send emails or accept the terms published on the website by ticking a box, they need to ensure that they have sufficient proof that the document exchange was carried out by authorized representatives of the relevant parties. Among the evidence which the parties may use to confirm such authorized exchange, the following sources are accepted by Russian courts, provided they contain all substantial agreement terms required under Russian law:

- official correspondence or emails coming from the parties' authorized representatives (sent from their official addresses, domains or emails)
- customer purchase orders
- payment documents
- individual codes entered via a secured communication channel

The contract is also considered to be concluded if the customer commences the performance of the contract terms in response to an offer.

It is arguable whether the "click to accept" or "click-wrap" method represents commencement of the contract performance, even if the accepted terms explicitly state so. Therefore, it is recommended to specify in the terms and conditions a list of actions required from the customer which, if performed, would show that the customer accepted the offered terms, e.g., profile activation, approval of technical specification, agreement on delivery terms, order placement or payment. If the defendant selling goods or services on the internet can prove that the customer has undertaken all actions required under the offered terms, this would reinforce his/her position in case of a dispute.

In addition, if the customer accepts the defendant's performance, then the customer will have only a very limited opportunity to claim that no agreement has been reached.

As a practical matter, please note that companies selling goods and services via the internet might face problems with using electronic documents executed without the use of an electronic signature, e.g., they might not be accepted by some banks, tax or customs authorities as proper confirmation of contractual relations. While there are legal arguments to support the position that such documents must be accepted as proper confirmation, we cannot exclude the risk that a particular state officer or bank representative would have a more conservative approach.

## 21.5 What rules govern advertising on the internet?

Advertising on the internet is governed by the same rules that apply to other advertising channels, though rules specific to internet advertising may be applicable to particular products, e.g., restrictions on internet advertising of gambling, tobacco, alcohol and other goods and services.

If Russian consumers are targeted, advertisers and/or advertising distributors must follow the following principles when distributing their adverts:

- obtain prior consent from a consumer before showing an advert via electronic communication channels (including the internet)
- allow the consumer to opt out of receiving the advertising

Under Russian advertising law and the enforcement practice of Russian courts, consent to receive advertising must be specific and, ideally, isolated from the main terms and conditions of the game. The right to opt out cannot be waived.

## 22. Personal Data

### 22.1 What laws apply to personal data, and what is the competent state body?

The processing of personal data in Russia is generally regulated by Federal Law No. 152-FZ "On Personal Data" dated 27 July 2006 (the "**Personal Data Law**") and related by-laws. The processing of personal data of certain types of data subjects, such as employee personal data, or processing by certain types of data operators may be additionally subject to industry or activity-specific laws. However, such regulations are based on the same principles as the Personal Data Law.

The main Russian state authority responsible for data protection is the Federal Service for Supervision in the Sphere of Telecommunications, Information Technology and Mass Communications (the "**Roskomnadzor**").

### 22.2 Does the Russian Personal Data Law apply to foreign entities?

Previously, the Personal Data Law had no express extraterritorial effect, but recently under the approach taken in practice by Roskomnadzor the Personal Data Law has been applied to foreign companies in connection with their Internet services aimed at individuals located in Russia.

Starting from 1 September 2022, clear extraterritorial criteria were introduced to the Personal Data Law. It expressly applies to the processing of Russian nationals' data by foreign entities carried out under (i) the agreement with data subject, or (ii) the data subject's consent.

### 22.3 What are personal data and data processing?

Under the Personal Data Law, personal data is any information relating to a directly or indirectly identified or identifiable individual.

Previously, the regulator narrowly interpreted the concept of personal data as: (i) data that can unambiguously identify an individual; and (ii) all

information relating to such identified individual. However, this interpretation does not expressly follow the law and it is now being replaced with a broader interpretation. Roskomnadzor's official letters already suggest that an individual's full name by itself qualifies as personal data, while in its oral statements Roskomnadzor opines that emails, IP addresses, and cookies, even without any additional information or other similar information, should also be treated as personal data.

The law defines the processing of personal data very broadly as any action (operation) or combination of actions (operations) with personal data, performed with or without computer equipment, including the collection, recording, systematization, accumulation, storage, verification (updating and amending), retrieval, use, transfer (dissemination, disclosure and access), depersonalization, blocking, deletion and destruction of personal data.

Russian data protection legislation regulates both the manual and automated data processing of personal data.

## 22.4 What are the basic requirements for data processing?

According to the Personal Data Law, the processing of personal data must be based on legitimate grounds.

From a practical perspective, in most cases, this means that the personal data operator must collect all the necessary consents from data subjects in an appropriate form. Generally, consent from personal data subjects may be obtained in any verifiable form, including in writing, electronically or by means of implied consent. However, in certain cases, an operator is required to obtain written consent in a special form.

An operator may also rely on such legal grounds as executing or performing an agreement to which a data subject is a party or beneficiary. However, in this case, the data processing must be either directly prescribed or at least reasonably justified by the aims and subject matter of such agreement. In most cases, any excessive operations involving the processing of data after the termination of the agreement will be considered as violating the law.

The Personal Data Law also provides for such legal grounds as compliance with legal duties imposed on the data operator. However, these legal grounds are applicable in a few cases where Russian laws explicitly provide that certain data can be collected and processed in a particular way (for example, Russian anti-money laundering legislation).

The Personal Data Law also permits processing personal data where an operator has a legitimate interest, provided this does not prejudice the personal data subject's rights. However, in practice, the Russian data protection authority rarely acknowledges legitimate interest as the appropriate legal basis for personal data processing.

The law provides other grounds for the processing of personal data but, in practice, they are mostly irrelevant for businesses.

The processing of personal data must comply with the purposes declared in the data subject's consent or must follow from the agreement with a data subject or the law. Namely, the law prohibits collecting and storing excessive categories of personal data or performing excessive operations. The Personal Data Law requires operators to cease processing data once the declared purposes of such processing have been achieved.

## 22.5 What requirements should be met to transfer personal data to third parties?

Data transfers by the primary operator to third parties (including affiliated companies) must be:

- directly envisaged by the data subject's consent (or have other legitimate grounds, such as performing a contract with the data subject)
- performed on the basis of a separate data transfer agreement or contractual clause that must impose a duty of confidentiality on the recipient

If the recipient acts as a data processor under the primary operator's instructions, the agreement, in addition to containing a confidentiality

clause, must also comply with a number of requirements established by the Personal Data Law.

## 22.6 Are there any special rules for cross-border transfers?

From 1 March 2023, data operators must notify Roskomnadzor of planned cross-border data transfers.

Prior to submitting a notice, the operator must conduct a transfer impact assessment. To conduct such assessment, the data operator must obtain information from the foreign data recipients on (i) data protection measures they implement; (ii) the regulatory environment in the country of the data recipient (in case of transfer to a country that doesn't ensure adequate protection of personal data).<sup>412</sup>

Operators are not required to submit the results of the risk assessment to Roskomnadzor (only the date of the assessment must be indicated in the notification). However, in certain circumstances, Roskomnadzor can request the assessment report when considering the notice.

Roskomnadzor generally considers cross-border transfer notices within 10 business days. Data operators can transfer data to countries that ensure adequate protection of personal data immediately after the notification is submitted. Transfers to countries that do not ensure adequate protection are prohibited until the expiry of the 10-day term (with few exceptions).

Roskomnadzor can fully prohibit or partly restrict transfers, if it finds this necessary to protect the morals, health, rights, and legal interests of individuals. In addition, Roskomnadzor may prohibit or restrict cross-border transfers for other reasons at the request of other Russian authorities.

If Roskomnadzor prohibits or restricts a cross-border transfer and the data has already been transferred, the data operator will have to ensure

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<sup>412</sup> The list of countries that ensure adequate protection is officially published and includes (i) countries that are parties to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 108), and (ii) countries additionally approved by Roskomnadzor.

that the foreign data recipient ceases processing and destroys all received data.

## 22.7 Are there any special requirements for the distribution of personal data?

The data subject's consent may be the only grounds for making personal data available to the public. The consent must be separate from other consents, must be explicit, and may provide for prohibitions and conditions on data processing. The operator must publish information on the conditions for processing and prohibitions with respect to the processing of publicly available data, which follow from the consent.

The Personal Data Law also explicitly prohibits operators from using publicly available personal data for purposes other than those explicitly allowed in such special consent for distribution. It means, for example, that the operators cannot monitor job candidates' social networks while assessing them for the job position.

## 22.8 Where can personal data be stored?

Data operators collecting personal data must ensure the recording, systematizing, accumulating, storing, verifying (including updating and modifying) and retrieving of the personal data of citizens of the Russian Federation with the use of databases located within the Russian Federation. This requirement is very general and applies to both local and foreign data operators collecting the data of Russian citizens.

This requirement is subject to several narrowly defined exceptions. For example, an exception applies if the processing of personal data is necessary to perform an international treaty of the Russian Federation in accordance with Russian legislation.

According to the literal interpretation of the Personal Data Law, the localization duty only applies to personal data collected by the operator. According to guidance issued by the Ministry of Digital Development, Communications and Mass Media of the Russian Federation, only intentional receipt of personal data directly from data subjects or through third parties engaged for this purpose (data processors) would qualify as "collection." If an operator unintentionally receives certain personal data,



or receives unrequested data, or receives personal data from another data controller (but not from processor), it will not be deemed to have collected such data for the purposes of the Personal Data Law.

The Russian authorities previously advised that upon the *initial* recording of the data in a primary Russian database, the operator may then potentially transfer the data to secondary foreign databases or provide access to a Russian database to foreign third parties (subject to the general requirements for the cross-border transfer of data to third parties).

Importantly, based on a literal interpretation of the Personal Data Law, the Russian database must be used not only for the initial recording, but also for any updates to the personal data. Once personal data is initially recorded and updated in the Russian database, the data operator can upload such data to a foreign database.

## 22.9 Are there any state authorities that must be notified if a company begins to process personal data?

Before a data operator commences processing personal data, it must file a notice of its intention to process personal data with Roskomnadzor. The notice may be submitted online (in which case it must be signed with a qualified advanced electronic signature). The notice may also be sent by regular mail.

## 22.10 What steps should the operator take in case of a data breach?

In case of a data breach, the operator must notify Roskomnadzor.

Within 24 hours after detecting the data breach, the operator must provide Roskomnadzor with preliminary information on the data breach (suspected reasons, assessment of damage, remedial actions taken, etc.).

Within 72 hours after detecting the data breach the operator must file a second notification with additional information on the breach (including the results of the internal investigation).

## 22.11 How do companies protect personal data in Russia?

The Personal Data Law requires a personal data operator to undertake the necessary organizational and technical measures to protect personal data from unlawful actions.

All such measures may be divided into two categories:

- organizational measures, which are imperatively prescribed by the law with respect to any operator irrespective of its IT systems' features (e.g., appointing an employee responsible for personal data processing in the company, issuing data processing policies, and familiarizing staff with internal documents and policies setting procedures for processing employee data)
- organizational and technical measures, which must be determined by an operator independently on a case-by-case basis based on the results of a mandatory internal audit of IT systems. Namely, to know the set of requirements applied to a particular IT system, an operator must consider:
  - the type of personal data, i.e., special (data on race, nationality, political views, religious beliefs, etc.), biometric (physiological and biological data), and publicly available data
  - the total number of personal data subjects
  - the type of actual threats to the IT system

## 22.12 What is the liability for a violation of personal data legislation?

If an operator fails to comply with Russian personal data legislation, it may face administrative or civil liability, including the judicial blocking of its websites where personal data is processed in violation of Russian law.

Civil liability may take the form of compensation for moral harm (a Russian legal concept similar to damages for pain and suffering in the United States) and/or a court order to cease violations.

Administrative liability for initial noncompliance with the personal data legislation (except for personal data localization requirements) may take the form of an administrative fine, the maximum amount of which is RUB 500,000 per violation.

Failure to notify Roskomnadzor about personal data processing entails special administrative liability in the form of an administrative fine, the maximum amount of which is RUB 5,000.

For noncompliance with the localization requirements, the operator may be fined in accordance with administrative procedures. If legal entities commit such violations for the first time, fines will be within the range of RUB one million to RUB six million. Fines for repeat violations for legal entities will be within the range of approximately RUB six million to RUB 18 million. In addition, if an operator collects personal data through an online resource (e.g., a website or mobile app) without due localization of personal data, such online resource may be blocked in Russia.

## 23. Consumer Protection

### 23.1 What regulations govern sales to Russian consumers and which administrative bodies control their enforcement?

Sales to Russian consumers are governed by the Civil Code of the Russian Federation (the "**Civil Code**"), Law No. 2300-1 "On Protection of Consumers' Rights" dated 7 February 1992 (the "**Law on Protection of Consumers' Rights**"), and various resolutions of the Russian government adopted in line with the aforementioned legislation. Among such regulations, the most prominent resolutions cover the rules of door-to-door sales, the so-called distance sales (including sales via the internet), and rules relating to sales of particular types of products.

According to Russian conflict of law regulations, even if a Russian consumer has entered into a contract governed by non-Russian law, it does not deprive them of the protection granted under Russian law. In most cases, Russian courts take a conservative approach and apply Russian law when a seller or provider of services advertises its products or services targeting Russian consumers.

A foreign jurisdiction clause in a contract also does not deprive Russian consumers from submitting their claims against a foreign seller/manufacturer to Russian courts of general jurisdiction. Courts will likely accept such claims for trial based on Russian procedural rules. However, in practice, Russian consumers rarely sue foreign manufacturers, because enforcement of a court's decision in a foreign country where the manufacturer is registered takes time and might be too costly for a consumer.

That said, Russian consumers and authorities sometimes submit their claims against the Russian representative(s) of a foreign manufacturer appointed to comply with Russian product conformity rules or a Russian subsidiary. While such claims are arbitrary, they may be based on the terms of the representative's appointment, e.g., if the representative undertakes to handle product liability claims, or a Russian entity acts as de-facto representative of the foreign manufacturer.

The principal body conducting state control in the sphere of consumer protection is the Federal Service for the Oversight of Consumer Protection and Welfare ("**Rospotrebnadzor**"). In practice, Rospotrebnadzor may involve other state bodies to ensure enforcement of consumer protection and related regulations, e.g., the police.

### 23.2 What represents a consumer sale?

According to specific regulations on protection of consumers' rights, a sale is made to a consumer if the buyer is an individual ordering, acquiring or using products or services exclusively for personal, family, household and other needs not relating to business activities. If a sale is made to a company or an individual for their business activity, the general rules of the Civil Code of the Russian Federation apply.

### 23.3 What remedies are generally available to Russian consumers (warranty undertakings of the manufacturer and the seller)?

Under Russian law, a consumer, at their sole discretion, may claim one of the following remedies from the seller (manufacturer, importer) of a defective product:

- (i) replacement of the defective product with a new product of the same type, brand and/or index
- (ii) replacement of the defective product with a new product of another type, brand and/or index and settlement of the price difference between the replaced product and the new one
- (iii) proportionate decrease of the purchase price
- (iv) immediate repair of the defective product at no cost, or compensation of the consumer's costs incurred repairing the product's defects
- (v) termination of the purchase agreement and refund of the purchase price; at the seller's request and expense, the consumer has to return the defective product to the seller

In relation to technically sophisticated products listed in the resolution of the government of the Russian Federation, e.g., computers, watches and cars, a consumer may submit only the claims indicated in items **(i)**, **(ii)** and **(v)** above.

In addition to the above remedies, a consumer is entitled to claim compensation of their losses incurred due to the purchase of the defective product. Importantly, under Russian law, a consumer may file claims indicated in items a and d above directly against the manufacturer, its representative or the importer of the defective product. Instead of addressing these claims to the manufacturer, the consumer should return the defective product to the manufacturer or the importer and claim a refund of the purchase price paid for such product from the manufacturer or the importer.

A consumer may address the above claims to the manufacturer and the seller of the defective product (as applicable) within the warranty period established by the manufacturer and the seller (as applicable). If the warranty period is not established, the consumer may file claims within two years after the defective product is delivered to the consumer.

If the warranty period is less than two years, a consumer may still file the above claims against the product's manufacturer within two years after the consumer receives the product, if they prove that the defect occurred prior to the delivery of the product to the consumer or due to reasons that occurred prior to such delivery.

Moreover, the consumer may claim the free repair of substantial defects from the manufacturer within the service life of the product or, if the service life is not stated, within 10 years after the delivery of the product to the consumer. If such a claim is not met within 20 days from the moment of its receipt, the consumer is entitled to file claims provided by items **(i)** and **(iv)** above or return the defective product to the manufacturer and claim a refund of the purchase price paid for such product.

### 23.4 Can the manufacturer's and/or seller's liability be limited under the contract with the consumer?

Under Russian law, it is not possible to limit the manufacturer's and/or seller's liability to a consumer under the contract.

At the same time, there is a market practice of limiting the manufacturer's and seller's liability for products by the definition of the product's qualities, terms of use and applicable limitations in using the products. Please note that limitations excluding liability for the intended purpose of the product might be considered by Russian courts as invalid unless the seller makes it explicitly clear in the contract that the relevant intended purpose is not applicable and the product serves other purposes. Due to the requirement of Russian law for the seller to explicitly state any limitations of the intended purpose and specific terms of use prior to entering into a contract with a consumer, we recommend using this tool with discretion because it may affect the reputation of both the manufacturer and seller, as well as their brands.

### 23.5 Product disclosure obligations

The seller/service provider must provide the consumer with the following information prior to entering into the contract:

- name of the technical regulation or other indication confirming the quality conformity established by Russian law
- information about the main qualities of the product
- price in rubles
- warranty period if it is established by the manufacturer or seller
- rules for effective and safe use
- service life and information about the terms of use, including the actions required from the consumer after the expiry of the shelf life

- registered address and full name of the manufacturer, importer, seller and their authorized organization(s) (if any)
- reference to quality standards and requirements applicable to the products
- information about the applicable rules of sale (e.g., rules for distance sales)
- information (full name, registered address and contact details) regarding the particular entity rendering the service (if applicable)
- information about defects (if any)
- return policy (in case of distance sales)

Additional disclosure requirements for particular products may be provided in relevant technical regulations and national standards.

**Under Russian law, all disclosures to Russian consumers have to be made in Russian.**

Although we are aware that companies directly targeting Russian consumers sometimes avoid using Russian in interactions with Russian consumers, we note that this violation may lead to various negative consequences, for example:

- it is highly likely that damage to the product inflicted by the consumer may be justified to a Russian court by the absence of information about the product in Russian
- an administrative fine of up to RUB 10,000 for each violation of the disclosure obligations may be imposed on the seller (in practice, one penalty per executed administrative protocol)
- there may be reputational damage from negative publicity concerning a seller violating the requirements of Russian law, etc.



## 23.6 Rights of consumers to claim a return/refund when purchasing products through distance sales methods

Apart from the return/refund opportunities discussed above, consumers purchasing products through distance sales have the right to:

- cancel the order prior to the delivery or within seven days after the delivery
- require a refund of any money paid for the cancelled order (excluding the costs of the product's return)

If the seller does not inform the consumer about their right to cancel the order, the consumer can cancel it within three months after delivery.

The return of an undamaged product is possible if the product's appearance and qualities are preserved.

The only exception to the return requirements relates to personalized products, which may be used only by the particular individual, e.g., a product customized for a particular individual (suit to the size of the client, certain dimensions of furniture, etc.).

## 23.7 Application of Russian distance selling rules

Russian distance selling rules apply to sales over the internet, through catalogues, TV shops, telecommunication channels and other vehicles used by the seller to provide the buyer with a general description of the goods and excluding the opportunity of direct familiarization with the product. While distance sales rules generally repeat the main provisions of the Law on Protection of Consumers' Rights, they provide extensive obligations for the seller in terms of disclosure and accepting the returns of undamaged products.

Special rules are established for owners of online marketplaces (the "**Aggregator**") that allow consumers to review offers of third-party sellers, conclude purchase agreements with such sellers and make prepayments through the Aggregator.

An Aggregator must disclose to a consumer its full name, address, registration number, working hours and all other information that the seller must disclose prior to selling the product to a consumer. If any of the disclosed information appears to be inaccurate, the Aggregator will be liable for the consumer's losses related to such misinformation. The Aggregator may not be liable for misinforming the consumer about the goods if the information disclosed was provided by the seller.

Finally, the Aggregator must refund the advance paid by a consumer if:

- the seller has failed to deliver the product (perform the service) in a timely manner against which the consumer paid the advance
- the consumer has sent a termination notice to the seller due to the latter's failure to deliver the product (service) on time

## 23.8 Class actions

Class action is an opt-in concept whereby consumers expressly give their consent to join a group of claimants against a common respondent.

In order to file a class action, several conditions must be met:

- the minimum number of claimants should be 20
- the claimants should base their submission on similar facts, refer to common or similar rights or interests breached by the respondent, and apply for the same remedies. A decision of a state authority (e.g., a decision on the violation of competition laws or similar, where the state authority acknowledges the violation of consumers' rights) or even an individual decision rendered under the same circumstances, may also be grounds for the class action
- the claimants should choose a representative who will lead the process under a legal service agreement entered with the claimants

- before filing, the claimants must publish an announcement in the mass media with an invitation to other consumers to join the action. Importantly, per request of the claimants a court may oblige the respondent to disclose all consumers whose rights may also be affected

The class action must be filed with a court of general jurisdiction at the location of the respondent. A court should issue a final decision within eight months, although in practice this deadline is not met because the proceedings last longer.

Any consumer may join the action until the final decision is rendered.

If an individual consumer has an ongoing suit against the same respondent, they will be offered the opportunity to join the class action. If the consumer rejects the proposal, their case will be suspended unless the class action is considered.

If the consumer, for any reason, missed the invitation and did not participate in the class action, they may file a separate suit later. Circumstances and conclusions established in the class action will have prejudicial effect over their individual claim.

Finally, not only consumers may file a class action; bodies, organizations and officials of Rospotrebnadzor are also empowered to apply to the courts with a class action.

### 23.9 Trends of recent enforcement practice

While some businesses have suspended their operations in Russia or left the market, Russian consumers, consumer protection organizations and even professional lawyers acting in the interest of a broad number of consumers have started raising the following claims:

- for the resumption of operations by the business that suspended its activities or left the market, e.g., the resumption of online services, or the maintenance, support and repairs of sold products, etc.

- for a full refund of the purchase price due to failure to provide repairs of substantial defects / replacement / maintenance or failure to perform repairs on time (within 45 days following submission of the claim and presentation of the defective items)
- for suspension / cancellation of product conformity documents, e.g., products' certificates, declarations

As such claims may jeopardize a company's strategy in the Russian market and even affect sales in other markets of the Eurasian Economic Union, we recommend developing a strategy for handling consumer related claims as part of an overall suspension / exit strategy.

## 24. The Pharmaceuticals and Healthcare Industry

### 24.1 What is the general legal framework governing healthcare in Russia?

The protection of citizens' health is one of the principles of the constitutional system of Russia declared by the Russian Constitution, and the Russian healthcare system is built around this principle.

The formal basis of the Russian healthcare system is laid out in Federal Law No. 323-FZ "On the Fundamentals of Citizens' Health Protection in the Russian Federation" (the "**Fundamentals**"), which replaced its predecessor, Law No. 5487-1 "Fundamentals of the Legislation of the Russian Federation on Protection of Citizens' Health" dated 22 July 1993, on 1 January 2012. The Fundamentals standardize healthcare, serve as a basis for the regulation of medical devices and significantly restrict the marketing and promotional activities of pharmaceutical companies. Federal Law No. 178-FZ "On State Social Care" dated 17 July 1999, as amended (the "**Social Care Law**"), is also an important legislative act regulating the Russian healthcare system. The main legislative act specifically governing the pharmaceutical market in Russia is Federal Law No. 61-FZ "On the Circulation of Medicines" dated 12 April 2010, as amended (the "**Law on Circulation of Medicines**"). There is no separate law specifically devoted to medical devices in Russia.

Other important laws for the pharmaceuticals and healthcare sector include Federal Law No. 38-FZ "On Advertising" dated 13 March 2006, as amended (the "**Law on Advertising**"), governing the advertising of medicines, medical devices and medical services; and Federal Law No. 99-FZ "On Licensing Certain Types of Activities" dated 4 May 2011, as amended (the "**Law on Licensing**"), governing licensing in the Russian Federation.

Following the years of 2020 and 2021, when the Russian regulations were highly influenced by a need to ensure availability of treatment in light of the spread in the world of a new coronavirus disease ("COVID-19"), the years of 2022 and 2023 required enactment of regulations to adopt Russian medicine and medical device markets to the restrictive economic measures implemented against Russia.

These two trends sometimes coincide. For example, the Russian Government has issued two permits to local manufacturers to use patented inventions of a multinational pharmaceutical company and to manufacture medicinal preparations treating COVID-19 (these cases were referred to as "compulsory licenses," but this terminology is not quite fitting from the Russian legal standpoint). Later, in March of 2022 the Government, by Decree No. 299, effectively allowed the recipients of these permits not to pay any fees for the use of the patents, if an owner of the patent is linked to a foreign state that takes unfriendly actions against Russian legal and natural persons. In our view, the imposition of sanctions is the most obvious case of an unfriendly action mentioned in the regulation.

## 24.2 Regulations enacted to adopt Russian medicine and medical device markets to the restrictive economic measures implemented against Russia

The introduction of restrictive economic measures against Russia has led to adoption of new legislation and subordinate legal acts in order to reduce the negative impact of these measures on Russian markets.

The main legislative act to support the Russian economy during this period is Federal Law No. 46-FZ "On the Amendments to Certain Legislative Acts of the Russian Federation" dated 8 March 2022. This law provides for supportive measures for various sectors of the economy, including the markets for medicines and medical devices. Another important legislative act, which establishes some additional

supportive measures for the markets for medicines and medical devices, is Federal Law No. 64-FZ dated 26 March 2022.

The general provisions of these two laws have been developed in the following two key documents, one for medicines and one for medical devices:

- Government Decree No. 593 dated 5 April 2022, which adopted Special Rules for Circulation of Medicines for Human Use in Case of their Deficit or Risk of Deficit Linked to the Restrictive Economic Measures Implemented Against Russia (the "**Special Rules for Medicines**")
- Government Decree No. 552 dated 1 April 2022, which adopted Special Rules for Circulation, Including Special Rules for State Registration, of Medical Devices in Case of their Deficit or Risk of Deficit Linked to the Restrictive Economic Measures Implemented Against Russia (the "**Special Rules for Medical Devices**")

While both documents in their titles refer to a deficit or risk of deficit linked to the restrictive economic measures implemented against Russia, the application of the supportive measures is triggered by an actual deficit or a risk of deficit of the relevant products while there are restrictive economic measures implemented against Russia, and proof that a deficit results from these restrictive measures is not required.

A special interdepartmental commission has been formed by the Ministry of Health (the "**MOH**") to take decisions as to the deficit of the medicinal preparations. This commission includes representatives of the MOH, the Ministry of Industry and Trade (the "**MIT**"), the Federal Service for Surveillance in Healthcare (the "**Federal Service**"), Federal Customs Service, Ministry of Finance, Federal Antimonopoly Service and some others.

A similar interdepartmental commission has been formed by the Federal Service to take decisions concerning the deficit of medical devices.

The Special Rules for Medicines establish that:

- importation into and circulation in the Russian Federation of registered medicinal preparations in their foreign language packaging is allowed until 31 December 2024. Imported medicines must comply with the requirements established during their registration, except for the requirements for primary and secondary (consumer) packaging. Medicinal preparations must bear on their secondary packaging a sticker containing information about the medicinal preparation in the Russian language
- a permit may be issued allowing the import into and circulation in the Russian Federation of a batch of unregistered medicinal preparations until 31 December 2023, if there is analogous (by international non-proprietary name) medicine registered in Russia and the medicine, with respect to which a permit is sought, is registered outside Russia
- a simplified procedure for registering medicinal preparations may be applied. A simplified dossier may be submitted to gain this registration. The term for state registration in this case is reduced to 60 days. The initial registration certificate issued within this procedure is valid until the end of the year 2023. This registration may be further confirmed with the issuance of a registration certificate valid until the end of the year 2025. In our view, it should not be possible to convert a registration certificate obtained within this procedure into the usual registration certificate of a medicinal preparation
- a simplified procedure for amending an entry on a pharmaceutical substance in the state register may be applied. Yet again, this procedure allows for a simpler and faster



approval of changes. This measure is aimed at supporting local manufacturing of medicines, since pharmaceutical substances are separately included into the state register only when they are used for further manufacturing in Russia

- "introduction into civil circulation," which will be discussed in more detail in Section 24.7 below, is also simplified while the Special Rules for Medicines are in force. In particular, submission of test reports of medicines to the Federal Service, which would usually be required, is not required currently for most medicinal preparations

In addition to the above, the Government of the Russian Federation approved special rules for introducing changes into the documents contained in the registration dossier for a registered medicinal preparation in the event of deficit of medicines or risk of their deficit caused by the restrictive economic measures imposed against Russia (Government Decree No. 440 dated 23 March 2022).

Government Decree No. 440 defines cases when amendments to the documents contained in the registration dossier for a medicine are carried out with or without quality examination of medicinal products, and a list of information that must be submitted by the applicant to the Ministry of Healthcare of Russia in order to amend the documents contained in the registration dossier for a medicinal preparation.

For instance, amendments to the documents contained in the registration dossier for a medicine (in respect of which the interdepartmental commission has established the fact of its deficit or risk of its deficit) can be introduced without quality examination in case of

- replacement / addition of manufacturers of the primary packaging of a pharmaceutical substance

- change in any component of the packaging (packaging material), etc.

Further, there are alterations in the rules regulating the prices of the Essential Drug List (ED List or EDL) medicines:

- the Government approved Government Decree No. 444, dated 23 March 2022, which introduces amendments into the specifics of state regulation of manufacturers' maximum selling prices for EDL medicines in case of their deficit or risk of deficit adopted by Government Decree No. 1771, dated 31 October 2020. The adopted measures aim to speed up the re-registration of the maximum selling price. So, if a registration certificate holder (a person authorized by him) receives an offer from the Ministry of Healthcare to re-register the price, the relevant documents must be provided (via the personal account) within two business days (compared to ten business days previously provided for this)
- when calculating the new price, Government Decree No. 444 allows use of the average exchange rate of the national currency of the manufacturer's country against the Russian ruble, established by the Central Bank of the Russian Federation, for one calendar month preceding the month of filing an application for state re-registration of the maximum selling price. This can be done provided that the exchange rate for the last month exceeds the average rate for the last three months by 10%
- the revision of prices due to exchange rates is possible only if there are signs of deficit, which are now calculated in a new way. If earlier the presence of a deficit was acknowledged if the index deviated by minus 30%, now a deviation of 10% is sufficient

The Special Rules for Medical Devices establish until 1 January 2025:

- that a medical device may be used with third party expendables, provided the manufacturer of those expendables registered them as a medical device and confirmed their compatibility with the other medical device within the state registration process
- that technical maintenance (this includes repair) of medical devices may be performed using third party (i.e., not original) spare parts and expendables, provided their compatibility with the original medical device has been tested and confirmed
- a simplified procedure for registering medical devices
- a simplified procedure for amending registrations of locally manufactured medical devices

Further, exportation of medical devices from Russia (including to other EAEU countries) has been limited. The Government has been given the authority impose restrictions on the export from the Russian Federation of medical devices previously imported into the Russian Federation from the territories of foreign countries that introduced economic restrictive measures against the Russian Federation.

Government Decree No. 311 dated 9 March 2022, introduced a temporary ban on the export from the Russian Federation of certain goods according to a special list. The goods include various medical equipment, as well as other products: sterile surgical catgut, dental cements and other dental filling materials, instruments and devices used in medicine, surgery, dentistry or veterinary medicine, respiratory equipment and gas masks, apparatus based on the use of x-ray, alpha, beta, gamma or other ionizing radiation, whether or not intended for medical, surgical, dental or veterinary use, etc.

Subject to Government Decree No. 390 dated 17 March 2022, the Government expanded the list of medical devices prohibited for export. The updated list includes dental materials, medical devices made of

vulcanized rubber, paper, cellulose wadding or cloth made of cellulose fibers, etc.

There are certain exceptions, e.g., export of such products to the member states of the Eurasian Economic Union is still possible subject to a special permit issued by the Ministry of Industry and Trade. The export of products that were produced in special economic zones, including those with the use of foreign components, is allowed (Government Decree No. 390).

There are also other exemptions from the ban (e.g., when the products originate from Russia as confirmed by the ST-1 certificate). Medical equipment is allowed to be exported either subject to the ST-1 certificate or permission of the Ministry of Industry and Trade (Government Decree No. 390).

This temporary ban on exportation is effective until 31 December 2023.

Order of the Federal Service for Surveillance in Healthcare No. 2075 dated 22 March 2022 established the procedure for issuing permits for the export of certain types of medical goods outside the territory of the Russian Federation according to the list indicated in Appendix No. 6 to Government Decree No. 312 dated 9 March 2022. The latter document introduced, on a temporary basis, a permit procedure for the export of certain types of goods outside the territory of the Russian Federation.

Other noteworthy new rules include the following:

- notice of discontinuation of supplies of medical devices: manufacturers and importers of medical devices cannot discontinue manufacturing and importation of medical devices into Russia without six months' prior notice. A similar rule applicable to medicines with a 1-year notice period has already been effective for some time
- shipment deadlines: a new requirement for distributors to comply with the deadlines for shipment of ordered medicines to pharmacies has been established. The deadlines will be set by local authorities
- parallel import: the MIT approved the list of goods that can be imported into Russia through parallel imports. The list does not include medicinal preparations at the moment, however, it contains some feminine care products, as well as sanitary bags and first aid kits
- public procurement: new rules have been introduced with the apparent aim of saving existing public procurement agreements rather than penalizing entities for breaches of them and expanding the possibilities for public procurement entities to purchase medicines from sole suppliers
- moratorium on inspections: the Government has introduced a moratorium on inspections of legal entities and individual entrepreneurs, which will be in force until the end of the year 2023 (Government Decree No. 336 dated 10 March 2022). Scheduled inspections will be retained only for a limited list of controlled objects, within the framework of sanitary and epidemiological, and veterinary control. Unscheduled inspections are allowed only in exceptional cases (e.g., in case of a threat to life and of causing serious harm to the health of citizens, a threat to the defense and security of the state, as well

as in case of a threat of natural and human-caused hazards). Such inspections are generally subject to the prosecutor's approval

### 24.3 Measures related to supply of medicines and medical devices due to spread of COVID-19

The Russian authorities have taken a comprehensive approach to ensuring that urgent needs for medicines and medical devices during COVID-19 are continuously met, which includes both faster review and granting of registrations and other necessary paperwork, relaxation of import rules and other permissive measures.

Decree of the Government № 441 dated 3 April 2020, contains a number of measures optimizing the regulatory procedures for medicines during the period of the spread of COVID-19, including:

- a procedure for issuance of permits for circulation of a batch of unregistered medicinal preparations necessary to treat COVID-19 (this procedure has been used by companies on several occasions)
- electronic document review and submission without hard copies, with electronic signatures
- establishment of a Working Group in the Russian MOH, which will determine the extent of expert examination of medicines intended for use in emergency situations
- reduction of the volume of examinations when introducing changes into the registration dossier related to replacement, addition, exclusion of a manufacturing site of the manufacturer of the active pharmaceutical substance and finished dosage form, as well as a change in the primary packaging
- exclusion of the examination of the medicine's quality and the examination of the expected benefit to the possible risk of the

medicine's use in relation to medicines registered in the Member States of the European Union, the United States of America, Canada or another state according to the list established by the MOH. The State registration of such medicines shall be carried out by the MOH within five working days

- the State registration of medicines intended for use in emergency situations shall be carried out in a period of no more than 20 working days
- the Russian MOH issues the applicant with a registration certificate which shall be valid until 1 January 2024 with the possibility to have this extraordinary registration converted into an ordinary registration certificate of a medicinal preparation in the future

Decree of the Government № 789 dated 29 May 2020, introduced amendments into the rules for inspecting pharmaceutical manufacturers and issuing Good Manufacturing Practice (the "**GMP**") certificates. In case of emergency, when it is impossible to inspect the manufacturing site, the validity of the GMP certificate must be calculated in a different manner, namely, it shall be calculated from the day when the inspection of the manufacturing site was completed in accordance with the documents available (including with the use of remote communication tools, including audio or video). This special rule shall be applied, if at least one of the following situations exists:

- threat of occurrence, occurrence and liquidation of emergencies
- threat of spread of dangerous diseases (such as COVID-19), as well as diseases and injuries resulting from adverse chemical, biological, radiation factors

Regardless of the situation the GMP certificate shall be issued for three years, as before.

The Government of the Russian Federation has also established a separate, simplified, procedure for State registration of medical devices with a low degree of potential risk of use (gloves, shoe covers, medical overalls, masks, respirators, etc.). The registration of such medical devices will be carried out within five working days. The applicant needs submit only an application, technical and operational documentation and a photograph of the medical device, while the submission of the results of clinical and other trials at the time of the medical device's registration is not required. However, within five months the applicant will be required to confirm the state registration of the medical device and submit to the Federal Service documents confirming the results of:

- technical tests of medical devices
- toxicological tests of medical devices
- tests of medical devices in order to approve the type of measuring instrument, etc.

The Government of the Russian Federation has also approved the procedure for the registration of certain medical devices that are intended for use in military operations, emergencies, and the prevention and treatment of dangerous diseases. The list includes 363 items, including: ventilators, extracorporeal membrane oxygenators, surgical suits, insulating suits and disposable masks, thermometers, pulse oximeters, protective screens for face and eyes, humidifiers, filters. etc.

For the initial registration, the applicant must provide the Federal Service with a copy of a document confirming the applicant's credentials, technical and operational documentation, photographs of a medical device, information about quality and safety, if any. The Federal Service shall review the documents within two days and, in the absence of remarks, shall issue a temporary registration certificate to be valid until 1 January 2024. Moreover, it is allowed to put into circulation, import, transport, and carry out the storage, use and destruction of disposable medical devices, such as gloves, medical masks, gowns, respirators,



shoe covers, without their registration in Russia, if there is a registration certificate in their country of manufacture.

Further, in case of an emergency situation or when there is a threat of the spread of a dangerous disease, the Russian Government has the right to restrict the wholesale and retail sale of medical devices included on the list determined by the Government for a period not exceeding 90 calendar days from the date of adopting the relevant decision.

In addition, the Russian Government is authorized to determine:

- special rules for organization of medical care in case of the threat of spread of diseases that pose a danger to people (for example, COVID-19)
- the procedure for collecting and recording information on the spread of such diseases, as well as its composition

Federal Law No. 67-FZ, which entered into force on 26 March 2020, allows the Russian Government to set maximum selling prices for manufacturers of certain medicines and medical devices. The same opportunity is provided in relation to the marginal wholesale and retail mark-ups to the actual selling prices of manufacturers of these medicines and medical devices. The Russian Government will determine the list of medical devices and the list of medicines, which are not included into the ED List, that will fall under the State regulation.

The Government will be able to exercise the right to set up maximum selling prices and mark-ups in cases of:

- an emergency situation
- a threat of the spread of a dangerous disease
- detection of the growth of the retail prices for medicines and medical devices by at least 30% in regions within 30 calendar days after the Government decides to track the prices

## 24.4 What are the key regulatory bodies in this area?

The regulatory bodies governing the healthcare system and pharmaceutical market of the Russian Federation are the MOH, the MIT and the Federal Service. This will continue at the operation of the EAEU common markets.

The Russian GMP inspectorate is authorized to inspect foreign manufacturing sites for compliance with GMP requirements. The MIT conducts inspections of manufacturing sites located in Russia.

The MOH is responsible for drawing up state policy and regulation in healthcare, the circulation of medicines for human use, sanitary and epidemiological welfare and numerous other areas. The MOH submits drafts of federal laws and acts of the President and the Government on healthcare to the Government. The MOH also adopts a significant number of important executive regulations on circulation of medicines required by law.

The MOH, among other things:

- adopts rules for the development of general pharmacopeial monographs and publishes the state pharmacopoeia
- registers medicinal preparations for human use and biomedical cell products
- issues permits for the conduct of clinical trials of medicinal preparations for human use and biomedical cell products
- issues permits for importing a specific lot of unregistered medicines for their clinical trials, their expert examination for the purposes of state registration and for rendering medical aid to a patient if they have extremely serious symptoms
- registers the maximum manufacturers' prices of medicinal preparations included in the essential drug list (the "EDL")

- certifies authorized persons of medicine manufacturers and manufacturers of biomedical cell products
- adopts rules for scientific consulting services on clinical trials and the registration of medicinal preparations, among other things

The MIT, among other things:

- grants licenses for manufacturing medicines
- keeps a register of licenses granted
- issues reports on the conformity of the medicines' manufacturers to the GMP and keeps a register of such reports

The Federal Service, among other things:

- exercises control over the circulation of medical devices
- exercises control over the circulation of medicines and biomedical cell products
- exercises control over the quality of medicines and biomedical cell products
- monitors the assortment and prices of EDL medicinal preparations
- monitors the safety of medicinal preparations and biomedical cell products
- grants licenses for pharmaceutical activities
- issues permits for putting into civil circulation batches/series of immunobiological medicinal preparations
- keeps a register of licenses granted

- exercises control over the quality and safety of medical activity
- carries out inspections to check the compliance of medicines manufacturers with the requirements for setting prices of EDL medicinal preparations
- publishes information in the public domain on new side effects and adverse reactions of medicinal preparations identified during the pharmacovigilance procedure

From 7 January 2019, the Federal Service is entitled to carry out sample purchases of medicines, medical services and medical devices. Such sample purchases are aimed at verifying the terms and conditions of rendering medical services, as well as ensuring that there are no falsified, poor quality or counterfeit medicines/medical devices in circulation. A newly adopted law provides for the duty of persons involved in sample purchases to immediately inform the prosecutor's office about their actions.

#### 24.5 How are clinical trials of medicinal preparations and clinical studies of medical devices regulated?

The regulation of clinical trials of medicines in Russia is undergoing a transition from a purely national system to a system combining national and EAEU components.

The key national document, the Law on Circulation of Medicines, contains a broad definition of clinical trials. It defines a clinical trial as a study of the diagnostic, therapeutic, prophylactic and pharmacological properties of a medicinal preparation in the process of its administration to humans and animals, including the study of the processes of its absorption, distribution, modification and excretion, using scientific methods for the purposes of obtaining: (i) evidence on the safety, quality and efficacy of the medicinal preparation; (ii) data on adverse reactions in humans and animals; and (iii) data on the effects of its interaction with other medicinal preparations and/or food products/animal feed.

For medicinal preparations for medical use, a clinical trial is a study of the clinical, pharmacological and pharmacodynamic effects of the studied medicinal preparation, including the processes of absorption, distribution, modification and excretion, for the purposes of obtaining, through scientific methods of assessment, evidence of the efficacy and safety of the medicinal preparations, and data on anticipated side effects and on the effects of interaction with other medicinal preparations.

Article 38 of the Law on Circulation of Medicines introduces the following possible objectives of a clinical trial:

- ascertaining the safety of medicinal preparations on, and/or their tolerability by, healthy volunteers (not allowed in Russian territory for medicinal preparations manufactured outside Russia)
- selecting optimal dosages of medicinal preparations, treatment courses for patients with a specific ailment, and optimal dosages and vaccination schemes for immunobiological preparations for healthy volunteers
- ascertaining the safety and effectiveness of medicinal preparations for patients with a specific ailment and the prophylactic efficiency of immunobiological preparations on healthy volunteers
- studying the possibility of widening the indications for the medical use of registered medicinal preparations and identifying unknown side effects

The Law on Circulation of Medicines also lists bioequivalence and therapeutic equivalence studies as types of clinical studies of medicinal preparations.

The key EAEU document is the Rules of Good Clinical Practice of the Eurasian Economic Union approved by Decision of the Council of the

Eurasian Economic Commission No. 79 dated 3 November 2016 (the "**EAEU GCP**").

The Russian national Rules of Good Clinical Practice established by Order of the Russian MOH No. 200n dated 1 April 2016 remain in force and are applied in the part that does not contradict the EAEU GCP.

For the functioning of the common market of medicinal preparations, Article 6 of the Agreement on Common Principles and Rules for the Treatment of Medicinal Preparations within the EAEU provides for conducting clinical trials of medicines in the EAEU member states in accordance with the EAEU GCP. The EAEU GCP is an international ethical and scientific standard for planning and conducting trials involving humans, as well as for documenting and presenting the results of such trials. The document is based on ICH GCP.

The unified procedure for conducting clinical trials of medicines established by the EAEU GCP is aimed at ensuring the mutual recognition of clinical trials data by the authorized bodies of the EAEU member states, as well as its recognition outside the EAEU.

The EAEU GCP must be observed when conducting any clinical trials, the data of which is submitted to the authorized bodies of the EAEU member states.

Under the EAEU GCP, a clinical trial is a study that satisfies at least one of the following conditions:

- the assignment to a clinical trial participant of a specific therapeutic strategy (intervention) occurs in advance and does not represent routine clinical practice in the EAEU member state whose research centers are participating in this clinical trial
- the decision to prescribe a medicinal preparation under examination is made together with the decision to include a clinical trial participant in the clinical trial

- clinical trial participants, in addition to routine clinical practice procedures, undergo additional diagnostic or monitoring procedures

A permit from the MOH is required to perform clinical trials. This permit is obtained by filing an application with the MOH together with the necessary documents. The MOH then orders two expert examinations of the relevant clinical trial documents:

- an expert examination of the documents for obtaining a permit for the performance of a clinical trial of a medicinal preparation concentrating on the scientific side of the trial in question, on the results of the preceding preclinical trial(s) of the relevant medicine and, if any, clinical trials of this medicinal preparation
- an ethical expert examination (concentrating on the ethical side of the trial in question with the aim of protecting the health and life of patients)

These two expert examinations are performed by a state institution for the expert examination of medicines (employing attested experts who perform expert examinations as part of their employment duties) and by the ethics council (composed of representatives of medical and scientific organizations, educational institutions of higher professional education, representatives of civic and religious organizations, and the mass media), respectively. No other filings are necessary to obtain the permit and no direct communication between the applicant and the expert bodies is allowed.

Currently, clinical studies of medical devices in Russia are regulated specifically in connection with the procedure for the state registration of medical devices by Government Decree No. 1416 "On Approval of the Rules for Registration of Medical Devices" dated 27 December 2012 (the "**Rules for Registration of Medical Devices**"). In the territory of the EAEU, there are Rules for Conducting Clinical and Clinical Laboratory Studies of Medical Devices approved by Decision of the

Council of the Eurasian Economic Commission No. 29 dated 12 February 2016.

The process for obtaining a permit to conduct clinical studies of medical devices will be described in the next Section devoted to registration matters.

## 24.6 How is the registration of medicinal preparations and medical devices organized?

A transitional period that allowed, at the choice of the applicant, the registration of medicinal preparations either in accordance with the national regulations (under Chapter 6 of the Law on Circulation of Medicines) or in accordance with the legislation of the EAEU terminated on 31 December 2020. Only the EAEU registration procedure remains available in Russia for new registrations of medicinal preparations.

Medicinal preparations registered in accordance with the legislation of the EAEU member states must be brought into line with the requirements of the EAEU law by 31 December 2025. Registration certificates of medicinal preparations issued in accordance with the legislation of the EAEU member states are valid until their expiration date, but no later than 31 December 2025.

Registration and examination of medicines intended for circulation on the common market of medicinal preparations within the EAEU must be carried out in accordance with the Rules for Registration and Examination of Medicines adopted by Decision of the Council of the Eurasian Economic Commission No. 78 dated 3 November 2016 (the "**Rules for Registration and Examination of Medicines**").

The Rules for Registration and Examination of Medicines establish requirements for the structure, format, and content of the registration dossier, structure and content of the report on the assessment of the registration dossier, the form of the registration certificate of the medicinal preparation, the procedure for amending the registration



dossier, the grounds for rejection of registration, and the withdrawal, suspension or termination of the registration certificate of the medicinal preparation.

The registration under one trade name of medicinal preparations with different qualitative composition of active ingredients is prohibited under the Rules for Registration and Examination of Medicines. The registration of one medicinal preparation with different trade names in different EAEU member states is permitted in the following cases:

- the use of the proposed trade name may contradict the law and morality norms, or otherwise does not take into account national cultural and/or linguistic characteristics
- the intellectual rights to a trade name in the form of a trademark belong to a person other than the person who applied for the registration of a medicinal preparation, or the holder of a registration certificate, and the applicant or the holder of a registration certificate cannot provide the relevant license agreement on granting the rights to use a trademark
- the medicinal preparation was registered under different trade names in accordance with the legislation of the EAEU member states prior to 31 December 2020

The Rules for Registration and Examination of Medicines provide for certain exceptions, i.e., the list of medicines that do not need to be registered:

- medicines formulated in pharmacies
- pharmaceutical substances
- medicinal products intended for preclinical and clinical trials
- medicines imported by individuals for personal use

- radiopharmaceutical medicinal products manufactured directly in medical organizations in the manner prescribed by the authorized bodies
- medicinal products not intended for sale in the customs territory of the EAEU
- samples of medicinal products intended for registration and standard samples
- medicinal products intended for use as exhibition samples

The core terms of the Rules for Registration and Examination of Medicines are quite similar to those contained in the Law on Circulation of Medicines; however, they have their own peculiarities.

A reference medicinal preparation is a medicinal preparation that is used as a reference product and is a standard in accordance with which the characteristics of a medicinal preparation are determined (normalized).

Reproduced medicinal preparations, i.e., generics, are medicinal preparations that have the same quantitative and qualitative composition of active substances and the same medicinal form as the original medicinal preparation, and whose bioequivalence to the original medicinal preparation is confirmed by the relevant bioavailability studies.

Other important terms defined by the Rules for Registration and Examination of Medicines are "state of recognition" and "referent state."

A state of recognition is the EAEU member state where a medicinal preparation is registered with an examination, which includes the evaluation of an expert report on the assessment of the safety, efficacy and quality of a medicinal preparation prepared by the referent state.

A referent state is the EAEU member state preparing an expert report on the assessment of the safety, efficacy and quality of a medicinal preparation based on an examination of a medicinal preparation in

accordance with the Rules for Registration and Examination of Medicines.

The Rules for Registration and Examination of Medicines provide for two alternative procedures of initial registration:

- 1) consecutive procedure ("mutual recognition") — after the product is registered in the referent state, this registration may be recognized in other states chosen by the applicant
- 2) simultaneous procedure ("decentralized procedure") — in order to register the product, the applicant chooses the referent state and the states of recognition; the registration in all states is performed simultaneously

The Rules for Registration and Examination of Medicines determine general requirements for the modules of dossiers, as well as special requirements for modules of dossiers for certain types of products (e.g., reproduced, hybrid, biological, radiopharmaceutical, orphan products and vaccines);

The initial registration of a medicinal preparation involves the provision, among other things, of the following documents/information, which may relate to the process of manufacturing and testing of the product:

- administrative documentation, including GMP certificate, manufacturing license, consent for conduct of GMP inspection, copy of the main dossier (master file) of the manufacturing site(s), if applicable, scheme of the manufacturing stages with the indication of all manufacturing sites involved in the manufacturing of medicines and active pharmaceutical substances, including release quality control
- quality documentation, including the draft of the quality normative documentation, certificate of conformity with pharmacopeia, information on the active pharmaceutical

substance and the medicinal product, comprising, among other things, documents and information on their manufacturing process, manufacturer(s), characteristics and properties, methods and requirements for quality control, control of critical stages and interim products, control of source materials, stability, validation of manufacturing process, development of manufacturing process, analytical methods, validation of analytical methods, specifications, composition, excipients, manufacturing sites and equipment, results of analysis of batches, and manufacturing formulae

- documentation on preclinical studies, including reports on the results of pharmacodynamics studies, pharmacokinetic studies and toxicological studies
- documentation on clinical trials, including reports on the results of clinical trials of efficacy and safety

Such documents are provided by either the legal entity that acts in its own interests (e.g., the entity to become the holder (owner) of the registration certificate (marketing authorization) for the product), or an entity representing another entity (e.g., representative of the holder).

It is worth mentioning that when registering a medicinal preparation, reports on clinical trials (included in module 5 of its registration dossier) are reviewed during the examination process, if one of the following conditions is met:

- clinical trials were carried out in accordance with the laws of the EAEU member states and on their territory prior to 1 January 2016 or continued to be carried out as of 1 January 2016
- clinical trials were carried out partially or completely in the territories of the countries of the International Council on the Harmonization of Technical Requirements for Registration of Medicinal Preparations (the "ICH") region prior to 1 January

2016, and, based on which, the medicinal preparation was registered in the territories of the countries of the ICH region

- clinical trials initiated after 1 January 2016 were carried out in accordance with international treaties and regulations constituting EAEU law, while at least one of the clinical trials was carried out in whole or in part in EAEU territory

If the requirements specified above are not met, the applicant conducts clinical trials in whole or in part in the territory of the EAEU, or during an examination of a registration dossier, an unscheduled inspection of one of the clinical centers, where the clinical trial was conducted, is arranged by a decision of an authorized body.

It is important to note that the above-mentioned provisions do not apply to orphan medicinal preparations, i.e., medicinal preparations intended for diagnosis and treatment of rare (orphan) diseases, the frequency of which do not exceed the officially defined level in the EAEU member state.

The registration and examination of a medicinal preparation in the referent state should not exceed 210 calendar days from the date of filing an application for registration of a medicinal preparation until the day of issuance of a registration certificate.

The duration of the decentralized procedure for the registration and examination of a medicinal preparation should not exceed 210 calendar days from the date of submission of the last application for registration of a medicinal preparation to the states of recognition until the day of issuance of the registration certificates by the authorized bodies of all EAEU member states participating in the decentralized procedure.

The examination of a medicinal preparation is carried out by an expert organization determined in accordance with the legislation of the EAEU member state. The Administrative Regulations of the Ministry of Health for the Provision of State Services for the Registration of Medicines

Intended for Circulation on the Common Market within the EAEU, approved by Order of the Ministry of Health No. 23n dated 25 January 2019, governs the procedure for the expert examination of a medicinal preparation.

Based on the results of registration of a medicinal preparation, the authorized body of each EAEU member state that has registered the medicinal preparation issues a registration certificate for the medicinal preparation (marketing authorization). The validity period of a registration certificate for a first-time registered medicinal preparation in the referent state is five years. Upon the expiration of this period, an unlimited registration certificate of the medicinal product is issued, subject to confirmation of its registration (reregistration) (in certain cases, a registration certificate with a validity period of five years may be reissued).

The Federal Service performs registration of medical devices and this is regulated by the Rules for Registration of Medical Devices. All medical devices circulating in the territory of the Russian Federation are subject to state registration, except for medical devices produced under a patient's individual order exclusively for their own use and medical devices intended to be used in the territory of an international medical cluster.

Within the EAEU, there are Rules for Registration and Examination of Safety, Quality and Effectiveness of Medical Devices adopted by Decision of the Council of the Eurasian Economic Commission No. 46 dated 12 February 2016. While it is already possible to register medical devices at the EAEU level, as we understand, companies still prefer to use the national registration system. This is supported by the statistics published by the Federal Service for 2022. The Federal Service registered 3041 medical devices in 2022, 2612 registrations were performed under the Rules for Registration of Medical Devices and only six were registered under the EAEU rules. The transition period and the possibility to choose between the two registration options has been

extended and is currently set to end on 31 December 2025. However, based on the current ratio of Russian national and EAEU registrations, there is a probability that this deadline will also be shifted.

Currently, the registration of any medical device involves the performance of clinical studies. Clinical studies are performed in medical organizations approved to conduct clinical studies by the Federal Service, a list of which is published on the official website of the Federal Service.

In accordance with the Rules for Registration of Medical Devices, an application for state registration of a medical device may be submitted to the Federal Service by either the company that developed (the developer) or manufactured (the manufacturer) the relevant medical device or the authorized representative of the manufacturer. The authorized representative of the manufacturer is a legal entity, registered in the territory of the Russian Federation, authorized by the manufacturer of the medical device to represent its interests with respect to the circulation of the medical device in the territory of the Russian Federation, including with respect to issues of evaluation of conformity and state registration, and in the name of which the registration certificate of the medical device may be issued.

However, the Rules for Registration of Medical Devices do not expressly require that the registration certificate be issued in the name of the authorized representative of the manufacturer or otherwise only in the name of a Russian legal entity. Thus, the registration certificate can still be issued in the name of a foreign legal entity.

The complete state registration procedure for a medical device is initiated through the submission of an application with the necessary set of documents to the Federal Service and should not take longer than 50 working days from the date the decision to commence the state registration is adopted by the Federal Service (excluding the time for conducting clinical studies). Within six working days after the submission

of these documents, the Federal Service orders two expert examinations: (i) an examination of the application for registration and supporting documentation to ascertain the possibility (or impossibility) of conducting clinical studies (performed by a separate federal state institution); and (ii) an ethical expert examination of the possibility of conducting clinical studies of medical devices if such clinical studies involve human participation (performed by an ethics council in the sphere of the circulation of medical devices). The first of these expert examinations should be conducted within 20 working days. The Rules for Registration of Medical Devices do not detail the length of an ethical expert examination. Upon receiving positive conclusions in these expert examinations, the Federal Service suspends the registration procedure while the clinical studies are performed.

After the clinical studies are completed, the applicant needs to submit another application to the Federal Service to resume the registration procedure, together with the results of the clinical studies. After resuming the registration procedure, within two working days after the receipt of the above-listed documents, the Federal Service will order an examination of the completeness and the results of the performed technical tests, toxicological studies and clinical studies of the medical device. This expert examination should be conducted within 10 working days. A positive conclusion results in the registration of the medical device by the Federal Service within 10 working days after the receipt of these results.

It is necessary to mention that the Rules for Registration of Medical Devices were amended by Government Decree No. 633 dated 31 May 2018 to reduce the registration period for medical devices for in vitro diagnosis and medical devices of the first class of potential risk of use (low risk). The registration period of the above-mentioned medical devices was shortened by 20 working days by carrying out an examination of their quality, effectiveness and safety in a single stage without obtaining permission to conduct clinical studies.



As we discussed in Sections 24.2 and 24.3 above, there are also extraordinary procedures for state registration of medicinal preparations and medical devices established to ensure the availability of treatment in light of the COVID-19 pandemic and because of the restrictive economic measures implemented against Russia.

#### 24.7 How does a shipment of a medicinal preparation or medical device enter the Russian market?

The state registration of a medicinal preparation makes its commercial importation into Russia possible. However, the actual shipment of the medicinal preparation should meet the following requirements before it may be commercially sold in Russia.

First, medicines imported into Russia should bear the Russian track and trace system (the "**System**") identification mark.

The System is implemented through a federal state information system to monitor the circulation of medicinal preparations from the manufacturer to the ultimate consumer using identification means, designed to operate as follows:

- marketing authorization holders, including those located outside Russia but holding registrations for medicines supplied to the Russian market, will need to enter into a series of three standard form agreements and register within the System electronically
- the System does not require the installation of additional equipment at the manufacturing lines of foreign manufacturers — manufacturers will place the identification marks generated using the codes obtained from the System on the packaging using already installed labeling equipment
- pharmaceutical manufacturers, including those located outside Russia but supplying their medicines to the Russian market, will need to put special identification marks containing a unique code

and a cryptographic element (44 symbols in length) on the medicine packaging

- each code costs RUB 0.5 and the codes are also provided free of charge for medicines that cost less than RUB 20 per pack
- the marketing authorization holders need to report to the System the codes that were used and only medicines bearing the reported codes will be allowed to be imported into Russia
- each participant in the downstream sale of the medicinal preparations, including the pharmacies and medical organizations, needs to scan the code and thus provide information on the movement of medicines into the System
- the last scan in the full normal lifecycle of each code occurs when a pharmacy or a medical organization scans the code for its retirement when the medicinal preparation is about to be dispensed or administered to a patient

Secondly, imported medicinal preparation needs to undergo an introduction into civil circulation. This procedure replaced the process for declaring or certifying medicines' quality under the Law on Technical Regulation dated 29 November 2019. In accordance with the new procedure, medicine manufacturers are required to submit to the Federal Service documents confirming the medicine's quality and the manufacturer's confirmation certifying the compliance of the medicine with the requirements established during the medicine's state registration.

The first three series or batches of a medicine produced for the first time in the Russian Federation or imported into it are under stricter control. The new procedure calls for the necessity to submit to the Federal Service test reports issued by federal state budgetary institutions accredited in the national accreditation system and confirmation of compliance of a series or batch with the quality characteristics. Immunobiological medicines produced in the territory of the Russian

Federation are to be put into civil circulation on the basis of a special permit issued by the Federal Service.

It is also important to note that, from 28 November 2018, manufacturers of medicines and organizations importing medicines into the Russian Federation are required to notify the Federal Service and the MIT in the event that there are plans to suspend or discontinue the manufacturing and importation of medicines into the Russian Federation. Such notification must be made no later than a year before the planned events.

Previously imported medical devices were released into the Russian market after their conformity was confirmed, among other conditions.

However, the Russian Government amended the unified list of products the conformity of which is confirmed in the form of a declaration of conformity approved by Decree of the Government of the Russian Federation No. 982 dated 1 December 2009. Medical devices are no longer on this list from 1 January 2021. Therefore, medical devices are no longer subject to the declaration of conformity, but may still be subject to applicable general declaration of conformity requirements, e.g., with respect to electromagnetic compatibility.

Once the importation of medical devices has been performed, the importer needs to input data on the imported medical devices into the special electronic system maintained by the Federal Service within three business days after the importation (Government Decree No. 1321 dated 9 August 2021).

Starting from 15 February 2022 till 31 August 2023 an experiment on marking certain types of medical devices with identification marks will take place in the Russian Federation (Government Decree No. 137 dated 09 February 2022). The Regulations on Labeling and the List of Certain Types of Medical Devices Subject to Labeling with Identification Marks have recently been approved. The list includes air purifiers, orthopedic shoes, hearing aids, except for parts and accessories,

coronary stents, computed tomography, etc. Participation in the experiment by those involved in the circulation of medical devices is carried out on a voluntary basis.

## 24.8 How is the manufacturing of medicines and medical devices regulated?

According to the Law on Licensing, manufacturing medicines is a licensable type of activity. The licensing procedure is governed by the Regulation on Licensing the Manufacture of Medicines, approved by Government Decree No. 686 dated 6 July 2012 (the "**Regulation**"). A license for manufacturing medicines is valid for an indefinite term.

Generally, only registered medicines may be manufactured in Russia. The manufacture of medicines is prohibited in the following cases:

- medicines are not included on the State Register of Medicines (does not apply to medicines that are manufactured for the performance of clinical trials and for exportation)
- medicines are falsified
- the manufacturer does not have a license to manufacture the medicines
- the manufacture of medicines is in breach of the rules for organizing the manufacture and quality control of medicines

The key document that each manufacturer must comply with is a GMP. The Good Manufacturing Practice Rules of the Eurasian Economic Union were adopted by Decision of the Council of the Eurasian Economic Commission No. 77 dated 3 November 2016 and should be complied with from 25 December 2020.

The MIT has been given the status of an authorized body responsible for the implementation of the Decision of the Council of the Eurasian Economic Commission (Decree of the Government of the Russian

Federation No. 1446 dated 15 September 2020). In accordance with this status, the MIT has adopted the Administrative Regulations for the Provision of Public Services for the Issuance of GMP Certificates Confirming Compliance with the EAEU GMP. Due to these amendments, manufacturers may submit applications for compliance inspection with the EAEU GMP in the Russian Federation.

Manufacturers are obliged to pass GMP inspections to obtain a document called a "conclusion on GMP compliance." As mentioned above, the MIT conducts inspections of manufacturing sites located in Russia, while the Russian GMP inspectorate conducts inspections of foreign manufacturing sites.

A manufacturing license is issued for certain types of activities listed in the Regulation. Whenever a licensee starts to perform new types of activities not indicated in its current license, it must apply for reissue of its license. The license must also be reissued if the address where the manufacturing is conducted changes.

Additional licensing requirements apply to license applicants/licensees manufacturing alcohol-containing medicinal preparations and other medicinal preparations with the use of the pharmaceutical substance ethanol or ethyl alcohol.

From 1 January 2022, licensing of activities for the manufacturing of medical equipment is abolished. However, inspection of the manufacturing of medical devices for compliance with the requirements for implementing, maintaining and evaluating the quality management system of medical devices depending on the potential risk of their use is introduced for the manufacturing of medical devices subject to state registration, and certain types of medical devices that are manufactured at the individual orders of patients.

In addition, other types of licenses may be required in order to lawfully manufacture certain types of medical equipment. For example, a license

for activities involving sources of ionizing radiation would also be required if X-ray equipment is being manufactured.

#### 24.9 How is the importation of medicines and medical devices regulated?

In accordance with the Law on Circulation of Medicines, only the following may perform the importation of medicines:

- 1) manufacturers of medicines for their own manufacturing purposes
- 2) organizations carrying out wholesale of medicines
- 3) foreign developers of medicines or foreign manufacturers of medicines, or other legal entities as their representatives for the performance of clinical trials, state registration of medicinal preparations, inclusion of a pharmaceutical substance into the State register of medicines, and quality control of medicines subject to the permission of the Federal Service
- 4) scientific-research institutions, educational institutions of higher professional education or manufacturers: (i) for development of medicines, (ii) for trials of medicines, (iii) for control of medicines' safety, quality and effectiveness
- 5) medical organizations and other organizations mentioned in items 1–4 of this list for the purposes of rendering medical assistance to a specific patient if he or she has extremely serious indications or for rendering medical aid or to a limited group of patients with a rare and/or especially severe pathology

The importation of medicines into the Russian Federation is governed by the Rules of Importation of Medicines Intended for Medical Use, adopted by Decree of the Russian Government No. 853 dated 1 June 2021.

The procedure for importing medicines into the customs territory of the EAEU is established by the Regulation on the Import of Medicines into

the Customs Territory of the Eurasian Economic Union contained in Appendix No. 21 to Decision of the Board of the Eurasian Economic Commission No. 30 dated 21 April 2015.

The importation of medical devices is not regulated to the same extent as the importation of medicines. As long as a medical device is duly registered in Russia, it may be imported in compliance with the general importation requirements. Of course, if a medical device has any special features (e.g., it is a source of ionizing radiation), there must be compliance with special importation requirements.

#### 24.10 How is the wholesale of medicines and medical devices regulated?

Pursuant to the Law on Licensing, pharmaceutical activity (including wholesale, retail sale and preparation of medicines) is a licensable type of activity. The licensing procedure is governed by the Regulation on the Licensing of Pharmaceutical Activities, approved by Decree of the Russian Government No. 547 dated 31 March 2022, as amended. A license for performing pharmaceutical activity is valid for an indefinite term.

Wholesale of medicines is currently governed by the Rules of Good Distribution Practice of the Eurasian Economic Union established by Decision of the Council of the Eurasian Economic Commission No. 80 dated 3 November 2016, and by the Good Practice in Storage and Transportation of Medicinal Preparations for Medical Use, approved by Order No. 646n of the MOH, dated 31 August 2016.

There is a significant new licensing requirement applicable to the wholesale of medicines introduced in 2023, namely to register in the Unified State Information System in the Area of Healthcare (EGISZ, as abbreviated in Russian) and to provide to this system the information on the pharmaceutical employees that a company relied upon to meet the licensing requirements as to personnel. This requirement will be fully applied starting from 1 September 2023.

Wholesalers of medicines may sell medicines or place them at the disposal of the following legal entities and persons:

- other organizations carrying out wholesale of medicines
- manufacturers of medicines for manufacturing purposes
- pharmacy organizations
- scientific-research institutions for scientific research purposes
- individual entrepreneurs having medical or pharmaceutical activities licenses
- medical organizations

Only duly registered medicines can be sold on the territory of the Russian Federation. Russian law explicitly prohibits the sale of falsified, poor quality and counterfeit medicines. An accompanying document must be executed for each particular medicinal preparation, stipulating, among other things, the medicine's name (international nonproprietary name and trade name), expiration date, information on the manufacturer, supplier, buyer, etc.

Administrative sanctions are established in Russia for breaching Good Distribution Practice and Good Practice in Storage and Transportation of Medicinal Preparations for Medical Use and for selling falsified, counterfeit or bad quality medicines (a separate offense is established if the sale of falsified, counterfeit or bad quality medicines results in harm to health or creates the threat of such harm).

The wholesale of medical devices does not require a license in Russia, unless the medical device in question is of any special type, e.g., an X-ray medical device. In this case, wholesale of the medical devices will require a license for activities involving sources of ionizing radiation.



## 24.11 How is the retail sale of medicinal preparations and medical devices regulated?

Retail sale of medicinal preparations is regulated by the Good Pharmacy Practice adopted by Order of the Ministry of Healthcare No. 647n dated 31 August, 2016. This document is aimed at ensuring the provision of citizens with high-quality, effective and safe medicines.

Retail sale of medicines is exercised by pharmacy organizations, individual entrepreneurs having a pharmaceutical activities license, and medical organizations and their separate subdivisions located in rural settlements where there are no pharmacy organizations.

Pharmacy institutions and individual entrepreneurs having a pharmaceutical activities license need to comply with a requirement for the minimum assortment of medicinal preparations necessary for rendering medical aid. The current minimum assortment of medicinal preparations is established by Government Resolution No. 2406-r dated 12 October 2019 as amended by Government Resolution No. 3073-r dated 23 November 2020.

Similar to wholesale activity, retail sale of medicines is subject to licensing and only registered medicines can be sold in the Russian Federation.

Administrative sanctions are established in Russia for breaching the rules on retail sale of medicines and, as in the case of wholesale of falsified, counterfeit or bad quality medicines, a separate offense is established if the sale of falsified, counterfeit or bad quality medicines results in harm to health or creates a threat of such harm.

One of the long-awaited developments on the Russian market that eventually happened due to the COVID-19 pandemic is a regulation allowing distance selling of over-the-counter (the "OTC") medicines and medical devices. Distance selling means any sale that does not entail a visit to the pharmacy by the purchaser (e.g. online sales, home

deliveries) and can be carried out by pharmacy organizations licensed to engage in pharmaceutical activities and authorized by the Federal Service. Further, there is a regulatory experiment ongoing in some of Russian regions involving distance selling of RX medicines. If successful this experiment will likely be converted into a regulation on a country-wide basis.

Decree of the Government No. 697 dated 18 May 2020 regulates the launch of distance selling of medicines. In order to engage in distance sales of OTC medicines pharmacies (but not individual entrepreneurs having a pharmaceutical activities license) need have to own/have:

- a license to carry out pharmaceutical activities for at least one year
- premises for storing orders
- a website with the ability to choose a payment method (mobile application is allowed) or an agreement with an owner of a marketplace
- their own (or contractual) courier service equipped with thermo-transportation technologies
- a system of electronic and/or mobile payments that allows customer to pay for the goods directly at the delivery location

The Federal Service is authorized to issue permits for distance sales of medicines and maintain a register of pharmacy websites that are allowed to engage in distance sales. The decision to issue / refuse to issue a permit shall be made by Federal Service within five working days.

Retail sale of medical devices does not require a license in Russia, unless, as in the case with wholesale, the medical device in question is of any special type.

## 24.12 How does the state regulation of prices of medicinal preparations and medical devices operate?

The basis for the system of state regulation of the prices of medicinal preparations and its most general rules are set forth in the Law on Circulation of Medicines and Government Decree No. 865 "On the State Regulation of Prices of Medicinal Preparations Included in the List of Essential and Most Important Medicinal Preparations" dated 29 October 2010 (the "**Decree 865**").

The state regulation of prices of EDL medicines is an important tool used in the organization of the healthcare system, ensuring that essential and the most important medicines are accessible for all citizens. By law, revising the EDL should be an annual process, as specified by Government Resolution No. 2406-r dated 12 October 2019, with the latest amendments introduced by Government Resolution No. 4173-r dated 24 December 2022.

According to the Law on Circulation of Medicines, the state regulation of prices of medicines included in the EDL is performed through the following measures:

- state registration of the maximum manufacturers' prices of medicinal preparations (conducted at the federal level)
- establishment of maximum wholesale and retail trade margins applied to the prices of medicinal preparations (conducted at the regional level)

Calculating the maximum manufacturer price of medicinal preparations is performed in accordance with the Calculation Methodology approved by Government Decree No. 979 dated 15 September 2015. The key feature of the calculation is that it is heavily affected by internal price referencing and external price referencing. Internal price referencing is the comparison of prices within the same INN and comparable medicinal

forms of medicines. External referencing is the comparison of the manufacturer's price for the same medicine in 12 reference countries.

Under the Law on Circulation of Medicines, Decree 865 and Decree of the Russian Government No. 239 "On Measures for Improvement of the State Regulation of Prices (Tariffs)" dated 7 March 1995, as amended (the "**Decree 239**"), regional governmental authorities establish the maximum wholesale and retail trade margins for medicines included in the EDL.

On the basis of an application of the manufacturer of medicines included in the EDL submitted before 1 October of each following year, the maximum registered manufacturer prices of medicinal preparations can be reregistered at a higher level once in a calendar year, e.g., due to an increase in the costs of manufacture.

The Law on Circulation of Medicines now sets an obligation of a registration certificate holder to apply for reregistration of the maximum registered manufacturer price of a medicinal preparation at a lower level in certain cases. These cases include, most importantly, situations where a price reduction has occurred in a foreign currency in the medicine's manufacturer country and in the countries where the medicine is supplied and/or where it is registered. Please note that this obligation is triggered not by price reductions in the 12 reference countries, but virtually in any country of the world where the relevant medicinal preparation is also available.

The Russian Government has finally developed a mechanism allowing an increase in the registered prices of those EDL medicines that are already in deficit or where there is a risk of one developing. The core document in this area is Government Decree No. 1771 dated 31 October 2020. We discussed this matter in Section 24.2 above.

Prices for other medicines (i.e., not included in the EDL) are currently not regulated in Russia.

The state regulation of prices of medical devices was introduced by Government Decree No. 1517 dated 30 December 2015. It only extends to implantable medical devices purchased by the state. In order to establish this system, Russian authorities sent requests to manufacturers of medical devices and holders of registrations of medical devices to provide information on the price of these medical devices and the volumes supplied to the Russian market. Based on this information, a weighted average price was calculated for certain groups of medical devices in accordance with the official nomenclature. This price became the maximum price for each medical device in the group. Then, the registration of the price for each specific medical device was sought, which was a rather simple procedure bearing in mind that the maximum price of the product had already been established by that time. A medical device is not able to participate in state procurement until its price is registered.

In addition to the price registration, constituent entities (regions) of the Russian Federation were given authority to establish the maximum margins applicable to actual sale prices.

### 24.13 How is the interchangeability of medicinal preparations and medical devices defined?

The Law on Circulation of Medicines provides a definition of interchangeable medicinal preparations and the criteria for interchangeability.

An interchangeable medicinal preparation has proven therapeutic equivalence or bioequivalence compared to the reference medicinal preparation and has an equivalent qualitative and quantitative composition of pharmaceutical substances (i.e., the same INN), equivalent composition of auxiliary substances, equivalent medicinal form and mode of administration. The criteria for interchangeability generally follow the criteria set in this definition.

The Law on Circulation of Medicines was amended on 1 March 2020 by Federal Law No. 475-FZ dated 27 December 2019. Federal Law No. 475-FZ establishes a new procedure for medicines' interchangeability. The interchangeability will be determined within the framework of one international nonproprietary name (either chemical or generic name) of the medicine by the MOH on the basis of an expert commission's report from the relevant expert institution, which will be guided by the criteria established by Federal Law No. 475-FZ.

In terms of their content, the criteria of interchangeability have not changed. However, some new definitions have been implemented in the Law on Circulation of Medicines (e.g., "therapeutic equivalence of medicines," "bioequivalence of medicines," etc.) for the purpose of the administration of the process of determining the medicines' interchangeability.

Moreover, the Federal Service may order both the holder of the marketing authorization for that medicine and the holders of the marketing authorizations for interchangeable medicines to make changes to the instructions for use (patient leaflet), if it is necessary based on pharmacovigilance data.

The key document in this area is Government Decree No. 1360 dated 5 September 2020 (the "**Decree No. 1360**") that entered into force on 9 September 2020. Decree No. 1360 states that the rules on interchangeability do not apply to herbal and homeopathic medicinal preparations.

Decree No. 1360 provides for criteria in accordance with which interchangeability should be determined, including certain types of medicines. In particular, the following must be taken into account:

- equivalence of the qualitative and quantitative characteristics of pharmaceutical substances and the comparability of the antigenic composition of vaccines

- equivalence of the dosage form (the same method of administration and use of medicine)
- equivalence and comparability of composition of excipients
- identity of the method for the administration and use of medicine
- compliance of the medicine manufacturer with the requirements of the GMP

An expert commission of an expert institution will carry out the determination of the medicine's parameters and their compliance with the specified criteria comparing regulatory documents, reports on bioequivalence or therapeutic equivalence studies of a medicine. Decree No. 1360 also approves the form of the expert commission's report that will state the decision on the medicine's interchangeability.

The register of interchangeable medicines will be posted on the MOH website and will be updated at least once a month. The most recent List of Interchangeable Medicines was published on 12 October 2021.

The Fundamentals establish a definition of the interchangeability of medical devices such that they may be considered interchangeable if they are comparable in terms of their functional purpose, quality and technical characteristics, and may replace one another. The Fundamentals further require the State Register of Medical Devices to contain information on their interchangeability. However, as far as we are aware, the practice of defining the interchangeability of medical devices is yet to develop.

#### 24.14 How is the technical maintenance of medical equipment regulated?

The technical maintenance of medical equipment is a licensable type of activity according to the Law on Licensing. The licensing procedure is currently governed by Regulation on Licensing Activities for the Maintenance of Medical Devices (Except for Internal Needs) No. 1445

dated 15 September 2020. However, starting from 1 March 2022 Decree of the Government of the Russian Federation No. 2129 dated 30 November 2021, which approved the new Regulation will be applied. A license for the maintenance of medical equipment is valid for an indefinite term.

It should again be noted that, in certain cases, a license for the technical maintenance of medical equipment alone is not sufficient and other licenses may be additionally required to lawfully conduct the technical maintenance of certain types of medical equipment (e.g., a license for activities involving sources of ionizing radiation is necessary when X-ray equipment is being serviced).

#### 24.15 How do government-run programs for medicinal supplies operate?

Until recently, the most important government-run program related to medicinal supplies has been the Program for Additional Medicinal Supplies for specific categories of citizens (DLO program), lately referred to as the Program for Supply of Essential Medicines (the "**ONLS Program**"), under which certain categories of citizens (social security beneficiaries) receive certain medicines free of charge. This program was established in 2004 (the first year of operation was 2005) through the introduction of amendments to the Social Care Law. The last quarter of 2007 was marked by significant reform to the ONLS Program.

The reform of the ONLS Program abolished price regulation in this sphere, transferred the program to the regional level and subjected it to the usual government procurement rules so that purchases of medicines within the ONLS Program were organized as auctions at a regional level.

However, due to the adoption of Federal Law No. 206-FZ dated 13 July 2020 (the "**Law No. 206-FZ**"), the ONLS Program has become outdated. Law No. 206-FZ has increased the role of the EDL, whose primary role to date has been to serve as a basis for state regulation of prices. Under



Law No. 206-FZ, the EDL will: (i) replace several lists of medicines that are used for purchases within government-run programs of medicinal supply, discussed below, and, most notably, the DLO list, and will effectively serve as the basis for the provision of medicines for certain categories of citizens as part of social services; and (ii) serve as the starting point in the formation of the lists of medicines covered by the territorial programs of state guarantees of free provision of medical care to citizens.

From 1 January 2021, citizens who receive social security benefits are provided with medicines free of charge in an amount of not less than that provided for by the EDL. The EDL itself should be revised once a year.

In addition, Law No. 206-FZ envisages the creation of a federal register of citizens who are entitled to receive medicines, medical devices and specialized medical nutrition products at the expense of the federal budget and the budgets of the constituent entities (regions) of the Russian Federation. Such a register entered into force on 1 September 2020. The register will provide the possibility of organizing automated control over preferential medicinal supply, predict the needs of citizens and the funding required for their treatment.

At the federal level, there is a state program set up to supply expensive medicines for treating certain diseases included in the former Seven Nosologies List.

Over the years, the Seven Nosologies List has included seven diseases, hence its unofficial name: hemophilia, cystic fibrosis, pituitary dwarfism, Gaucher disease, malignant tumors of lymphoid, hematopoietic and related tissues, and multiple sclerosis. However, five orphan diseases have been added since 2019, namely: hemolytic-uremic syndrome, systemic juvenile idiopathic arthritis, and types I, II and VI mucopolysaccharidoses. From 1 January 2020, this list was further supplemented by two orphan diseases, namely: unspecified aplastic

anemia and hereditary deficiency of factors II (fibrinogen), VII (labile) and X (Stuart-Praver). Therefore, the Seven Nosologies List has now been unofficially rebranded as the Fourteen Nosologies List. There are discussions that this list should be supplemented with one more disease — Paroxysmal nocturnal hemoglobinuria — thus making it the Fifteen Nosologies List. Despite the expectation that this matter would be resolved within 2021, it is still pending.

Medicinal supply in Russia witnessed two significant developments in 2021.

First, the Circle of Kindness Foundation (*Фонд "Круг добра"*) (the "**Foundation**") was created in 2021 to provide support to children with severe life-threatening and chronic diseases, including rare (orphan) diseases. It is funded by way of deductions from the increased rate (15%) of Russian personal income tax applicable to incomes exceeding RUB five million per year.

The Foundation provides children with medical care (including abroad, if necessary), medicines and rehabilitation. The MOH is currently working on extension of the Foundation's powers to help patients with rare diseases over 18 years old. The list of diseases the Foundation helps with is constantly expanding, and now there are 71 nosologies on the list, which also includes the diseases from the Fourteen Nosologies List.

The Foundation purchases unregistered medicinal preparations for the needs of its patients by itself.

Second, the Federal Center for Planning and Organization of the Supply of Medicines for Citizens (the "**Federal Center**") was created by the MOH on 26 November 2020 and is headed by Elena Maximkina. Elena Maximkina was the director of the Department of Medicines Supply and Circulation of Medical Devices of the MOH prior to her appointment.

The main function of the Federal Center is to fulfill the responsibilities that the MOH already has, to determine the current and future needs for

medicines. It is also engaged in the procurement of medicines under federal programs, in particular, medicines for the treatment of patients with orphan and oncological diseases, HIV and tuberculosis, as well as vaccines included in the National Immunization Schedule.

The Federal Center has already entered into a contract for the purchase of registered medicines for the Circle of Kindness Foundation.

The MOH purchases expensive medicines through auctions. The current list of such medicines was established by Government Resolution No. 2406-r dated 12 October 2019 with the latest amendments introduced by Government Resolution No. 4173-r dated 24 December 2022.

Purchases of medicines for state or municipal needs (except for the purchases of unregistered medicines by the Foundation) are carried out in accordance with Federal Law No. 44-FZ "On the Contractual System in the Supply of Goods, Performance of Works, and Rendering of Services for State and Municipal Needs" dated 5 April 2013, as amended.

Since 2008, medicinal preparations and medical devices originating from abroad have been subject to a mandatory 15% handicap in public procurement. This is commonly referred to as a preference for local products. The current preference of this sort was adopted by Order of the Ministry of Finance No. 126n dated 4 June 2018, which entered into force on 15 November 2018 (the "**Order 126n**").

This measure applies as follows in the context of public procurement auctions, which are the main mechanism through which medicinal preparations are purchased within public procurement in Russia. The 15% handicap will only apply if there is a bid consisting of at least one medicinal preparation originating from abroad and a bid offering only local medicinal preparations within the same auction. "Local" in this context means originating from any of the EAEU countries, i.e., meeting the criteria for determining the country of origin on the basis of sufficient processing established in the Agreement on the Rules of Determination

of the Country of Origin in the Commonwealth of Independent States dated 20 November 2009 (the "**Customs Rules**").

If the "foreign" bid offers a lower price, the auction is awarded to this bidder; however, the resulting supply agreement is not concluded based on the price as proposed in the winning bid, but rather on this price reduced by 15%.

In practice, this means that a bidder offering at least one medicinal preparation originating from abroad (other than from members states of the EAEU) needs to take the subsequent price reduction into account when making its bid to ensure that, once it wins the auction, the price in the supply agreement is set at a level that remains profitable. In other words, this bidder needs to increase its bid price, thus making it less competitive compared to the bid offering local products.

This measure applies differently in the context of tenders, which are, along with auctions, the mechanisms through which medical devices are purchased within public procurement in Russia. The 15% reduction will be applied to a price of the bid offering only "local" medical devices when the bids are compared. Thereafter, if this bid still wins, the procurement contract will be entered into at the original price without the 15% reduction.

From the examples above, one can clearly see that preferences according to Order 126n should be applied to bids offering goods originating from EAEU countries.

In addition to the above, Order 126n contains a reference to Government Decree No. 1289 "On Restrictions and Conditions for the Access of Medicinal Preparations Originating from Foreign Countries and Included into the List of Vital and Essential Medicines for the Purposes of Procurement for State and Municipal Needs" (the "**Decree 1289**"), which was adopted on 30 November 2015 by Russian Government. Decree 1289 is part of the anti-crisis plan, developed by

the Government that aims to develop the local manufacturing of medicines.

Decree 1289, which established the "third one out rule," applies only to medicinal preparations included in the EDL. In a tender to conclude a single contract (single lot) to purchase a medicinal preparation included in the EDL, a state or municipal purchaser must reject any bid offering a medicinal preparation of foreign origin (or several medicinal preparations, one of which is of foreign origin), if there are two or more other bids that:

- offer one or more medicinal preparations, the country of origin of which is in the EAEU
- do not offer the same type of medicinal preparation from one manufacturer or manufacturers from the same group of companies (as defined in accordance with the anti-monopoly legislation)

Decree 1289, as amended by Government Decree No. 572 dated 12 May 2018, introduced an additional "super preference" for those medicines that are manufactured in EAEU countries from active substances manufactured in EAEU countries as discussed below.

In case of the rejection of a "foreign" bid in accordance with the procedure under Decree 1289 as described above ("third one out rule") the contract should be entered into with the bidder at the price proposed by them if the following conditions are collectively met:

- 1) the bid contains a proposal for the supply of medicinal preparations, of which all stages of manufacturing (including the synthesis of the active substance molecule) are carried out in the territories of EAEU countries, while information on such pharmaceutical substances is included in the State Register of Medicinal Preparations.

- 2) the bid complies with the requirements of the procurement documentation.
- 3) the bidder offered a contract price that is the lowest among the bidders whose offers are not rejected under the "third one out rule" and corresponds to the set of conditions specified in items 1 and 2 above.
- 4) the bidder offered a contract price that does not exceed by more than 25% the smallest contract price offer if the latter is submitted by a bidder whose bid is not rejected under the "third one out rule," but does not comply with the requirement of item 1 above.

The criteria of country of origin for the purposes of the application of preferences under Decree 1289 changed at the beginning of 2019. A medicine may qualify as originating from the EAEU not only under the Customs Rules, but also under the separate set of local Russian manufacturing rules established by Government Decree No. 719 dated 17 July 2015 (the "**Decree 719**").

The new rules provide that the MIT will issue conclusions confirming that industry products (including medicines) are manufactured in the territory of the Russian Federation in one of the following three cases:

- there is a special investment contract concluded with the Russian Federation (some other additional parties are also allowed), under which a company undertook to create and/or modernize and/or organize the manufacturing of its products in Russia so that in three years they will meet the requirements of either of the two criteria below
- products meet the substantive criteria set out in Decree 719
- products meet criteria set out in the Customs Rules on sufficient processing

Substantive criteria set out in Decree 719 require a medicine to pass through the technological process of formulation (manufacturing of final medicinal form), packaging and quality control release in Russia to qualify as locally manufactured.

Decree 719 also sets out criteria for pharmaceutical substances, but meeting such criteria is not necessary for a medicine to qualify as locally manufactured. A pharmaceutical substance needs to pass through the technological process of chemical synthesis and/or biotechnology synthesis and/or being obtained from natural mineral raw materials and/or from biological and/or animal sources and/or being obtained from plant sources.

In February 2015, the Russian Government adopted Government Decree No. 102 "On Restricting the Access of Certain Types of Medical Devices Originating from Foreign Countries for the Purposes of Procurement for State and Municipal Needs" (the "**Decree 102**").

Decree 102 contains a list of medical devices to which its provisions apply (the "**List**"). The List was expanded in November 2017 and in June 2019. For medical devices included in the List, a state purchaser must reject any bid offering a foreign medical device (other than those devices originating in the EAEU) if there are two or more other bids that:

- offer one or more medical devices included on the List, the country of origin of which is in the EAEU
- do not offer one and the same type of medical device from one manufacturer

The country of origin is confirmed only in accordance with the Customs Rules.

## 24.16 How is the promotion of medicinal preparations and medical devices regulated?

Advertising is the only type of promotional activity in the pharmaceuticals market that is currently specifically regulated by Russian law. Russian legislation contains few provisions that specifically regulate practices (other than simple advertising) aimed at the promotion or marketing of medicines. This means that to determine the rules applicable to things such as seminars, hospitality, entertainment and similar activities, in most cases one has to refer to the generally applicable provisions of Russian law.

Advertising is defined in Article 3 of the Law on Advertising as information spread by any means, in any form, and by any media, which is addressed to an indefinite circle of persons and aimed at drawing attention to the object advertised, at creating or maintaining interest in it, and at promoting it in the market.

The Law on Advertising contains general restrictions on advertising that are as applicable to medicines and medical devices as they are to any other product. The general requirement is that the advertising should be fair and true. In the event of the advertising of medicinal preparations and medical devices this requirement is further reinforced by a requirement that advertising statements regarding the properties and characteristics of medicinal preparations or medical devices, including the methods of their application and use, are permitted only to the extent that they are in line with indications contained in the instructions for use of the relevant medicinal preparation or medical device.

The Law on Advertising also contains specific provisions applicable to the advertising of medicinal preparations and medical devices.

The Law on Advertising specifically requires that prescription medicinal preparations, medicines that contain narcotic or psychotropic substances approved for medical use, methods of prophylaxis, diagnostics, treatment and medical rehabilitation, and medical devices



that require special training for use can only be advertised in specialized printed publications intended for medical and pharmaceutical professionals, and at medical or pharmaceutical events.

Furthermore, the Law on Advertising requires that the advertising of medicinal preparations, medical services, including methods of prophylaxis, diagnostics, treatment and medical rehabilitation, and medical devices must be accompanied by a warning regarding contraindications against their use and application, the necessity of reading the instructions on their use or the necessity of consulting a specialist. The warning should last for at least three seconds in advertisements on radio programs and at least five seconds on television, film and video advertisements (no less than seven percent of the frame area should be allocated to this warning); and no less than five percent of the area/volume in advertisements disseminated by other methods. This requirement, however, does not apply to advertisements disseminated at medical or pharmaceutical events or advertisements in specialized printed publications for medical and pharmaceutical professionals, or to other advertisements where the recipients are solely medical and pharmaceutical professionals.

The Law on Advertising further introduces a group of restrictions that apply to the advertising of medicines. Thus, the advertising of medicines should not:

- 1) be addressed at minors
- 2) contain references to specific cases of recovery from disease or improvement of health as a result of the advertised object being used (except in advertising exclusively for medical and pharmaceutical professionals)
- 3) contain expressions of gratitude from individuals in connection with the use of the advertised object (except in advertising exclusively for medical and pharmaceutical professionals)

- 4) create an impression of the advantages of the advertised object by reference to the fact that the trials required for its state registration have been conducted
- 5) contain statements or assumptions that consumers have certain diseases or impairments of health
- 6) facilitate the impression that a healthy person needs to use the advertised object (this prohibition does not apply to medicines used for the prevention of diseases)
- 7) create an impression that one does not need to consult a physician
- 8) guarantee the positive effect of the advertised object, its safety, effectiveness and absence of side effects
- 9) represent the advertised object as being a dietary supplement or other product that is not a medicine;
- 10) contain statements that the safety and/or effectiveness of the advertised object are guaranteed by its natural origin

The advertising of medical services on induced abortion is prohibited. The restrictions in items 2 to 5 above are also applicable to the advertising of medical services, including methods of diagnosis, prophylaxis, treatment and medical rehabilitation, and the restrictions in items 1 to 8 above apply equally to the advertising of medical devices.

The Law on Advertising contains an important general prohibition against using images of medical and pharmaceutical professionals in any advertisements, except for advertisements for medical services and personal care products, and when advertising exclusively for medical and pharmaceutical professionals.

Further, by virtue of the Fundamentals, which came into force in the relevant part on 1 January 2012 (namely, Article 74), the interaction of

pharmaceutical and medical device companies with Russian medical and pharmaceutical professionals is substantially restricted. Although these rules are not specifically targeted at restricting marketing activities, inevitably, they will significantly affect them. It is also important to note that these rules are not aimed at restricting the lawful interactions of pharmaceutical and medical device companies with Russian healthcare institutions.

Most importantly, the Fundamentals prohibit medical and pharmaceutical professionals from:

- accepting visits of representatives of companies except for cases related to the performance of clinical trials of medicinal preparations or clinical studies of medical devices, or the participation of medical workers in meetings or other events related to their professional development or providing information on the safety of medicinal preparations and medical devices (in accordance with the procedure established by the management of a medical organization)
- accepting gifts or money, including payments for entertainment, vacations and travel costs, from pharmaceutical and medical device companies (except for remuneration under agreements on clinical trials of medicinal preparations or clinical studies of medical devices, or for teaching and/or scientific activities)
- participating in entertainment events held at the expense of companies or representatives of companies
- accepting samples of medicinal preparations and medical devices for further distribution to patients (except in the context of clinical trials)

The Law on Circulation of Medicines has been subsequently amended to include an article on interacting with medical and pharmaceutical professionals, largely duplicating Article 74 of the Fundamentals.

Additionally, the following changes have been introduced to the Law on Circulation of Medicines:

- the Law on Circulation of Medicines now lists the requirements that pharmaceutical companies (their representatives) must satisfy when organizing and/or financing scientific and other events aimed at the professional development of medical professionals or the provision of pharmacovigilance information
- the Law on Circulation of Medicines prohibits hindering the participation of other companies that manufacture or distribute medicines with a similar pharmacological mechanism to that of medicines manufactured or distributed by the company organizing or financing the relevant event
- companies (their representatives) must also make information on the event (its date, place and time, agenda, plan and participants) available by placing it on its official web page no later than two months prior to the event. They are also required to pass the above information to the Federal Service, which should then place it on its official website

A separate administrative offense has been established for failing to provide the authorized state body with information if required to do so by healthcare legislation. Even though it is not yet certain, this rule is likely to apply to pharmaceutical companies for failing to inform the Federal Service about events they organize and/or finance.

Surprisingly, the long-awaited amendments to the Code of Administrative Offenses of the Russian Federation for violating Article 74 of the Fundamentals (governing interactions with medical and pharmaceutical professionals) have not yet been introduced.

## 25. Competition Protection Law

### 25.1 General section

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

Antitrust matters in Russia are mainly regulated by the Federal Law "On Protection of Competition" (the "**Competition Law**") dated 26 July 2006, and fall under the auspices of the Federal Antimonopoly Service (the "**FAS**").

The Competition Law has extraterritorial effect and applies to agreements concluded and actions taken outside Russia, including by non-Russian persons, if they affect competition in Russia. The Competition Law does not apply to agreements or actions committed on the so-called cross-border markets within the Eurasian Economic Union (the "**EAEU**"), i.e., those involving at least two countries of the EAEU (of which Russia is a member). Such agreements and actions are regulated by a separate set of legal acts of the EAEU and fall within the jurisdiction of the Eurasian Economic Commission, which is a supranational authority in the EAEU.

#### 25.1.2 What is the Competition Law about?

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

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

- requirements for procurement tenders by government authorities, government enterprises and private companies
- requirements for the transfer of state-owned property
- state aid
- establishment of companies
- mergers and acquisitions
- unfair competition/marketing

## 25.2 Abuse of market dominance

### 25.2.1 Under what circumstances can a company be considered dominant?

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

For entities with a market share exceeding 50%, there is a presumption of market dominance. FAS must establish the market dominance of entities with a market share between 35% and 50%. For entities with a market share not exceeding 35%, there is a presumption of non-dominance. However, there is an exception for collective dominance (see below in Section 25.2.2).

Different (lower) thresholds apply to certain industries. For example, FAS deems a financial organization to be a dominant entity according to the criteria set by the Russian government (and with respect to credit

organizations, together with the Russian Central Bank). A financial organization whose share in any single market in the Russian Federation does not exceed 10%, or whose share does not exceed 20% in a commodity market if the commodity also circulates in other commodity markets in the Russian Federation, may not be deemed dominant.

### 25.2.2 Can several companies be dominant at the same time?

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

- the market share of up to three companies exceeds 50%, or the market share of up to five companies exceeds 70%, provided that the share of each such company is at least 8% and at the same time exceeds the respective shares of other market players
- during a significant period (at least one year), the shares of companies active on the relevant market are stable or fluctuate insignificantly, and there are barriers to market entry
- goods sold or purchased by the companies cannot be substituted, any price increase is not proportionate to the respective decrease in demand, and the information on prices and the terms of selling or purchasing the goods are publicly available

### 25.2.3 What restrictions apply to dominant entities?

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

- setting and/or maintaining monopolistically high or low prices
- withdrawal of goods from circulation if this leads to higher prices for such goods
- creation of discriminatory conditions, i.e., those that place one or more business entities in an unequal position compared to other entities in their ability to access the market for particular goods
- unjustified imposition of contractual terms that are disadvantageous to the other party or do not relate to the subject matter of the contract
- stopping or decreasing the production of goods for which there is consumer demand if it is possible to produce such goods on a profitable basis
- unjustified refusal to enter into a contract with particular customers if it is possible to provide the relevant goods to such customers
- unjustified setting of different prices for the same goods
- creation of barriers to market entry or exit for other business entities
- violation of pricing rules established by legislation
- price manipulation in the wholesale and/or retail electricity markets

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



### 25.2.4 Are there any exemptions from dominance-related restrictions?

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

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

## 25.3 Anti-competitive agreements, concerted actions and actions of state bodies limiting competition

### 25.3.1 What agreements between competitors are prohibited?

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

- setting or maintaining prices, discounts, bonus payments or surcharges
- increasing or reducing prices or manipulating prices at tenders
- dividing the market by territory, volume of sales/purchases, assortment or the range of sellers/buyers
- refusing to deal with particular sellers or customers

- ceasing or decreasing production of goods

The term "competitors" covers not only entities supplying goods on the same market, but also entities that purchase goods on the same market.

### 25.3.2 What agreements between non-competitors are prohibited?

The Competition Law also specifically prohibits vertical agreements, i.e., agreements between companies at different levels in the supply chain, if they: (i) lead to resale price fixing, save for setting a maximum resale price; and/or (ii) impose an obligation on the buyer not to sell a competitor's products unless the sales are organized by the buyer under a trademark or other means of individualization of the respective manufacturer or supplier.

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

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

### 25.3.3 What if there is no agreement and companies follow the instructions of a third party?

The Competition Law prohibits the "coordination of economic activities" by economic entities if such coordination actually leads to certain consequences enumerated by law. Coordination is understood as

direction of the actions of economic entities by a third person who does not belong to the "group of persons" of such economic entities and does not act on the market where coordination is taking place. Actions pursuant to a vertical agreement are not treated as coordination of economic activities. The prohibited consequences are: (i) setting or maintaining prices, discounts, bonus payments or surcharges; (ii) increasing or reducing prices or manipulating prices at tenders; (iii) dividing the market by territory, volume of sales/purchases, assortment or the range of sellers/buyers; (iv) refusing to deal with particular sellers or customers; (v) ceasing or decreasing the production of goods; (vi) resale price fixing, save for setting a maximum resale price; and (vii) the obligation not to sell a competitor's products unless the sales are organized by the buyer under a trademark or other means of individualization of the respective manufacturer or supplier.

#### 25.3.4 Are there any exemptions from the above prohibitions?

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

- the Competition Law permits vertical agreements that are: (i) concluded between economic entities each having a market share of 20% or less in the market of a product in relation to which the agreement is concluded; and/or (ii) commercial concession (franchise) agreements concluded in written form
- save for cartels, an agreement may be recognized as permissible if it can be proved that: (i) the agreement does not lead to the elimination of competition or impose excessive restrictions on the parties or third parties; and (ii) the positive effects of the agreement, including socioeconomic effects, outweigh the negative consequences pursuant to the criteria set in the Competition Law

- an agreement on joint activities between competitors may be recognized as permissible if it can be proved that: (i) the agreement does not lead to the elimination of competition or impose any restrictions on third parties; and (ii) the positive effects of the agreement, including socioeconomic effects, outweigh its negative consequences pursuant to the criteria set in the Competition Law. In fact, the agreement on joint activities cannot be recognized as a cartel if FAS preapproved it
- some agreements are exempt from all restrictions if entered into between companies of the same group of persons and if either party to the agreement controls, is controlled by or is under common control of the other party to the agreement. "Control" for this purpose is understood as the ability of one person or entity to determine directly or indirectly the decisions taken by the other entity through exercising more than 50% of voting or participation shares in the entity or by performing the functions of an executive body of the entity
- agreements on the transfer of intellectual property rights are exempt from all restrictions specified above

In addition, the Russian government has introduced block exemptions in a number of economic areas (e.g., credit and insurance organizations) as well as general block exemptions. The general block exemptions specify certain conditions that automatically render a vertical agreement permissible, as well as conditions that ensure the permissibility of an agreement. The general block exemptions were extended until November 2029. The new Government Regulation adopted in January 2023 has introduced block exemptions for credit and insurance organizations, effective from September 2023 to September 2025.

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

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

- setting and/or maintaining prices, discounts, bonus payments or surcharges
- increasing or reducing prices or manipulating prices at tenders
- dividing the market by territory or according to the volume of sales/purchases, the range of marketable goods, or the range of sellers or buyers
- refusing to deal with particular sellers or customers unless such refusal is provided for by federal legislation
- ceasing or decreasing production of goods

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

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

The Competition Law generally prohibits concerted actions between competitors that lead to the restriction of competition, including creating unfavorable conditions for a counterparty, setting different prices for the

same goods without economic or technological justification, or creating barriers for third parties trying to enter or exit a certain market.

### 25.3.6 Are there any exemptions from the above prohibitions?

Certain concerted actions may be permitted, provided that it can be demonstrated that their positive effects, including socioeconomic effects, outweighs their negative consequences pursuant to criteria set out in the Competition Law.

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

### 25.3.7 Can an agreement with a state authority violate the Competition Law?

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

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

## 25.4 Requirements for tenders and price quotations

### 25.4.1 What actions are prohibited in procurement tenders?

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

Finally, the Competition Law specifically prohibits agreements between procuring entities or tender organizers on the one hand and tender participants on the other if such agreements have the restriction of competition as their aim or effect.

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

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

### 25.5 State aid

#### 25.5.1 What is state aid?

The Competition Law defines "state (or municipal) aid" as granting an economic entity certain privileges over other market participants,

ensuring more favorable conditions for its activity in the relevant market by transferring property and/or civil rights, preferences or state (or municipal) guarantees.

### 25.5.2 What is the procedure for granting state aid?

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

- ensuring vital services for the population in Arctic regions and equivalent areas
- developing science and education
- conducting fundamental scientific research
- protecting the environment
- developing and conserving cultural heritage
- developing sports and physical culture
- agricultural production
- state defense and security
- rendering social services for the population
- protecting health and labor
- rendering support to small or medium businesses
- support for socially-oriented non-profit organizations
- support for individuals who are not individual entrepreneurs and apply the special tax regime "Professional income tax"



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

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

## 25.6 Merger control

### 25.6.1 What transactions are subject to merger control?

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

- main production (fixed) assets or intangible assets that are located in Russia
- voting shares, participation interests or rights in Russian commercial and noncommercial legal entities
- voting shares, participation interests or rights in foreign companies supplying goods to the Russian Federation worth more than RUB one billion during the year preceding the transaction
- joint ventures in Russia between competitors
- assets of Russian financial organizations

In addition to the merger control rules, which are described below, there are certain requirements, including the prior approval of a contemplated transaction, that apply to foreign investments. These requirements are

set forth in: (i) Federal Law No. 57-FZ "On the Procedures for Foreign Investments in Companies of Strategic Significance for National Defense and Security," which governs the acquisition of control over or assets of Russian companies engaged in activities that are deemed strategic for Russian defense and security purposes by foreign investors; and (ii) Federal Law No. 160-FZ "On Foreign Investments in the Russian Federation." In more detail, these requirements are described in the Section 3 ("Promoting Foreign Investments in Russia").

### 25.6.1.1 When is the establishment of companies subject to merger control?

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

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

### 25.6.1.2 When is the merger of companies subject to merger control?

The consolidation or merger of legal entities (save for financial organizations) is subject to the prior approval of FAS if the aggregate asset value of these entities and their group of persons exceeds RUB seven billion or the aggregate revenue earned by the entities and their

group of persons from the sale of goods during the past calendar year exceeds RUB 10 billion. The procedures for obtaining such approval are similar to the procedures used for acquisitions.

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

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

The following constitutes a group of persons:

- a company (partnership) and an individual or legal entity, if such individual or legal entity, by virtue of participation in this company (partnership), or in accordance with authority received from other persons, including on the basis of a written agreement, has more than 50% of the total number of votes carried by voting shares/participation interest in the charter capital of this company (partnership)
- a legal entity and an individual or legal entity, if such individual or legal entity exercises the functions of the sole executive body of this legal entity
- a company (partnership) and an individual or legal entity, if such individual or such legal entity, on the basis of the constituent documents of this company (partnership) or a contract made with this company (partnership), is entitled to issue mandatory instructions to this company (partnership)

- legal entities in which the same individuals make up more than half of the management council and/or the board of directors (supervisory board or fund's council)
- a company and an individual or legal entity, if the sole executive body of such company has been appointed or elected on the proposal of such individual or legal entity
- a company and an individual or legal entity, if more than half of the members of the management council or board of directors of such company have been elected on the proposal of such individual or legal entity
- an individual and their spouse, parents (including adoptive), children (including adopted), brothers, sisters and half-brothers and half-sisters thereof
- persons who, for any of the reasons specified above, belong to a group with one and the same person, as well as other persons belonging to the same group with each of such persons for any of the reasons specified above
- a company (partnership) and individuals and/or legal entities, if such individuals/legal entities (for any of the reasons specified above) are part of one group of persons and at the same time such individuals/legal entities (whether by virtue of participation in this company (partnership) or in accordance with authority received from other persons) jointly have more than 50% of the votes represented by voting shares (participation interest) in the charter capital of this company (partnership)

25.6.1.3 When is the acquisition of shares or participation interests in a Russian company subject to merger control?

When an individual, legal entity or group of persons acquires more than 25%/50%/75% of voting shares in a Russian joint-stock company or more than one-third/one-half/two-thirds of participation shares in a Russian limited liability company, such persons, entities or group must receive prior approval from FAS if:

- the aggregate book value of the assets of the acquirer and its group of persons plus the target and its group of persons exceeds RUB seven billion and the book value of the total assets of the target and its group exceeds RUB 800 million
- the aggregate revenue earned by the acquirer and its group of persons plus the target and its group of persons from the sale of goods over the past calendar year exceeds RUB 10 billion and the balance sheet value of the total assets of the target and its group of persons exceeds RUB 800 million

If the book value of the total assets of the target and its group is above RUB 800 million but less than RUB two billion, then instead of prior FAS approval, a post-transaction notice must be sent to FAS within 30 days. This rule extends until the end of 2023.

#### 25.6.1.4 When is the acquisition of assets located in Russia subject to merger control?

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

- the aggregate book value of the assets of the acquirer and its group of persons plus the target and its group of persons

exceeds RUB seven billion and the book value of the total assets of the target and its group exceeds RUB 800 million

- the aggregate revenue earned by the acquirer and its group of persons plus the target and its group of persons from the sale of goods during the past calendar year exceeds RUB 10 billion and the book value of the total assets of the target and its group exceeds RUB 800 million

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

Similar to the acquisition of shares, until the end of 2023, if the book value of the total assets of the target/seller and its group is above RUB 800 million but less than RUB two billion pursuant to the latest balance sheet, then, likewise, instead of prior FAS approval, a post-transaction notice must be sent to FAS within 30 days.

#### 25.6.1.5 When is the acquisition of rights in a Russian company subject to merger control?

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

- the aggregate book value of the assets of the acquirer and its group of persons plus the target and its group of persons exceeds RUB seven billion and the book value of the total assets of the target and its group exceeds RUB 800 million

- the aggregate revenue earned by the acquirer and its group of persons plus the target and its group of persons from the sale of goods over the past calendar year exceeds RUB 10 billion and the book value of the total assets of the target and its group exceeds RUB 800 million

Similar to the acquisition of shares and assets, until the end of 2023, if the book value of the total assets of the target and its group is above RUB 800 million but less than RUB two billion pursuant to the latest balance sheet, then, likewise instead of prior FAS approval, a post-transaction notice must be sent to FAS within 30 days.

#### 25.6.1.6 Are mergers or acquisitions made outside Russia subject to merger control?

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

- such target foreign legal entity controls a Russian subsidiary or such target foreign legal entity supplied goods to the Russian Federation worth more than RUB one billion during the year preceding the transaction
- the aggregate book value of the assets of the acquirer and its group of persons plus the target and its group of persons exceeds RUB seven billion and the book value of the total assets of the target and its group exceeds RUB 800 million
- the aggregate revenue earned by the acquirer and its group of persons plus the target and its group of persons from the sale of goods over the past calendar year exceeds RUB 10 billion and the book value of the total assets of the target and its group exceeds RUB 800 million

Similar to other types of acquisitions, until the end of 2023, if the book value of the total assets of the target and its group is above RUB 800 million but less than RUB two billion pursuant to the latest balance sheet, then instead of prior FAS approval, a post-transaction notice must be sent to FAS within 30 days.

### 25.6.1.7 When are joint ventures subject to merger control?

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

- the aggregate book value of the assets of the parties and their groups of persons exceeds RUB seven billion
- the aggregate revenue earned by the parties and their groups of persons from the sale of goods over the past calendar year exceeds RUB 10 billion

### 25.6.2 How are the financial thresholds for merger control purposes calculated?

When determining the threshold for asset and revenue values, FAS takes into consideration not only the acquirer and the target company or the parties, but also all persons (individuals or legal entities) in the acquirer's and target's group of persons (with the exception of the seller, provided that, however, the seller loses control over the target as a result of the transaction).

### 25.6.3 What is a group of persons?

Where a merger or acquisition takes place between entities in the same group of persons that are related to each other in a way other than through a shareholding of over 50% (e.g., through management control, contractual control or other de facto control), the Competition Law requires the post-transaction notification of FAS within 45 days, provided



that the group structure is submitted to FAS no later than one month before the transaction and the group structure does not change until after the transaction.

#### 25.6.4 Do any special merger control rules apply to any specific sectors?

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

#### 25.6.5 What is the merger control procedure like?

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

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

In exceptional cases, where the transaction raises serious antitrust concerns, FAS can extend the review period by an additional nine months, during which the applicant or parties are required to fulfill certain conditions aimed at the restoration of competition. Within 30 days from the fulfillment of the conditions by the applicant or parties, FAS is obliged to make a decision on either the approval or rejection of the transaction. FAS very rarely applies this timeline in practice; but if it is applied, the review may take up to 13 months in total.

## 25.7 Unfair competition and marketing

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

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

- disseminates false, inaccurate or distorted information that may cause losses to another commercial entity or damage the entity's business reputation
- misleads consumers about the nature, methods and place of production, as well as consumer characteristics and quality of goods
- incorrectly compares the goods produced or sold by another commercial entity with the goods of other commercial entities
- sells goods that illegally use another's intellectual property or means of individualization to identify a commercial entity, product or service, such as trademarks, logotypes and other objects of intellectual property
- creates confusion with a competitor's product style or design (which has no protection as intellectual property or as a mean of individualization), e.g., by using a particular set of colors, packaging form or specific features
- receives, uses and discloses commercial, official or other secrets without the consent of the commercial entity to which this information belongs

- otherwise competes unfairly (e.g., uses another person's business reputation)

## 25.8 Russia is a member state of the EAEU. Are there any special competition rules in the EAEU?

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

The Agreement contains antitrust prohibitions similar to those outlined in the Competition Law. These include unfair competition, abuse of dominant positions, anti-competitive agreements and coordination of economic activities. Anti-competitive agreements with state bodies, tenders and price quotations, as well as the establishment of companies and mergers and acquisitions, do not fall within the scope of the Agreement. The main criterion to be met for the Agreement to cover a particular violation is that such violation occurs in a cross-border market. No distinct definition of "cross-border markets" is set in the Agreement. The criteria for determining cross-border markets are stipulated in a decision of the High Eurasian Economic Council. A market may be deemed cross-border if its geographic boundaries cover the territories of two or more member states of the EAEU.

The Eurasian Economic Commission has enforcement powers similar to those of FAS, including the right to request information from companies, initiate and investigate antitrust cases, and impose fines. In addition, it is entitled to request national competition authorities to conduct antitrust inspections and share the information gathered during inspections.

## 26. Issuance and regulation of securities

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

The securities market and securities transactions within the Russian Federation are primarily regulated by Federal Law No. 39-FZ "On the Securities Market" dated 22 April 1996 (the "**Securities Law**"). The offering of corporate securities is regulated by Federal Law No. 208-FZ "On Joint-Stock Companies" dated 26 December 1995 (the "**JSC Law**") and by Federal Law No. 395-1 "On Banks and Banking Activity" dated 2 December 1990.

The issuance of securities in the Russian Federation is also subject to a number of regulations adopted by the Central Bank of the Russian Federation and Federal Service for Financial Markets (the "**FSFM**") of the Russian Federation, and other regulatory agencies, as well as the general provisions of the Civil Code. On 1 September 2013, all the powers of the FSFM were transferred to the Central Bank of the Russian Federation (together with its predecessors — "**Bank of Russia**").

### 26.2 What types of securities exist in Russia?

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

Generally, all types of securities existing in the Russian Federation can be divided into two main groups: those that should be issued in compliance with a specific issuance procedure prescribed by the Securities Law and require registration (such securities are referred to as mass issued), and those that need not be registered (non-mass issued). Shares, bonds, stock options and Russian depository receipts are mass-issued securities, while promissory notes, bills of exchange, bills of lading, mortgage certificates, mortgage participation certificates,

investment units, deposit certificates and warehouse documents are non-mass issued securities.

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

In certain cases the Securities Law requires a prospectus to be registered simultaneously with the registration of the securities' issue (e.g., when securities are to be distributed through an offering to the public).

The Securities Law also provides for the disclosure of certain financial and other information by issuers who have registered a prospectus. Such information includes:

- semi-annual reports of the issuer (drafted in compliance with the requirements of the Bank of Russia)
- consolidated financial statements (which should be included in the semi-annual report for the relevant period)
- material events that may affect the financial results or business activities of the issuer (a list of such events has been drawn up by the Bank of Russia)

Generally, information should be disclosed in standard forms prescribed by Russian legislation through the newsfeed of an information agency within one day from the date on which the material fact(s) occurred.

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

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

- by decision of a Russian stock exchange (if foreign securities have been listed abroad with a stock exchange that satisfies the criteria set by the Bank of Russia)
- by decision of the Bank of Russia (if foreign securities are not listed with a stock exchange that satisfies the criteria set by the Bank of Russia and are offered to the general public for the first time)

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

If securities have not been listed with a stock exchange that satisfies the criteria set by the Bank of Russia, to list them in Russia a foreign issuer has to comply with a number of requirements, the most important of which are:

- registering a Russian prospectus with the Bank of Russia
- obtaining permission from the Bank of Russia for the placement of foreign securities
- assigning ISIN/CFI codes

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

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

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

Starting from 30 May 2022, the Bank of Russia has restricted trading of foreign securities blocked by international settlement and clearing systems on Russian exchanges. Exception is granted for securities of foreign issuers doing business predominantly in the Russian Federation. The restriction does not affect the ownership of such foreign securities. It is expected that trading will resume when restrictions are removed.

From 2 March 2022, certain transactions between Russian residents and foreign persons having ties to Unfriendly States<sup>413</sup>, as well as other persons controlled by such foreign persons, and involving transfer of ownership rights to securities (including where securities of Russian issuers or their eurobonds are held offshore and the relevant transaction is settled through an offshore bank account) may be effected only upon approval of the Governmental Commission on Control over Foreign Investments in the Russian Federation (the "**Government Commission**") or upon joint approval of the Bank of Russia and the Ministry of Finance of the Russian Federation, as applicable. The same restriction applies to transactions with foreign persons other than those having ties to Unfriendly States, if the securities in question were acquired by such foreign persons from foreign persons having ties to Unfriendly States after 22 February 2022.

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<sup>413</sup> The list of "unfriendly" states currently includes the following states/territories: Australia, Albania, Andorra, Bahamas, Great Britain (including British Crown Dependencies and British Overseas Territories), member States of the European Union, Iceland, Canada, Liechtenstein, Micronesia, Monaco, New Zealand, Norway, the Republic of Korea, San Marino, North Macedonia, Singapore, United States of America, Taiwan (China), Ukraine, Montenegro, Switzerland and Japan (hereinafter collectively referred to as "**Unfriendly States**").

Starting from 2 March 2022, certain transactions between Russian residents and foreign persons having ties to Unfriendly States, as well as other persons controlled by such foreign persons, and involving transfer of ownership rights to securities (including where securities of Russian issuers or their eurobonds are held offshore and the relevant transaction is settled through an offshore bank account) may be effected only upon approval of the Government Commission or upon joint approval of the Bank of Russia and the Ministry of Finance of the Russian Federation, as applicable. The same restriction applies to transactions with foreign persons other than those having ties to Unfriendly States, if the securities in question were acquired by such foreign persons from foreign persons having ties to Unfriendly States after 22 February 2022.

Starting from 3 March 2023, certain transactions with shares in Russian companies and foreign securities representing such shares (i.e. depositary receipts), government securities, bonds of Russian issuers, the register (or global certificate) for which is kept by a Russian depository, as well as units in a Russian unit investment fund are subject to approval from the Government Commission or the Bank of Russia, as applicable, *to the extent that* the above securities or foreign securities representing shares in Russian companies were acquired after 2 March 2022, from foreign persons having ties to Unfriendly States, as well as other persons controlled by such foreign persons, and are now accounted for in Russia. The restriction also applies to any subsequent transactions involving the above securities. The restriction is in force until it is lifted.

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

Russian joint-stock companies (the "**JSCs**") may issue shares, stock options, convertible bonds and other securities. JSCs may raise equity capital either by issuing shares to the public or by private placement.



Shares in a limited liability company are not deemed to be securities and cannot be used for raising capital from the general public.

## 26.6 What legislation governs the issuance of domestic bonds?

The issuance of domestic bonds is regulated by the Civil Code, the JSC Law, the Securities Law and, in respect of limited liability companies, Federal Law No. 14-FZ "On Limited Liability Companies" dated 8 February 1998 (as amended). This legislation provides for the regulation of secured and unsecured bonds. Secured bonds must be fully or partly secured with a suretyship, independent guarantee, state or municipal guarantee, or with a pledge (or a mortgage) over the issuer's and/or a third-party's property.

The Securities Law allows for the establishment of exchange-traded bond programs (which can be unsecured or, in certain cases, secured), programs for mortgage bonds, programs for asset-backed bonds and structured bonds programs. A bond program is established by the preparation of a framework decision on issuance, which provides the terms and conditions applying to all issues within such bond program and a specific decision on issuance with the terms and conditions of a separate issue within such bond program.

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

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

## 26.8 How are exchange-traded bonds, commercial bonds and structured bonds different from usual domestic Russian bonds?

Exchange-traded bonds differ from ordinary bonds in that they do not need to be registered by the Bank of Russia. Exchange-traded bonds and the relevant prospectuses are registered by a stock exchange (Moscow Exchange (the "**MOEX**")). However, the following conditions apply:

- placement must be made through a public offering
- exchange-traded bonds are issued in dematerialized (paperless) form
- the Bank of Russia must be notified of the registration of the issue and placement of securities

Commercial bonds are unsecured securities issued in dematerialized form and registered by the Central Depository. Commercial bonds can be offered only through a private placement.

Structured bonds are debt securities:

- issued by credit organizations, brokers, dealers and specialized finance companies
- the performance of obligations under which is subject to the occurrence (or nonoccurrence) of certain events listed in the decision on issuance (e.g., change of currency exchange rate, price of securities or rate of inflation)

Structured bonds are only eligible for purchase by qualified investors.

Structured bonds issued by brokers, dealers and specialized finance companies must be secured by a pledge of receivables or other

property. Credit organizations do not have to pledge any assets to secure their performance under structured bonds.

Structured bonds may be issued within the scope of a structured bonds issuance program. The Securities Law only allows the issuer to prepay structured bonds due to reasons beyond the control of the issuer explicitly mentioned in the decision on issuance.

## 26.9 What powers does the general meeting of bondholders have?

The issuer, bondholders' representative or bondholder/bondholders holding more than 10% of the bond issue may call a general meeting of bondholders. Generally, bondholders get one vote for each bond with decisions being taken by a majority of votes of bondholders eligible to vote and present at the meeting (for example, electing a bondholders' representative or filing a lawsuit against the issuer or security provider requires a simple majority of votes).

However, certain matters require three-quarters of the votes of bondholders present at the meeting, including:

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

Bondholders also have the right to waive their rights to apply to a court by a nine-tenths supermajority of votes.

## 26.10 What are the functions of the bondholders' representative?

A bondholders' representative must be appointed for secured bonds (except for bonds secured by state or municipal guarantees, independent guarantee, or secured by the guarantee of a state corporation or commercial organization that is recognized as a development institution according to federal laws) if bonds are:

- publicly placed
- privately placed with more than 150 investors who are not qualified investors
- suitable for nonqualified investors and admitted to trading on a securities exchange

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

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

The rights and obligations of a bondholders' representative should be set out in a services agreement between the issuer and the bondholders' representative. A bondholders' representative must comply with decisions made by the general meeting of bondholders, monitor the

performance of the issuer's obligations, inform the bondholders of any breach of the issuer's obligations and protect the legitimate interests of the bondholders.

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

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

The issuer and the bondholders' representative may terminate the services agreement only with the approval of the general meeting of bondholders and upon the simultaneous appointment of a new bondholders' representative. The bondholders' representative may unilaterally terminate the services agreement by notifying the issuer three months before such termination, unless the services agreement provides for a different notice period.

## 26.11 How can mortgage loans be securitized in Russia?

Federal Law No. 152-FZ "On Mortgage-Backed Securities" dated 11 November 2003 (the "**MBS Law**") allows Russian credit organizations and special purpose entities (mortgage agents) to issue mortgage-

backed securities — mortgage-backed bonds and mortgage participation certificates.

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

- a mortgage-backed bond issued directly from the balance sheet of a Russian bank — covered bonds
- a mortgage-backed bond issued via a Russian special purpose vehicle (so-called mortgage agent) acquiring mortgages from an originator — residential mortgage-backed securities (the "**RMBS**")

The MBS Law allows for the establishment of RMBS bond programs. Such programs may be placed on the exchange and should contain a description of the security for the bonds, as well as information about the order for the fulfillment of obligations under bonds with a single cover pool. Additional assets may be added to the cover pool to secure further issues of the bonds. The program may be established with a stock exchange.

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

Issuance of RMBS implies a true sale of mortgage loans from a bank to a mortgage agent. Under the MBS Law, mortgage agents have limited capacity and they are allowed to conduct specific activities related to the issuance of RMBS and purchase of mortgages. A mortgage agent is not allowed to have employees; an independent management company should manage it. It should also be noted that the mortgage agent is not subject to corporate profits tax. Such RMBS structures allow a rating

uplift of five to six notches above the rating of the bank selling mortgage loans.

Mortgage participation certificates were issued only by commercial organizations with licenses to manage investment funds, mutual investment funds and nongovernmental pension funds, as well as by credit organizations. Unlike mortgage-backed bonds, mortgage participation certificates have no nominal value, they are not considered mass-issued securities and they do not require state registration with the Bank of Russia. Being similar to a unit in a mutual fund, a mortgage participation certificate confirms the right of its owner to a portion of the cover pool. There have been only several issuances of mortgage participation certificates in Russia due to a lack of investor interest in such instruments and the gradual implementation of stricter requirements for investment into such instruments by the Bank of Russia. From 5 September 2021, the issuance of new mortgage participation certificates is prohibited. Mortgage certificates issued before that date are regulated by the MBS Law until they are redeemed.

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

The cover pool of mortgage-backed bonds may comprise mortgage loans, receivables under co-investment construction contracts, cash, government securities and, in limited cases, real estate. During the life of the bonds, the value of the cover pool must not be less than the total principal amount outstanding under the mortgage-backed bonds. Mortgage loans included in the cover pool should also meet certain eligibility criteria set out in the MBS Law (e.g., loan to value ratio and property insurance). The issuer pledges the cover pool to holders of mortgage-backed bonds.

The MBS Law provides for the concept of a specialized depository that acts as a cover pool monitor. It should possess a special license to act as a specialized depository and it may not be affiliated with the issuer.

The specialized depository maintains a register of the cover pool, safely keeps documents relating to mortgage loans (typically mortgage certificates (*закладная*) and other ancillary documents) and, on a daily basis, monitors the compliance of the cover pool with the eligibility criteria and ratios set out in the MBS Law.

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

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

### 26.14 Is the securitization of assets other than mortgage loans possible in Russia?

On 13 December 2013, the State Duma passed Federal Law No. 379-FZ aimed at creating a legal basis for the securitizations of a wide range of assets on the Russian market (the "**Securitization Law**"). The Securitization Law introduced changes to various pieces of legislation, including the Civil Code, the Securities Law, the Tax Code, the Banking Law, the Bankruptcy Law and a number of other laws. The Securitization Law became effective in 2014 and since then many transactions with various asset classes — including SME loans, auto loans and leasing receivables — have been completed.



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

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

According to the Securitization Law, a 20% risk retention rule would apply to the originator. The Bank of Russia developed secondary legislation prescribing forms in which risk should be retained.

The Securitization Law provides for several new types of accounts. One is a nominal bank account, which is to be used for operations with funds not beneficially owned by the account holder (client). Nominal bank accounts can be used to minimize the commingling risk in certain securitization transactions.

Another type of special account is a collateral (pledge) account. The pledge may be created over all the existing and future funds on the collateral account or for a fixed amount. The collateral account allows the pledgor to use the funds on the collateral account, although there may be certain limitations agreed by the parties. Collateral accounts are widely used in the issuances of asset-backed bonds. In accordance with the Securitization Law, all collections from the securitized receivables should be credited to the collateral account pledged in favor of the bondholders. Funds on such account may only be used to satisfy claims of the bondholders or to make payments indicated in the terms and conditions of the bonds.

## 26.15 Who can issue Russian depository receipts (the "RDRs") and what obligations does the foreign issuer assume to their holders?

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

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

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

## 26.16 What types of collective investment schemes are recognized in Russia?

There are several types of collective investment schemes in Russia:

- joint-stock investment funds
- mutual investment funds
- nongovernmental pension funds

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

Mutual investment funds, on the other hand, are considered property complexes and not legal entities. Mutual investment funds are managed by a management company, which acts on behalf of the founders pursuant to a fiduciary management agreement. Management companies need to be licensed. An investment unit is a registered security issued by a management company certifying the share of its holder in the ownership right to the property composing an investment fund and property coming about through its management.

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

The Investment Funds Law, the Nongovernmental Pension Funds Law and relevant acts of the Bank of Russia provide detailed regulation of various issues regarding funds, including the foundation, decision-making and asset structure thereof. Management companies of investment funds are subject to certain information disclosure

requirements (e.g., regarding information on the value of an investment share). Nongovernmental pension funds should also disclose information regarding their total assets and investment results.

### 26.17 What professional participants are there on the Russian securities market?

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

### 26.18 What are the licensed intermediaries on the Russian securities market?

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

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

On 1 October 2015, the regulation of foreign exchange (forex) dealers became effective. Forex dealers are required to have at least RUB 100 million in capital and maintain membership of specialized self-regulatory organizations (the "**SROs**"). Forex dealers must disclose certain information on their websites, including the terms for setting quotes, the

financial performance of their clients' investments, notification of risks and other information. The complete scope of the information to be disclosed by forex dealers is defined in a regulation of the Bank of Russia.

Trust managers of securities are professional participants of the securities market who manage the securities of their clients under a fiduciary management agreement. Fiduciary management may be exercised over securities, money for investment in securities and/or for entering into derivative transactions.

### 26.19 Who are investment counsels?

Investment counsels are professional participants of the securities market that provide professional advice on transactions with securities and derivative instruments to their clients based on an investment profile chosen by each client. An investment counsel should provide such advice to each client in good faith, reasonably and in the interest of the client. Each investment counsel (whether a legal entity or an individual entrepreneur) should be a member of a self-regulatory organization of investment counsels and be registered with the Register of Investment Counsels maintained by the Bank of Russia.

### 26.20 Who records the transfer of rights to securities in Russia?

Under the Securities Law, registrars are professional participants of the securities market charged with maintaining the registers of securities owners. All JSCs are subject to the requirement to appoint a professional licensed registrar to maintain the shareholders' register.

Under the Securities Law, depositories are professional participants of the securities market that hold certificates of securities and/or record the transfer of rights to securities. The conclusion of a depository contract does not involve the transfer of ownership over a depositor's securities to the depository. The depository has no right to dispose of the

depositor's securities, to manage them or to perform any actions with securities on behalf of the depositor, except for those performed at the demand of the depositor in cases provided for by the depository contract.

## 26.21 What are the functions of the Central Depository in Russia?

The Central Depository is the only organization able to open depository accounts directly with the registrars of companies whose securities are publicly traded. Federal Law No. 414-FZ "On the Central Depository" dated 7 December 2011 does not require that transactions with publicly traded securities be settled exclusively through the Central Depository. In order to prevent any loss of rights, the Central Depository must immediately verify the status of its accounts with registrars if operations are undertaken and must do so on a daily basis if no operations are undertaken.

If the Central Depository has a depository account with the registrar of a company or holds securities in a mandatory deposit, the issuers of such securities must provide the Central Depository with information relating to the exercise of rights under such securities (e.g., shareholder/bondholder meetings, payment of dividends/coupons, conversion of shares, Voluntary Offers, Obligatory Offers (both defined below in Section 26.25), etc.) Other issuers may voluntarily provide such information to the Central Depository. The Bank of Russia establishes a detailed list of the information to be provided in each case. The information disclosed by the Central Depository on its website will take priority over the information disclosed by the issuer.

Apart from the right to open accounts for Russian legal entities, the Central Depository has rights to open foreign nominee accounts for, and to open nominee accounts with, foreign registrars or depositories incorporated in a member state of the Organization for Economic Cooperation and Development (OECD), the Financial Action Task Force

(FATF), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) or United Economic Area, or in a jurisdiction whose securities market regulator has concluded a cooperation agreement with the Bank of Russia.

In addition, foreign organizations incorporated in a member state of the OECD, FATF, MONEYVAL or United Economic Area, or in a jurisdiction whose securities market regulator has concluded a cooperation agreement with the Bank of Russia, are allowed to open the following foreign nominee accounts with Russian depositories:

- foreign nominal holder accounts if the foreign organization is authorized to register and transfer rights to securities under its domestic legislation
- foreign authorized holder accounts if the foreign organization is authorized to act in its own name but on behalf of other persons under its domestic legislation (this also applies to brokers)

Before 27 April 2022, issuers of foreign securities that represent Russian securities (such as depository receipts) were allowed to open special depository program accounts with Russian depositories, which, in turn, must have opened nominee accounts with the Central Depository. However, in accordance with Article 6 of Federal Law of the Russian Federation No. 114-FZ dated 16 April 2022 (the "**Law No. 114**"), starting from 27 April 2022 the establishment of depository programs for Russian securities was prohibited, all existing depository programs were to be closed and the depository receipts to be converted into shares of Russian issuers. Rights attaching to shares held in a depository program account with a Russian depository after 27 April 2022 were limited (they could not vote, receive dividends or participate in shareholder meetings) until they were distributed among the holders. Once all the shares underlying the depository receipts had been distributed among the holders and there were no further shares left in the relevant depository

program account, such account was to be closed. Law No. 114 provided for the possibility to maintain the listing of the depository receipts and the depository programs upon receipt of special permission from a Government Commission. Depository receipts for shares of Russian issuers that have received such permission continue to trade, and the rights attached to underlying shares are not limited (except for limitations related to S-type accounts).

## 26.22 What legislation governs the activities of organizers of trade, stock exchanges and clearing organizations in Russia?

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

MOEX is the leading Russian stock exchange for both debt and equity instruments.

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



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

The main functions of the Bank of Russia, as a securities market regulator, are: the licensing and supervision of professional participants of the securities market and banks; the authorization of self-regulatory organizations; the registration of securities issuances and prospectuses, and the approval of standards for their issuance; and the control over the use of inside information.

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

In addition, the Bank of Russia has the power to fine legal entities or individual entrepreneurs for various securities law violations. Any action pursued against issuers, such as for the invalidation of an issuance, must be effected through the courts. Consequently, the ultimate jurisdiction over breaches of securities law remains with the courts.

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

## 26.24 What is the purpose of SROs in Russia?

Federal Law No. 223-FZ "On Self-regulatory Organizations on the Financial Markets" dated 13 July 2015 (the "**SRO Law**") substantially deepened the regulatory framework governing the activities of SROs in Russia.

Under the SRO Law, an SRO is a voluntary association of financial organizations functioning on the principles of a nonprofit organization established for the development of standards of professional activity, the

monitoring of compliance of its members with such standards, the development of the Russian financial market, and the creation of a framework for the effective functioning of the Russian financial system and ensuring its stability.

The SRO Law established an obligation of professional participants on the securities market to participate in an SRO specializing in the area of such participants' business activities. Only a nonprofit organization can obtain the status of an SRO, which becomes effective when the Bank of Russia includes information about the organization in the register of SROs. Such organizations must comply with the following requirements:

- at least 26% of all of the relevant financial market professionals (e.g., brokers, dealers and registrars) must be members of such SRO
- standards of conduct that comply with the SRO Law should be developed
- management and certain other bodies in accordance with the SRO Law should be established
- chief executive officers should comply with the specific requirements of the SRO Law

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

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

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

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

## 26.25 Are there any requirements for purchasing a significant amount of voting shares in a Russian public JSC?

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

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

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

Starting from 27 April 2022, placement of Russian shares overseas is prohibited.

## 26.27 Are derivative transactions awarded civil law recognition in Russia?

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

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

It has been argued that those provisions are also applicable in cases where foreign law is chosen, which is generally possible if the transaction includes an international element, which is the case if one party is non-Russian. However, we do not believe this argument is convincing.

## 26.28 What are the regulations on derivatives on the securities market in Russia?

In the context of plans to protect netting, the Securities Law was amended in January 2010 to regulate trading in Russian and foreign derivative instruments. In particular, the law now deals with trading in Russia in stock exchange and over-the-counter (the "OTC") derivatives, in derivative instruments designated for trading by so-called qualified investors and foreign derivative instruments (i.e., derivative contracts issued under foreign law).

According to the relevant legislation, derivative instruments may only be offered to qualified investors. The exact sanctions for violating the new rules in case of cross-border trading are unclear. In particular, it is unclear whether contracts violating such rules would be deemed invalid or whether the parties offering such contracts face sanctions for undertaking non-permitted activity.

## 26.29 Is there an equivalent of the International Swaps and Derivatives Association (ISDA) Master Agreement on the Russian market?

In May 2008, three associations — the National Association of Securities Market Participants (NAUFOR), the National Foreign Exchange Association (NVA) and the Association of Russian Banks (ARB) — asked a law firm to develop standards for concluding derivatives transactions. The contracts prepared on this basis were discussed again and were reviewed in 2011; the results were approved by the FSFM (frequently referred to as the Russian ISDA or RISDA).

## 26.30 What are the requirements for netting claims?

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

The Securities Law allows contractual claims to be netted, including in the course of the bankruptcy of one of the parties, provided that the transactions are concluded between eligible counterparties and transactions are documented under eligible master agreements, information about which is provided to a repository. Eligible cross-border master agreements include those developed by ISDA, the International Securities Markets Association (ISMA), and the Futures Industry Association (FIA).

### 26.31 What are the functions of a repository?

Under the Securities Law, repositories collect, record, process, store and provide information regarding OTC repo and derivative transactions, and maintain registers of such transactions on the basis of a license granted by the Bank of Russia. Stock exchanges, clearing organizations, settlement depositories, the Central Depository and a 100% subsidiary of the Central Depository may act as repositories.

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

- credit organizations
- brokers
- dealers
- trust managers
- depositories
- registrars
- nongovernmental pension funds
- management companies of investment funds, mutual investment funds and nongovernmental pension funds

- joint-stock investment funds
- trade organizers
- clearing organizations
- insurance companies

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

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

## 26.32 What constitutes inside information in Russia?

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

## 26.33 Who can be an insider in Russia?

The list of insiders includes the following:

- issuers (including foreign issuers) and management companies

- consultants and counterparties
- major shareholders
- trade organizers, clearing and other organizations making settlements on exchanges
- professional participants of the securities market
- members of corporate governing bodies
- authorities/officials
- press agencies
- rating agencies
- persons involved in a voluntary, mandatory or competitive share offering
- employees
- persons with access to inside information due to their professional activities rendered to issuers (including auditors, banks and insurance companies)

### 26.34 What are the obligations of insiders in Russia?

The Inside Information Law requires insiders to comply with, among other things, the following requirements:

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



- provide the Bank of Russia with the list of insiders at its request
- approve own lists of inside information (not applicable to insiders who are consultants and contractors, employees and members of management bodies)
- provide information about transactions with financial instruments, securities, currency and other assets of the companies of which they are insiders upon the request of such companies

### 26.35 What are the penalties for violating the Inside Information Law?

The Bank of Russia supervises compliance with the Inside Information Law requirements. Violating these requirements may entail civil, administrative or criminal liability. Administrative penalties for violating Inside Information Law requirements include various fines, which may be imposed on individuals, legal entities and company executives. Other sanctions include the revocation of licenses (primarily applicable to banks and professional participants of the securities market) and imprisonment.

Violation of the Inside Information Law requirements includes unlawful use of inside information. The legislation provides for an administrative fine of up to RUB 5,000 for individuals and up to RUB 50,000, or disqualification for up to two years, for executives. The fine for legal entities amounts to the greater of RUB 700,000 and the losses they avoided by using the inside information, or the difference between the actual income and the income that would have been made without using the inside information. If the avoided losses or income gained using inside information exceed RUB 3.75 million, the individual may be subject to criminal liability.

In addition, failure to disclose inside information and failure to enact measures to counter the use of inside information entail a fine of up to

RUB 700,000 for legal entities and up to RUB 30,000, or disqualification for up to one year, for executives.

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

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

## 27. Banking

### 27.1 What is the structure of the banking system in Russia?

At the upper level of the banking system in Russia is the Central Bank of the Russian Federation (the "**Bank of Russia**"), which is the key regulatory authority for banking and is in charge of monetary policy. The Bank of Russia regulates banking activities through its instructions, regulations and other acts that establish rules, standards and obligatory requirements for banks and nonbanking credit organizations throughout the Russian Federation. The lower level of the banking system in Russia is composed of credit organizations and representative offices of foreign banks.

Pursuant to Federal Law No. 395-1 "On Banks and Banking Activities" dated 2 December 1990 (the "**Banking Law**"), there are two main types of credit organizations: banks and nonbanking credit organizations. A bank has the right to carry out a wide range of banking operations such as opening and maintaining the bank accounts of legal entities and individuals, attracting deposits from legal entities and individuals, and holding these funds in its own name and at its own cost and expense. A nonbanking credit organization, in contrast, is allowed to perform only a limited number of specified banking operations as set forth in its license.

Both banks and nonbanking credit organizations are entitled to carry out banking operations as soon as they are issued a banking license by the Bank of Russia. Both types of credit organizations may participate in banking groups (when the controlling company is a credit organization) and banking holdings (when the controlling company is a noncredit organization).

As of 1 March 2023, there were 327 banks, 35 nonbanking credit organizations and 28 representative offices of foreign banks registered in Russia.

## 27.2 What are the primary sources of legislation covering banking in Russia?

The primary pieces of banking legislation are:

- the Civil Code of the Russian Federation
- Federal Law No. 395-1 "On Banks and Banking Activities" dated 2 December 1990
- Federal Law No. 86-FZ "On the Central Bank of the Russian Federation" dated 10 July 2002
- Federal Law No. 177-FZ "On the Insurance of Deposits in the Banks of the Russian Federation" dated 23 December 2003
- Federal Law No. 353-FZ "On Consumer Credits (Loans)" dated 21 December 2013 (the "**Consumer Credit Law**")
- Federal Law No. 486-FZ "On Syndicated Credits (Loans)" dated 31 December 2017
- Federal Law No. 115-FZ "On Combating Money Laundering and the Financing of Terrorism" dated 7 August 2011 (the "**Anti-Money Laundering Law**")

## 27.3 Can a foreign bank operate in Russia?

Although foreign banks may not currently open branch offices in the Russian Federation, a local subsidiary or a representative office may be established. Due to current restrictions neither subsidiaries nor representative offices can be established by residents of so-called "Unfriendly States"<sup>414</sup>.

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<sup>414</sup> The list of "unfriendly" states currently includes the following states/territories: Australia, Albania, Andorra, Bahamas, Great Britain (including British Crown Dependencies and British Overseas Territories), member States of the European Union, Iceland, Canada, Liechtenstein, Micronesia, Monaco, New Zealand, Norway, the Republic of Korea, San

## 27.4 What are the requirements for the establishment of a local subsidiary of a foreign bank in Russia?

A foreign bank may establish a subsidiary in Russia in the form of a Russian legal entity (joint-stock company or limited liability company).

The total share of foreign investment in the charter capital of all credit organizations in the Russian banking system may not exceed 50%. If this limit is reached, the Bank of Russia is entitled to refuse to register Russian credit organizations with foreign investments or issue banking licenses to them. In addition, the Bank of Russia may restrict the increase of the charter capital by nonresidents and the disposal of shares (participation interests) to nonresidents if this limit would be exceeded as a result. Any shares (participation interests) disposed to nonresidents in violation of such restriction would be deemed nonvoting and the Bank of Russia would be entitled to petition a court to invalidate the transaction.

The participation of foreign banks in the Russian market is subject to certain restrictions. In particular, nonresidents need the Bank of Russia's prior approval if they acquire 10% or more of shares in a Russian bank or nonbanking credit organization. When a nonresident acquires more than 1% but less than 10%, the Bank of Russia need only be notified. This is similar to the regulation that applies to Russian residents. In addition, the Bank of Russia may not establish additional requirements for the subsidiaries of foreign banks related to mandatory ratios and minimal charter capital. However, additional requirements on reporting procedures, approval of management bodies and permitted operations of the representative offices and subsidiaries of foreign banks may still be introduced.

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Marino, North Macedonia, Singapore, United States of America, Taiwan (China), Ukraine, Montenegro, Switzerland and Japan (hereinafter collectively referred to as the "**Unfriendly States**").

## 27.5 What are the requirements for establishing a representative office of a foreign bank in Russia?

A foreign bank that is not a resident of an Unfriendly State may establish a representative office in Russia.

The Bank of Russia issues accreditations for the representative offices of foreign banks and the foreign citizens to be employed there. A representative office of a foreign bank can be accredited for up to three years. Accreditation becomes effective if a representative office of a foreign bank starts operating within six months after the Bank of Russia grants such accreditation. Otherwise, the accreditation will be terminated. Accreditation can be renewed an unlimited number of times. The Bank of Russia may grant permission to open a representative office to a foreign bank that meets the following criteria:

- the foreign bank has been operating in its country of incorporation for at least five years, and
- the foreign bank has a stable financial position

Confirmation of the foreign bank's compliance with the latter criterion should be requested from the relevant supervisory body in the country where the foreign bank is incorporated along with the relevant regulator's consent or confirmation that such consent is not required.

Representative offices of foreign banks have limited legal capacity under Russian law. They are allowed to study the economic situation and standing of the Russian banking sector, to maintain and develop contacts with Russian banks, and to develop international cooperation. While the representative office of a foreign bank may not solicit new clients for the bank, it may provide consultancy services to existing clients of the foreign bank.

The Bank of Russia supervises the representative offices of foreign banks. The Bank of Russia may close a representative office (i) if its

activities threaten Russia's sovereignty, political independence, territorial integrity or national interests or if it is otherwise noncompliant with Russian law; (ii) if the bank's license is revoked; or (iii) if the bank or its clients do not observe anti-money laundering regulations.

## 27.6 What activities do Russian banks generally engage in and how are they regulated?

Under the Banking Law, only credit organizations holding a license granted by the Bank of Russia are allowed to carry out banking operations. The list of banking operations includes the following:

- attraction of monetary funds for on-demand and term deposits and placement of such funds in the name and at the expense of the relevant credit organizations
- holding deposits and placement of precious metals (except for precious metal coins)
- maintaining bank accounts in precious metals (except for precious metal coins) and carrying out transfers from/to such bank accounts
- opening and maintaining bank accounts for individuals and legal entities
- collecting money, promissory notes and bills of exchange, payment and settlement documents
- providing cash services to individuals and legal entities
- exchanging foreign currency
- transferring money (including e-money) with or without the opening of bank accounts

Banks and nonbanking credit organizations are also entitled to perform certain nonbanking operations, including:

- providing financial suretyship
- fiduciary management
- performing operations with precious metals and precious metal coins
- renting out safe deposit boxes
- leasing operations
- providing consultancy and other informational services
- issuing bank guarantees

Subject to compliance with applicable licensing requirements, credit organizations may act as professional participants on the securities market. Credit organizations are prohibited from engaging in any industrial, trade or insurance activities, other than derivatives transactions.

Banks can operate under two types of banking licenses in Russia:

- 1) a universal license that allows the bank to carry out all banking operations and establishing subsidiaries and branches (subject to prior approval of the Bank of Russia) and representative offices (subject to prior notification of the Bank of Russia) abroad
- 2) a basic license that restricts the bank from carrying out certain banking operations with foreign individuals, foreign legal entities and other foreign organizations and requires less charter capital from a bank than a universal license

Banks with basic banking licenses cannot conduct the following banking operations and transactions with foreign individuals, foreign legal entities and other foreign organizations (as opposed to banks operating under universal banking licenses):



- placing attracted monetary funds for on-demand and term deposits in its own name and at its own the expense
- holding deposits and placement of precious metals (except for precious metal coins)
- maintaining bank accounts in precious metals (except for precious metal coins) and carrying out transfers from/to such bank accounts
- issuing bank guarantees
- acquiring claims of such foreign persons
- participating in financial leasing operations

Unlike banks operating under universal banking licenses, banks operating under basic banking licenses cannot open bank (correspondent) accounts with foreign banks (with the exception of participation in a foreign payment system). This limitation has been imposed until 31 December 2023. Banks with basic licenses cannot trade securities not listed in the first (highest) quotation list, or not approved by the Bank of Russia. Banks operating under basic banking licenses are subject to less provisioning requirements and prudential regulations than banks operating under universal licenses.

## 27.7 What are the peculiarities of corporate lending in Russia?

One of the major activities of a credit organization in Russia is lending. When lending to Russian corporate entities, a number of issues should be taken into account.

The parties to a transaction with a foreign element (i.e., a foreign counterparty) may generally choose foreign law as the governing law of their contractual relationship. Thus, if financing is provided to a Russian company by a foreign bank, the loan agreement is usually governed by

foreign law (usually English law and Loan Market Association (LMA) style agreements are used). The choice of governing law for security documents, however, is generally determined by where the proposed collateral is situated or created.

It is noteworthy that Russian law does not recognize the concept of a trust. Therefore, the straightforward use of a security trustee in syndicated secured financing may not work in Russia, where alternative structures are used.

Although most of the currency control restrictions were removed in 2007, foreign banks should still take into account some currency control regulations when lending to Russian corporate borrowers, e.g., the requirement to collect documents related to currency operations and repatriation of funds from export proceeds.

Payments by a Russian borrower to a foreign lender under a loan agreement, as the payer is a Russian taxpayer, may be characterized as Russian source income. In this case, the payments by the Russian borrower may be subject to 20% Russian profits withholding tax, subject to a reduction or elimination pursuant to the terms of an applicable tax treaty.

## 27.8 How is consumer lending regulated in Russia?

Lending to individuals is specifically regulated by the Consumer Credit Law, which became fully effective in July 2014.

According to the Consumer Credit Law, the terms and conditions of consumer credit agreements are either general or individual. General terms are drawn up by the lender for mass application and they must include:

- the range of total charges for the credit for each type of credit program available in the bank

- types of security for the performance of obligations under a credit agreement
- information about agreements the borrower must enter into in order to obtain a loan

Individual terms are agreed upon by the lender and the borrower and should be separately specified in the credit agreement. Individual terms usually cover:

- the amount of credit, currency of credit, the repayment period, the interest rate or, if a variable interest rate applies, the method for its determination and the interest rate effective as at the date of the individual terms
- liability of the borrower for undue performance
- information about the possibility to assign the creditor's rights under the agreement
- the total charge for the consumer credit in question

Individual terms may also contain other terms and conditions agreed by the parties. Even though the individual terms are supposed to be agreed by the parties, the Bank of Russia is required to adopt standardized individual terms to which the banks will be required to adhere. If there is a discrepancy between general and individual terms, individual terms prevail.

The Consumer Credit Law also provides for certain particularities of the terms and conditions of a loan provided to an individual for purposes not related to commercial activity, if the obligations of the borrower under such loan are secured by a mortgage. In particular, the Consumer Credit Law imposes certain restrictions on bank charges and fees, and limits the amount of penalties for the failure of the borrower to perform their obligations under such loan.

The Consumer Credit Law also introduced the regulation of total charge for credit (the "**TCC**"), which generally includes the repayment of the loan and payment of accrued interest, other payments in favor of the creditor required by the agreement, payments to third parties (e.g., an insurance company) and some other payments. It is calculated as an effective annual interest rate based on all mandatory payments the borrower is expected to make during the term of the credit. On the date the parties enter into the credit agreement, the TCC must not exceed the least of the following rates: 365% (292% starting from 1 July 2023) annual interest rate or the average market TCC, as calculated and published by the Bank of Russia, by more than one-third. The Bank of Russia calculates and publishes the average market TCC for different types of credit on a quarterly basis.

The Consumer Credit Law allows a creditor's rights to be assigned to a limited number of entities, including specialized financial companies, professional collection agencies, banks and microfinance companies, unless such assignment is prohibited by law or by the individual terms of the credit agreement. Upon assignment, the initial creditor is entitled to transfer the personal data of the borrowers and legal entities/persons that provided the guarantees or collateral under consumer credit agreements.

## 27.9 What financial authorities are established in Russia to oversee banking activities in Russia?

The Bank of Russia is the primary regulatory body governing the banking sector of the Russian Federation. The Bank of Russia is one of the few institutions under the control of the Russian legislative (rather than executive) branch. The State Duma must approve the nomination of the chair of the Bank of Russia, and approve the chair's resignation as well. Federal Law No. 86-FZ "On the Central Bank of the Russian Federation" dated 10 July 2002 provides for the establishment of a special body within the structure of the Bank of Russia, the National Banking Council (the "**NBC**"), composed of representatives of various

executive and legislative bodies. The NBC exercises control over the Bank of Russia's board of directors and participates in establishing the basic principles of Russian banking and financial policy.

The Bank of Russia and the Government share authority over monetary policy. The Bank of Russia is responsible for monetary policy and ensuring the stability of the Russian ruble. As part of its regulatory role, the Bank of Russia establishes state registration, accounting, reporting and licensing rules for credit organizations; it also sets minimum reserve requirements for lending operations, mandatory ratios (capital adequacy, liquidity, etc.) and requirements on the amount of charter capital. The Bank of Russia maintains regional offices throughout the Russian Federation.

Although not a regulatory body in a traditional sense, the State Corporation "Deposit Insurance Agency" (the "**Deposit Insurance Agency**") in certain cases performs regulatory functions provided by law. For example, the Deposit Insurance Agency:

- supervises the deposit insurance system in Russia
- acts as the temporary administrator of a credit organization if appointed by the Bank of Russia
- takes part in certain bankruptcy prevention procedures of Russian banks together with the Bank of Russia

## 27.10 What approvals are required to purchase shares in Russian banks?

Current restrictions provide for different requirements with respect to purchasing equity in Russian banks. The requirements depend on the residency of prospective sellers and buyers. Transactions between Russian residents and residents of Unfriendly States are restricted.

Starting from 1 January 2023, residents of Unfriendly States are prohibited from selling of shares or otherwise disposing of their

participation in Russian banks without the consent of the Russian president.

Acquiring or selling more than a 1% equity in other banks requires permission of Government Commission on Control over Foreign Investments in the Russian Federation (the "**Government Commission**") if at least one of the parties of such transaction is a resident of Unfriendly State.

Transactions between residents of Russian Federation must meet certain requirements.

Prior approval of the Bank of Russia is required if a purchaser obtains control over more than:

- 10%, 25%, 50% or 75% of shares of a Russian bank (if such bank is a joint-stock company)
- 10%, one-third, 50% or two-thirds participation interest in a Russian bank (if such bank is a limited liability company)

Prior approval of the Bank of Russia is also required to obtain direct or indirect control over shareholders owning more than 10% of shares (participation interest) of a Russian bank.

The incoming shareholders that plan to purchase shares (participation interest) in a Russian bank should comply with certain requirements of the Bank of Russia with regard to financial standing and business reputation.

Under certain circumstances, banks have to cooperate with the Federal Antimonopoly Service (the "**FAS**"). For example, with mergers, banks are required to obtain preliminary clearance from FAS if the purchaser will acquire more than 25% in the charter capital of a bank and if the target bank's assets exceed RUB 29 billion.

The Bank of Russia can deny approval of the purchase of shares (participation interest) of a Russian bank if FAS refuses to authorize the respective purchase of shares (participation interest) of a Russian bank and if an incoming shareholder does not meet the requirements of the Bank of Russia with regard to its financial standing or business reputation, or in certain other cases.

Starting from 15 October 2022, certain transactions with shares in a bank or an insurance company that involve more than 1 percent of the charter capital or 1 percent of the voting rights attached to such shares where one of the parties is a foreign person having ties to unfriendly states, as well as a person controlled by such foreign persons, require approval from the Government Commission.

### 27.11 What regulatory powers does the Bank of Russia have?

A credit organization must be registered in the Russian Federation in accordance with a specific procedure and must be licensed by the Bank of Russia. Newly established banks can receive licenses permitting a limited scope of operations. A bank that has held a license for a period of two years or more is entitled to apply for licenses permitting an extended scope of operations.

The Bank of Russia may refuse to issue a banking license in the event of the following:

- noncompliance of the application documents with Russian legal requirements
- unsatisfactory financial standing of the founders of the credit organization or their failure to perform their obligations before the federal budget, the budgets of constituent entities of the Russian Federation or local budgets

- failure of a nominee for the position of chief executive officer or chief accountant of the credit organization (or their deputies) to meet the qualification requirements and requirements for business reputation, or an unsatisfactory business reputation of a nominee for the position of a member of the board of directors (supervisory board) of the credit organization

The Bank of Russia has controlling powers over Russian banks: it approves the appointment of the senior management of all credit organizations, holds mandatory reserves placed by credit organizations and monitors credit organizations for compliance with applicable requirements. If a credit organization fails to comply with these requirements, the Bank of Russia is entitled to exercise various sanctions, which range from a warning and fine to the suspension of certain banking operations and the revocation of its banking license, which triggers the dissolution or bankruptcy of the credit organization.

## 27.12 How are bank deposits protected in Russia?

Federal Law No. 177-FZ "On the Insurance of Deposits in the Banks of the Russian Federation" dated 23 December 2003, establishes an insurance system for deposits. It provides that all banks accepting individual deposits and SME deposits must be members of the deposit insurance system. The Deposit Insurance Agency is responsible for supervising this system.

Banks that hold valid retail banking licenses need to apply to the Bank of Russia to become registered as participants in the mandatory deposit insurance system. A bank is expected to pass a number of tests before it can be admitted. The Bank of Russia must be assured of the following:

- the bank's financial accounts and reports are accurate
- the bank is in full compliance with the Bank of Russia's mandatory ratios



- the bank's solvency position is sufficient
- the Bank of Russia has not canceled the bank's banking license

If a bank fails the above tests or chooses not to participate in the deposit insurance system, it will not be able to attract deposits from or open accounts for individuals. Member banks have to contribute to a special deposit insurance fund administered by the Deposit Insurance Agency. These contributions are calculated as a percentage of the average daily balance of individual deposits maintained with a particular bank and, as a rule, cannot exceed 0.15%. All individual depositors with deposits in member banks are generally entitled to 100% compensation for aggregate amounts up to RUB 1.4 million for each bank. However, the deposit insurance does not cover e-money deposits.

### 27.13 What are the anti-money laundering requirements in Russia?

Based on recommendations made by the Financial Action Task Force (FATF) on Money Laundering, the State Duma adopted the Anti-Money Laundering Law.

The Anti-Money Laundering Law imposes certain requirements on credit organizations, professional participants of securities markets, insurance and leasing companies, postal services and other entities that deal with the transmission of money or other valuables. These entities must:

- identify clients and beneficiaries pursuant to a specific procedure
- require certain information on payers in payment orders
- report to the Federal Financial Monitoring Service on certain types of transactions of RUB 600,000 or more, and transactions with real property exceeding RUB 3 million, and all complex or unusual transaction schemes that have no apparent economic or lawful purpose irrespective of their amount

- identify foreign public officials and the sources of their money and other property
- pay close attention to transfers of monetary funds and other property between foreign public officials and their close relatives

The Anti-Money Laundering Law prohibits the creation and maintenance of anonymous accounts (such as numbered bank accounts).

### 27.14 What are the capital adequacy requirements in Russia?

Russian banks are required to comply with the capital adequacy requirements set by the Bank of Russia, which is responsible for the implementation of Basel III developed by the Basel Committee on Banking Regulations and the Supervision Practices of the Bank for International Settlements in Russia.

Regulation of the Bank of Russia No. 646-P "On Methods for Calculation of the Capital of Credit Organizations" dated 4 July 2018 implemented the rules of Basel III on capital adequacy in Russia. It should be noted that the capital adequacy rules are tighter than the default rules suggested by the Basel Committee.

Under Russian law, the minimum capital adequacy ratio that banks are required to maintain is calculated (on an unconsolidated basis) as the ratio of a bank's owned funds (its capital) to the total amount of its risk-weighted assets. The minimum total capital adequacy ratio required by the Bank of Russia is 8%. If the total capital adequacy ratio of a bank drops below 2%, the Bank of Russia should revoke its banking license.

Newly established Russian banks applying for universal banking licenses should have charter capital of at least RUB one billion. Newly established Russian banks applying for basic banking licenses should have charter capital of at least RUB 300 million.

## 27.15 What are the eligibility requirements for including subordinated instruments in the regulatory capital of a bank?

The implementation of Basel III in Russia is at an advanced stage. In order to qualify as a subordinated instrument and be eligible for inclusion in a bank's Tier I or Tier II capital, subordinated instruments should meet the following requirements:

- the borrower should not be obliged to repay a subordinated loan before the maturity date and the creditor should not be entitled to claim early repayment of the debt.
- the terms and conditions of the subordinated instrument (including the interest rate) should not differ substantially from market conditions.
- the subordinated instrument cannot be prepaid, amended or terminated without prior consent of the Bank of Russia.
- in case of the borrower's bankruptcy, the subordinated loan may only be repaid after the satisfaction of all other creditors' claims.
- if the base capital adequacy ratio of a bank with a universal banking license or if the core capital ratio of a bank with a basic banking license decreases below prescribed threshold levels, or the board of directors of the Bank of Russia approves a plan on the Bank of Russia's participation in the bankruptcy prevention measures of a bank or the banking supervision committee of the Bank of Russia approves a plan on the Deposit Insurance Agency's participation in the bankruptcy prevention measures of a bank, the obligations of the borrower to repay the subordinated loan and to pay interest and penalties are terminated and/or the lender's claims are converted or exchanged into shares (participation interest) in the charter

capital of the bank in the amount necessary to restore the base capital adequacy ratio.

- the subordinated loan may not provide for: (i) any security directly or indirectly provided by the bank or by third parties if the bank agreed to reimburse them for doing so; (ii) a nonmonetary form of settlement (except for a loan made in federal loan bonds); or (iii) a natural person (this does not apply to qualified investors in subordinated bonds), subsidiary or affiliated company as a party to the subordinated instrument.
- subordinated loans must be provided for at least five years. Tier I loans should be provided on a perpetual basis (without a fixed maturity date).

#### 27.16 What is the status of the implementation of the Basel III liquidity coverage ratio (the "LCR") rules in Russia?

Regulation No. 421-P "On the Calculation of the Liquidity Coverage Ratio" dated 30 May 2014 became effective on 1 July 2014. The LCR is aimed at showing a bank's ability to properly perform its payment and other obligations within 30 calendar days from the LCR calculation date in times of economic uncertainty. Currently, only systemically important banks must comply with the LCR and calculate it regularly.

#### 27.17 What is the status of the implementation of the remuneration policy under Basel III in Russia?

The Bank of Russia adopted Instruction No. 154-I "On the Procedure for Assessment of Compensation in Credit Organizations and Rectifying Violations of the Rules on Compensation" dated 17 June 2014, which became effective on 1 January 2015. This instruction regulates the remuneration of the management and employees of banks who affect the risk profile of the bank. This regulation provides that at least 40% of such remuneration should be variable and paid taking into account the level of risk management and overall performance of the employee.

However, banks are allowed to introduce higher thresholds for the variable part of remuneration for a wider range of employees. Banks should prepare remuneration policies, which should be approved by the Bank of Russia.

A bank's maximum credit exposure to a single person or a group of persons associated with the bank (N6) may not exceed 25% of the capital of a bank with a universal banking license or 20% of the capital of a bank with a basic banking license.

In 2022 and 2023, the Bank of Russia temporarily eased certain capital requirements for banks to preserve stability and liquidity of the banking sector. It is expected that standard requirements will be reinstated in 2024.

## 27.18 What accounting and reporting standards are applicable to Russian banks?

Accounting and reporting requirements in Russia are not directly comparable to those in other (especially Western) jurisdictions. All credit organizations in the Russian Federation must prepare Russian accounting standards (RAS), statutory accounting reports and, on a quarterly basis, their financial statements in accordance with the international financial reporting standards (IFRS).

The Bank of Russia develops reporting forms for credit organizations and establishes procedures for preparing reports and filing them. Banks are obliged to submit a lot of information to the Bank of Russia. Certain reports should be filed on a regular (e.g., daily) basis. The nature of the required information may vary depending on the type of operations carried out by a particular credit organization and the licenses it holds. In addition, all credit organizations must disclose information about their affiliates and submit financial statements and accounting reports; they must also provide information on portfolios of assets grouped based on specific criteria, information on asset quality, mandatory ratios and any deviation therefrom, information on derivative transactions, etc.

In 2022 and 2023, Russian banks that have been sanctioned by Unfriendly States have been exempted from mandatory disclosure of certain information, in particular, IFRS financial statements.

## 28. Currency Regulations

In response to international sanctions against Russia, in 2022 and 2023, Russian authorities introduced substantial capital and currency control restrictions that affect cash flows between Russian residents and non-residents. The restrictions were introduced as a response to sanctions imposed by a number of countries, the so-called "**Unfriendly States**"<sup>415</sup>. They primarily apply to settlements between Russian residents and counterparties from Unfriendly States.

The table below outlines the main restrictions. The questions and answers that follow should be considered along with the information in the table.

Russian governmental/regulatory laws, decrees and requirements (in force as of the date of this report) that may materially affect the company	Description of key provisions
Presidential Decree No. 79 dated February 28, 2022	A Russian resident must obtain approval from the Government Commission on Control over Foreign Investments in the Russian Federation (the " <b>Government Commission</b> ") prior to transferring any funds in any currency other than rubles to non-Russian residents under

<sup>415</sup> The list of "unfriendly" states currently includes the following states/territories: Australia, Albania, Andorra, Bahamas, Great Britain (including British Crown Dependencies and British Overseas Territories), member States of the European Union, Iceland, Canada, Liechtenstein, Micronesia, Monaco, New Zealand, Norway, the Republic of Korea, San Marino, North Macedonia, Singapore, United States of America, Taiwan (China), Ukraine, Montenegro, Switzerland and Japan (hereinafter collectively referred to as the "**Unfriendly States**").

	<p>loan agreements (including the provision of such loans, repayments or prepayments of such loans). Certain exemptions are available and their applicability should be verified on a case-by-case basis.</p>
<p>Presidential Decree No. 81 dated March 1, 2022</p>	<p>The decree requires obtaining approval from the Government Commission prior to providing ruble-denominated loans to borrowers from the Unfriendly States and/or borrowers under control of individuals/entities from the Unfriendly States. Certain exemptions are available and their applicability should be verified on case-by-case basis.</p>
<p>Presidential Decree No. 95 dated March 5, 2022</p>	<p>The decree requires prior approval from the Russian Ministry of Finance for making any payment exceeding RUB 10 million (or its equivalent in other currency at the Bank of Russia exchange rate) per month to (i) foreign creditors related to the Unfriendly States, and/or (ii) foreign creditors controlled by individuals/entities from the Unfriendly States. The requirement applies to payments under loans, facilities, guarantees, securities and other financial instruments.</p> <p>In the absence of the Ministry's approval, a Russian debtor is entitled to discharge its obligations by making payments to a special Ruble S-type account opened in the name of a foreign creditor with a Russian bank. There are a limited number of operations that are allowed with respect to funds credited to S-type</p>



	<p>account. In practice this means that the repatriation of such funds out of Russia may not be possible.</p>
<p>Presidential Decree No. 254 dated May 4, 2022          Presidential Decree No. 95 dated March 5, 2022          Presidential Decree No. 737 dated October 15, 2022</p>	<p>Presidential Decrees No. 254 and No. 95 restrict payments of profit (dividends) exceeding RUB 10 million (or its equivalent at the Bank of Russia exchange rate) per month to foreign participants (shareholders) related to the Unfriendly States, or participants (shareholders) controlled by persons related to the Unfriendly States. The same restrictions apply to payments arising out of a decrease in share capital or liquidation of Russian companies.</p> <p>It should be noted that the RUB 10 million threshold is calculated for all obligations towards creditors from the Unfriendly States or controlled by individuals/entities from the Unfriendly States under loans, facilities and other financial instruments, including securities and derivatives in aggregate.</p> <p>If the RUB 10 million threshold is exceeded, distributions (dividends) may be paid only to a special Ruble S-type account opened in the name of a participant (shareholder) with a Russian bank; otherwise, an approval of the Ministry of Finance is required.</p>
<p>Presidential Decree No. 126 dated March 18, 2022</p>	<p>Russian residents are prohibited from investments in the share capital of non-Russian legal entities or partnerships and joint ventures with non-Russian residents until 31</p>

	<p>December 2023. Such investments require permissions issued by the Bank of Russia.</p> <p>The Bank of Russia issues permissions on an individual basis and general permissions for all Russian residents. Based on the general permission announced by the Bank of Russia on 24 June 2022, it is not required to obtain an individual permission in the following cases:</p> <ol style="list-style-type: none"> <li>1) if a Russian resident invests in a foreign entity or joint venture in rubles or in the currency of a state which is does not commit unfriendly actions towards Russia, Russian legal entities and individuals (e.g. Kazakh Tenge); or</li> <li>2) if a Russian resident makes an investment in a foreign entity or joint venture denominated in the currency of an Unfriendly State (e.g., USD or EUR) but the amount of investment does not exceed the equivalent of RUB 15 million at the exchange rate set by the Bank of Russia at the date of payment</li> </ol>
<p>Regulations of the Bank of Russia</p>	<p>Non-Russian residents from Unfriendly States are not allowed to transfer funds from their Russian accounts abroad (the restriction does not apply to transfers in RUB from correspondent accounts of banks from the Unfriendly States). Non-Russian resident individuals from the Unfriendly States who work in Russia are allowed to transfer amounts</p>

	equal to their salary; non-Russian residents from other states may also transfer funds in the amount not exceeding USD one million per month.
Regulations of the Bank of Russia	Russian resident individuals are allowed to transfer to their foreign bank accounts funds in the amount not exceeding USD one million per month. Transfers of dividends received from Russian companies are prohibited.
Regulations of the Bank of Russia	Non-Russian legal entities related to the Unfriendly States are restricted from purchasing foreign currency in Russia (save for certain exemptions).

## 28.1 What currencies can be used for settlement in Russia?

The Civil Code states that the Russian ruble is the national currency and legal tender of the Russian Federation. Although agreements may refer to the ruble value equivalent of a foreign currency, all transactions conducted inside the Russian Federation must generally be settled in rubles. The Civil Code, however, permits the use of foreign currency in cases provided for by law.

Federal Law No. 173-FZ "On Currency Regulations and Currency Control" dated 10 December 2003, as amended (the "**Currency Law**"), establishes the basic rules of the currency regulation and control regime in Russia. This law also mentions cases in which foreign currency can be used to settle transactions in Russia.

## 28.2 Which transactions are subject to currency regulation in Russia?

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

- payments in a foreign currency
- transfers of foreign securities
- ruble transfers between a Russian resident and a non-resident or between two non-residents
- transfers of domestic securities between a resident and a non-resident or between two non-residents
- import and export of rubles and securities
- transfers of funds and securities from the overseas account of a resident into a domestic account, and vice versa
- transfers of rubles and securities between the domestic accounts of a non-resident
- clearing settlements
- settlements between commission agents and principals connected with clearing
- settlements under derivative transactions

### 28.3 Who are considered residents and non-residents under Russian currency control regulations?

The Currency Law divides individuals and legal entities into residents and non-residents. Residents include:

- Russian citizens and other individuals whose permanent place of residence is the Russian Federation on the basis of the Russian residence permit
- legal entities established in accordance with Russian legislation

- representative offices (branches) of Russian legal entities outside Russia
- the government of the Russian Federation, constituent entities of the Russian Federation and municipal units

Non-residents are defined as:

- individuals who are not qualified as residents
- legal entities incorporated outside Russia
- enterprises/organizations that are not legal entities, organized and located outside the Russian Federation
- representative offices or branches of foreign legal entities in Russia

Current restrictions designate residents of Unfriendly States as a separate category of entities. Key restrictions applying to such residents are listed in the introductory table.

#### 28.4 Are there any special currency control rules in Russia?

The following currency control requirements apply to Russian residents:

- Russian residents must comply with restrictions for transactions with counterparties from Unfriendly States referred to in the introductory table, as well as some other specific transactions (e.g., with securities, real estate, shares or participatory interests in Russian legal entities, payments for gas, IP rights, aircraft lease and etc.)
- generally, Russian companies must remit all foreign currency export proceeds to their Russian bank account(s) (repatriation of currency proceeds), subject to certain exceptions. However, the repatriation requirement temporarily does not apply.

- most Russian residents are prohibited from dealings in foreign currencies with other Russian residents, subject to some exceptions
- foreign currency may only be purchased or sold by authorized Russian banks
- cash exports are subject to restrictions
- when a Russian company or individual opens an overseas account, they must notify the Russian tax authorities and present regular reports on the cash flow in such accounts
- the operation of an overseas account by a Russian resident is subject to certain restrictions

### 28.5 What are the requirements under Russian Currency Law to transactions between local and foreign counterparties?

A Russian counterparty (which is not a bank) must comply with certain requirements in connection with payments to a foreign lender or another counterparty (export/import transactions).

On 1 January 2018, the Instruction of the Central Bank of Russia No. 181-I dated 16 August 2017 became effective, which canceled the requirement for transaction passports and currency operation certificates, and introduced a new procedure under which banks are required to:

- records of a contract with an authorized bank (which, in most cases, is an account bank of a resident), if the amount of liabilities under a relevant import or loan contract exceeds RUB three million or RUB 10 million under export contracts
- provide supporting documents related to currency operations (transactions within one contract)

Russian residents are required to submit a currency operation code and supporting documents in relation to currency operations in excess of RUB 600,000. The requirement is applicable to currency operations involving rubles and foreign currencies.

## 28.6 What rules are applicable to foreign accounts of Russian residents?

When a Russian company or individual opens an account with an overseas bank or other financial institution, they must notify the Russian tax authorities and provide regular reports on the cash flows in such accounts, except where an individual is a resident who spent more than 183 days abroad.

The Currency Law contains a list of permitted operations that Russian residents can perform using their overseas accounts.

Certain groups of individuals (state officers, certain officials at state corporations, and members of the board of directors of the Bank of Russia, their spouses and underage children) are restricted from maintaining bank accounts with foreign banks.

## 28.7 What rules are applicable to all Russian residents?

Russian residents may transfer the following funds to their overseas accounts:

- payments under foreign trade contracts, if the proceeds are used for repayment under a loan agreement with an entity located in a member state of the EAEU or in a foreign state participating in the automatic exchange of financial information
- proceeds of foreign exchange transactions involving funds on the overseas account
- other cases envisaged by the Currency Law

If the overseas account is opened with a foreign bank or a financial institution located in a member state of the EAEU or in a foreign state participating in the automatic exchange of financial information, the Russian resident may transfer the amounts borrowed under a loan agreement with an entity located in the EAEU, or in a foreign state participating in the automatic exchange of financial information, to such account. The term of such loan should exceed two years.

As part of repatriation requirements, Russian residents should provide the following information about foreign trade contracts to the authorized banks:

- the expected term for the receipt of foreign currency and/or Russian rubles from non-residents for performance of obligations under foreign trade contracts with such non-residents, in particular, for performed works, provided services, transfer of information or intellectual property
- the expected term for performing obligations by non-residents, in particular, performance of work, provision of services, transfer of information or intellectual property, advance payments and conditions for return of specified advance payments

## 28.8 What rules are applicable to Russian resident individuals?

Alongside what is generally allowed under the Currency Law, Russian resident individuals can receive the following funds on their overseas accounts from non-residents:

- funds from their Russian accounts not exceeding USD one million or equivalent in other currency per month, other than dividends
- funds received from Russian companies
- salary and other employment-related payments



- sums awarded under foreign court judgments (except for international commercial arbitration)
- pensions, scholarships, alimony and other social payments
- insurance payments
- refunds and payments made in error
- income from the sale of precious metals from residents' accounts with foreign banks

If a Russian resident individual has an account with a foreign bank located in a member state of the EAEU, or in a foreign state participating in the automatic exchange of financial information, such individual may receive funds on such overseas account without restrictions.

## 28.9 What are the penalties for violating Russian currency regulations?

The Bank of Russia and the Russian government, including the Federal Tax Service and the Federal Customs Service, supervise the currency control system. Currency control is executed through agents of the currency control regime, including authorized banks and professional participants of the securities market.

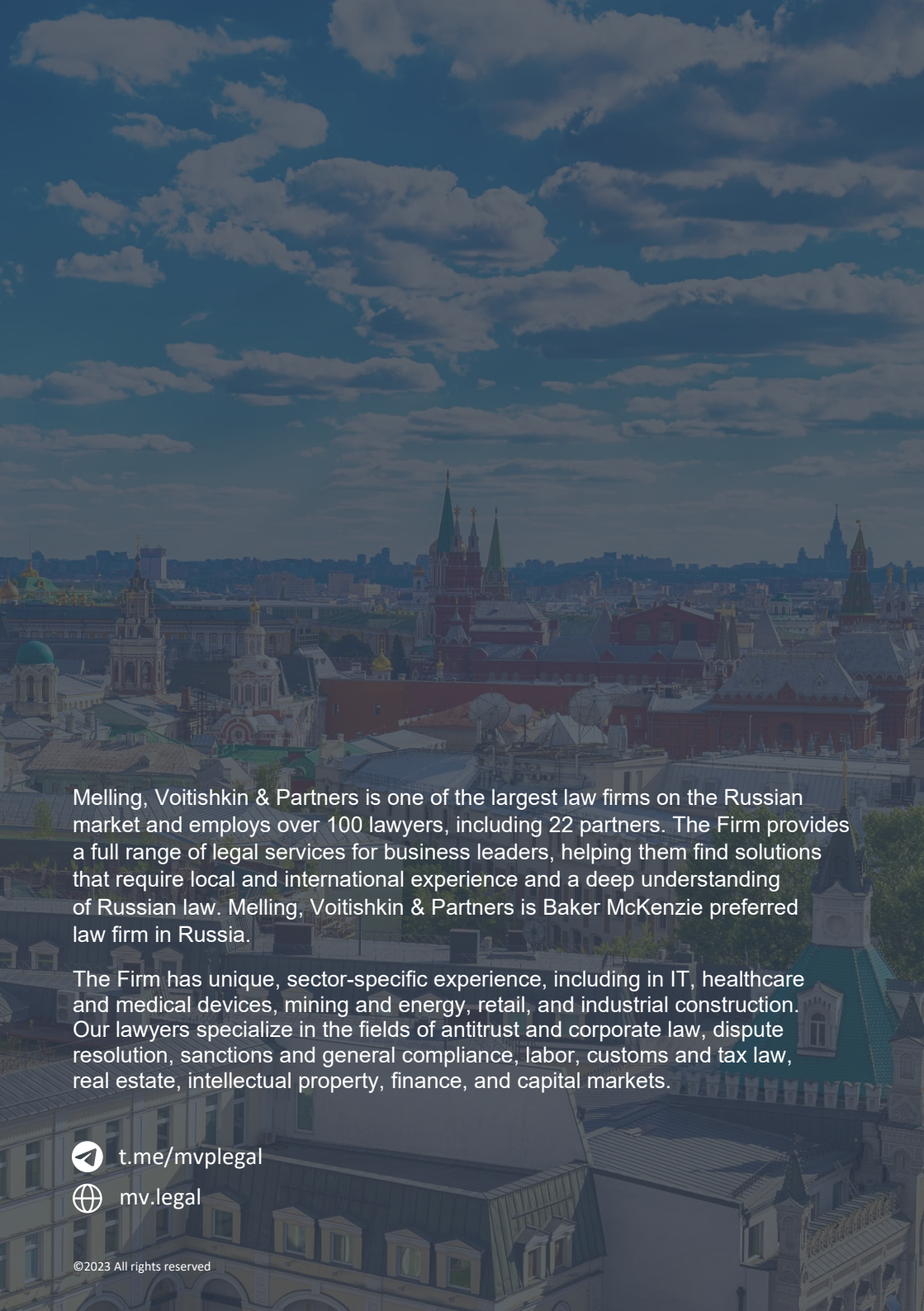
Violation of Russian currency control requirements may entail civil, administrative or criminal liability. Administrative penalties for the violation of Russia's currency control requirements include various fines, which may be imposed on individuals, legal entities and company executives. The fine amount may be as high as the entire value of the transaction performed in violation of the currency control requirements. Penalties also apply to transactions executed via various electronic means of payment. Other sanctions include the revocation of licenses (primarily applicable to banks) and imprisonment.

Illegal currency transactions entail a fine ranging from 20% to 40% of the transaction amount.

Violation of currency control requirements includes non-compliance with the terms for the submission of reports on currency operations to a Russian authorized bank. The currency control legislation provides for differential fines of up to RUB 3,000 for individuals and up to RUB 50,000 for legal entities depending on the type of violation. In cases of repeated violation, the fine may reach up to RUB 10,000 for individuals and up to RUB 150,000 for legal entities. The fine for the failure to timely submit the report on the cash flow in overseas accounts for the first time is the same, but for a repeated violation the fine can reach up to RUB 20,000 for individuals and up to RUB 600,000 for legal entities.


Failure to notify the Russian tax authorities of the opening, closing, or a change of details of an overseas bank account on time entails a fine of up to RUB 1,500 for individuals and up to RUB 100,000 for legal entities. Failure to notify the Russian tax authorities of these actions will result in a fine of up to RUB 5,000 for individuals and up to RUB one million for legal entities.


In addition, failure to comply with the repatriation requirements may result in the imposition of fines in the amount of one-one hundred and fiftieth of the Bank of Russia's key rate (currently, 7.5% per annum) accrued daily on proceeds not received; or up to 10% or 30% of proceeds if such RUB or USD proceeds, respectively, were not received under a trade contract. For company executives the amount of the fine is up to RUB 30,000. Failure to return foreign currency proceeds in an amount of more than RUB 100 million may lead to a fine of up to 100% of the transaction amount or to criminal liability for the company's senior management.



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