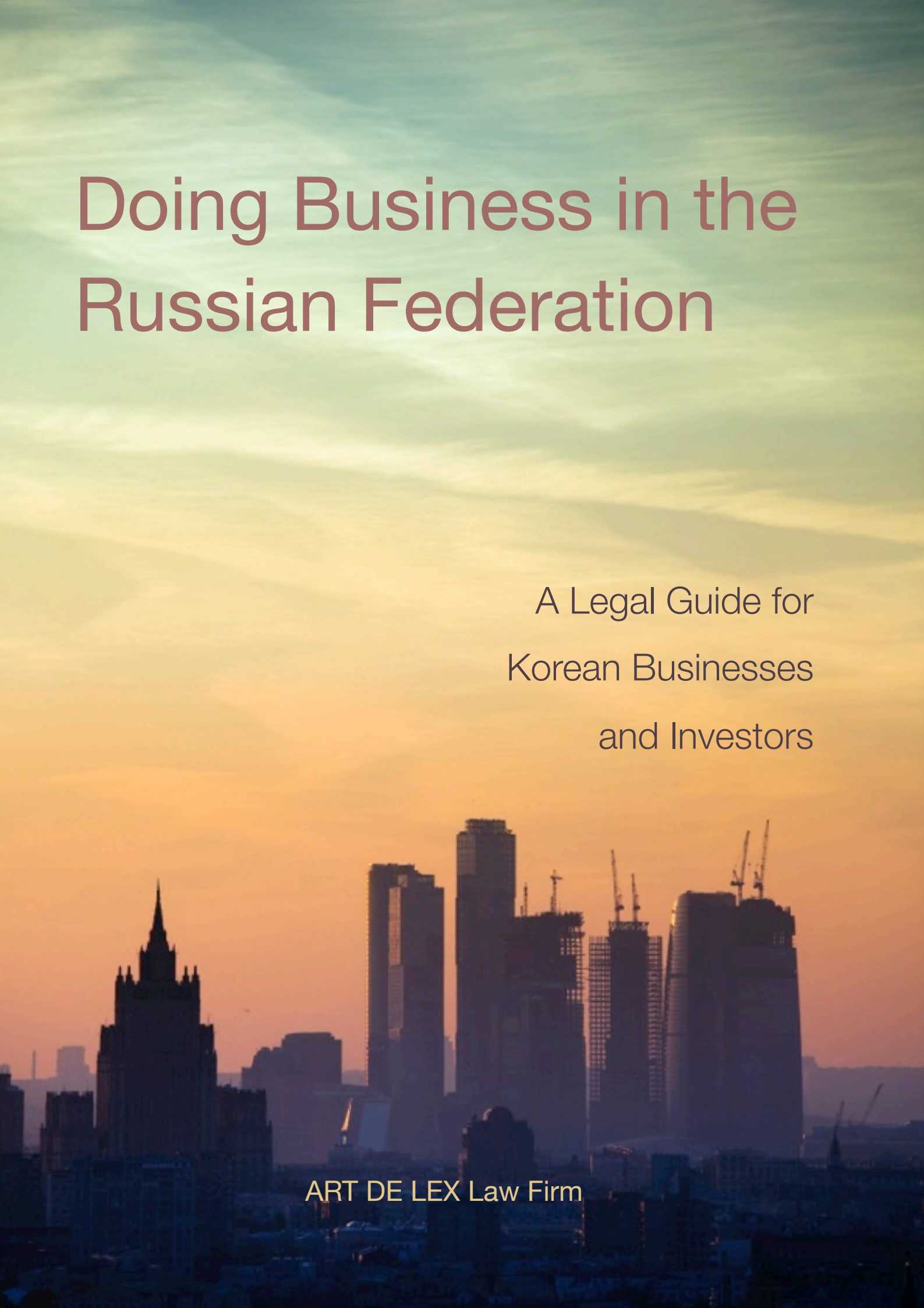
Doing Business in the Russian Federation

A Legal Guide for Korean Businesses and Investors



ART DE LEX Law Firm

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ART DE LEX

This book provides a basic overview of Russian laws and regulations that are most relevant to South Korean companies and investors with opportunities and interests in the Russian Federation. As such, it is presented entirely and without exception for informational purposes only, and must not be interpreted as legal advice by the ART DE LEX Law Firm or any of its members.

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Preface

As globalization brings nations and people closer together, it is inevitable that the creative cultures and dynamic economies of the Republic of Korea and the Russian Federation will continue to embark upon strong, innovative, and successful financial and commercial relationships. As this book points out, Korean investment in Russia is already a significant economic factor, and we expect this trend to continue to produce highly beneficial results for both countries.

Doing Business in the Russian Federation: A Legal Guide for Korean Businesses and Investors is intended to introduce businesses and investors in South Korea to the legal infrastructure that the Russian Federation has constructed to support the realization of the many attractive opportunities offered in 21st century Russia. The following pages not only outline the basic legal principles that govern the major activities of business life in Russia; but they also present what we hope is an honest and practical guide to using Russian laws and regulations, at all levels of government, as creative tools to help entrepreneurs to achieve their goals.

This book was written by the partners and associates of the ART DE LEX law firm, under the coordination of our firm's South Korea Desk. For more information about ART DE LEX and our services to Korean businesses and investors, please consult the final chapter of this book.

Dmitry Magonya

Managing Partner

ART DE LEX Law Firm

Moscow, Russia

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1. Introduction

1.1. The Russian Federation – an overview

Russia is one of the wealthiest countries in the world. Its wealth consists not only of vast geographical areas and reserves of natural resources, but Russia is also rich in its potential, which requires stable business links and support by investors.

The Russian Federation creates a most favorable environment for success in a wide range of businesses. Current initiatives include:

- improvement of the legal and regulatory framework;
- benefits granted to entrepreneurs in most underdeveloped industries;
- ongoing care for the modernization and growth of the Russian economy;
- cooperation with foreign partners; and
- efforts to achieve and promote internationally accepted standards in business communication.

All of these initiatives contribute to making Russia an advantageous jurisdiction for foreign investors and businesses.

In particular, according to the in-depth report, *Doing Business 2013*,[1] published by the World Bank, the Russian Federation has improved its business environment, as compared to the previous year, and is currently ranked 112th in terms of favorable conditions for business.

Russia continues to move up as a business-friendly environment, ranking most recently in 11th place for reliability of contract performance. This is due, in large part to the high efficiency of contract enforcement remedies in Russian law and expeditious judicial review of contract disputes.

Doing Business also examined the Russian business climate at the regional level, which enables a comparison of the business environment in the larger Russian cities. This clearly shows a widespread investment appeal that is not restricted to the Moscow region. In fact, in 2012 entrepreneurs who enjoyed the greatest advantages in their businesses were from Ulyanovsk, Saransk, and Vladikavkaz, even over larger markets such as Yakutsk, Novosibirsk, and Moscow.

Russia has emerged as a major participant in international trade. Russia's largest economic partners are China, Germany, France, Italy, Korea, India, and Brazil. This demonstrates that the Russian

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[1] Tenth in the series of the *Doing Business* Project, as published by the World Bank and the International Finance Corporation (IFC, a World Bank company): https://openknowledge.worldbank.org/handle/10986/11857.

Federation is recognized in the world arena as a reliable trading partner. Moreover, international trading partners enjoy the additional benefits of establishing international links while active in the Russian Federation.

Based on the above, it is clear that Russia provides all the necessary elements for easy start-ups and progressive growth of businesses. However, like any other country, Russia has its peculiar features, which must be considered in order to run businesses successfully. This book provides useful information about the legal regulations regarding business operations in Russia, so that foreign investors and business leaders will have a comprehensive and accurate understanding of the realities of doing business in the Russian Federation.

1.2. The history of relationships between Russia and Korea

Since the establishment of diplomatic relationships between the Russian Federation (the former USSR) and the Republic of Korea in 1990, Russian-Korean links have rapidly grown and covered almost all the possible fields of economic cooperation.

Since that time, the two countries have created a wide-scope bilateral legal framework for cross-border contracts. More than 50 bilateral agreements have been executed in the field of trade, investment guarantees, the fishing industry, double taxation avoidance, cooperation in the military technical field, the peaceful use of atomic energy, cultural exchanges, and others. These include, for example: the Declaration on Assistance in the Development of Trade and Economic, and Scientific and Technical Cooperation (28 September 1995); and the Agreement on Cooperation in Gas Industry (17 October 2006). At present, a number of other intergovernmental and interdepartmental agreements are being drafted.

Mutual beneficial economic cooperation between Russia and the Republic of Korea focuses on large-scale investment projects connected with development of Russia's natural resources. There are also projects under development that provide:

- large-scale export of Russian liquefied gas, petroleum, and electric power to South Korea;
- cooperation in the automobile and shipbuilding industries;
- peaceful uses of atomic energy;
- cooperation in information technologies and communications, and the financial sector;
- the construction of infrastructure facilities for the 2014 Winter Games in Sochi; and
- space exploration.

A large number of joint ventures already are operational. There are also several major projects of economic cooperation, including, for example:

- the construction of a gas pipeline running between through the Russian Federation, China, and the Republic of Korea;

- the construction, launch, equipping, rigging and supply by the South Korean company, Daewoo Shipbuilding & Marine Engineering of ARC7 ice-class tankers for liquefied gas shipment under the Yamal LNG Project; and

- the commissioning of the first plant in Russia producing SF6-gas insulated high-voltage metal-clad switchgears.

Large-scale investment projects sponsored by the South Korea, both completed or implemented and under implementation in the Russian Federation in 2012, included:

- LG Electronics home appliance plant in Ruza, Moscow Region (US$ 150 million);

- Samsung Electronics RUS Kaluga (SERK) home appliance plant in the Borovsk District, Kaluga Region (US$ 137 million);

- Hyundai Motor Manufacturing Rus automobile plant in Kamenka, Leningrad Region (approximately €500 million);

- Lotte Hotel Moscow: multi-functional hotel and retail complex with 304 hotel rooms (approximately US$ 350 million);[2] and

- Hyundai bus and truck assembly plant in the Kemerovo Region, a joint venture of Hyundai and Kuzbass-Auto (more than US$ 14.5 million)

According to the Russian Trade Mission to Seoul, the foreign trade turnover of the Russian Federation with the Republic of Korea in the first six months of 2013 totaled US$ 11.3 billion. Russian exports increased by 8.2% over the same period in 2012, and totaled US$ 5.7 billion; while imports from the Republic of Korea increased by 1.8% and totaled US$ 5.6 billion.

A considerable portion of capital investments by South Korean companies, in 1,247 projects totaling approximately US$ 1.9 billion, originated from direct contacts at the regional level. The South Korean investments were primarily directed to the industrial and fuel and energy sectors of the Russian economy. Russian-Korean collaboration in these fields has included the development of energy carrier deposits in Siberia and the Far East, natural gas in the Irkutsk Region, coal fields in Yakutia and Buryatiya, and oil and gas deposits on Sakhalin island and the West Kamchatka shelf.

South Korean interest in natural resources is focused not only on development and shipment of oil and oil products, but also on the development of aquatic biological resources, in particular commercial fishing.

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[2] Lotte Holding Group intends to construct five more hotels in Moscow, St. Petersburg, Vladivostok and Yekaterinburg, as well as a retail and entertainment center in St. Petersburg.

Relations between Russia and the Republic of Korea in the fisheries sector are based on the Agreement of 16 September 1991 between the USSR Government and the Government of the Republic of Korea. Subsequently, Korean fishing vessels obtained the right to develop aquatic biological resources in the Russian exclusive economic zone, based on catch quotas offered to them in return for payment of annual fees.

All issues of the bilateral cooperation in commercial fishing and other aquatic biological resources exploitation are reviewed during annual sessions of the Russian-Korean Fishing Committee.

Being highly interested in development of the resources in the Russian exclusive economic zone, the Korean entities are continuously seeking to increase the number of quotas offered to them by the Russian authorities. The Korean commercial fishing industry has proposed, as an alternative to the current quota regime, to invest in Russia's fishing industry up to an annual amount of US$ 5 million

Following the 22nd session of the Russian-Korean Fishing Committee, held on 16-18 July 2013, the number of quotas previously offered to the Republic of Korea for development of aquatic biological resources in the exclusive economic zone of the Russian Federation was increased. In 2013, the permitted volume of aquatic biological resources for development will total 61.4 thousand tons.

In addition, alleged violations by Korean companies and investors in the Russian fishing industry of Russian laws about foreign investments in strategic industries emerged in 2013 as an acute issue between the two countries.

Currently, Korean investors tend to focus on infrastructure and large-scale regional industrial projects. For example, during negotiations in May 2012 between the Governor of the Primorsky Krai V. V. Miklushevsky and Chairman of the Korea-Russia Association Chang Chi Khek, the parties discussed the possibility of investing South Korean capital in large-scale infrastructure projects in the Russian Far East, including the construction of a high-speed railway.

We expect that more sophisticated scientific and technical cooperation will become a priority for investment cooperation between Russia and the Republic of Korea. Attraction of South Korean investments in this field would not only enhance the unique scientific capital and technical potential of Russia, but also would capitalize on the Korean genius for adaptive innovation in research and development. This could create a foundation for a Russian-Korean joint promotion of new, highly sophisticated products in the global market.

1.3. Russia's accession to the WTO and its impact on trade and economic relations with the Republic of Korea

The Russian Federation officially joined the World Trade Organization on 22 August 2012. The World Trade Organization (WTO), which is the successor to the General Agreement on Tariffs and Trade (GATT), in effect since 1947, came into being on 1 January 1995. The WTO's mission is to regulate trade and political relations of its members, based on the set of Agreements of the Uruguay Round of Multilateral Trade Negotiations (1986-1994). These documents constitute the basis of present-day international trade.

The World Trade Organization has 150 member countries, and in the coming years, this number will be growing. Almost every country that seeks to create a modern and efficient economy and to be involved in the equitable participation in world trade, aims to become a WTO member; and Russia is no exception.

The purposes of Russia's accession to the WTO are:

- to gain better (as compared to existing) and non-discriminatory conditions for Russian products to enter foreign markets;
- to obtain access to the international mechanism of commercial dispute settlement; to create a more favorable climate for foreign investments as a result of bringing the legislative system in line with WTO standards;
- to expand possibilities for Russian investors in WTO member countries, especially in banking;
- to create an environment to increase the quality and competitiveness of Russian products as a result of increased flow of foreign goods, services and investments to the Russian market;
- to participate in the development of international trade rules taking into account its own national interests; and
- to improve Russia's global image as a full-fledged member of the international trade process.

The WTO Agreements, and the terms of Russia's accession, commit Russia to liberalize its trade and investment regime. This will affect the dynamics of the direct foreign investment flow to the national economy, producing an expected growth in foreign investments in the Russian Federation.

Members of the 2012 Russia Forum, held on 11 January 2012 in Seoul, discussed Russia's membership in the World Trade Organization and associated prospects for Russian-Korean cooperation, with special emphasis on investment projects of the Northern Caucasus and Far Eastern Federal Districts.

Russia's WTO accession has had a positive influence on trade and economic relations with foreign states, including South Korea.

For example, the abolition of export duties upon Russia's accession to the WTO (a reduction to 0% per the Schedule of Concessions and Commitments on Goods) will increase the export of raw fish for fish delicacies to the Republic of Korea. Reduction of import duties for numerous types of raw fish from 10% to 3-8% will allow inexpensive Korean products to enter the Russian marketplace.

Russia's WTO obligations also will have a positive impact on increasing the supplies of automobiles and automobile components produced in the Republic of Korea and imported into the Russian Federation.

Russia's accession to the WTO also will improve the investment climate and increase the influx of foreign capital, including from South Korea. The protection of the rights and interests of foreign entrepreneurs will become more secure. Compliance with WTO rules and procedures will become an important tool for reduction of corruption and enhancement of investment appeal in the Russian market. As a result, foreign investment flow will increase, and capital outflow from the country will decrease.

For example, certain benefits may be granted to foreign investors according to the tax and customs laws of the Russian Federation. Pursuant to Article 150 of the Tax Code of the Russian Federation, tax benefits include a tax exemption for technological equipment, components, and spare parts thereto, that are imported into the customs territory of the Russian Federation as a contribution to charter capitals of companies. They also receive duty relief under the ordinance of the Russian Government No. 883 "On Relief for Payment of Import Customs Duty and Value Added Tax on Goods Imported by Foreign Investors as a Contribution to Charter (Pooled) Capital of Foreign Invested Enterprises" (23 July 1996). This law provides that any goods imported to the customs territory of the Russian Federation as a contribution to charter capital shall not be subject to any customs duties; provided that such goods: are not subject to excise taxes; relate to property, plants and equipment; and are imported within the time frame prescribed by constitutional documents for charter capital formation.

As well, Federal Law No. 160-FZ "On Foreign Investments in the Russian Federation" (9 July 1999) provides for other customs and tax benefits to foreign investors involved in priority investment projects. Certain investment incentives were granted in the automobile and aircraft industries.

The Russian Federation protects foreign investments that are subject to international treaties. Bilateral investment agreements of the Russian Federation, *inter alia*, contain protections with respect to issues such as:

- equality between aliens and nationals;
- the most favored national remedy and withdrawal therefrom;
- guarantees and indemnity rules in the event of expropriation;
- provisions on free transfer of income and profit; and
- dispute settlement procedures.

Thus, the terms of Russia's accession to the WTO, namely the reduction of customs duties and prohibition of protectionism of domestic manufacturers, will have a favorable impact on the trade and economic cooperation between the Russian Federation and foreign countries.

2. The Russian Legal and Judicial System

2.1. The form of government of the Russian Federation

According to the Constitution, Russia is a federation and, formally a semi-presidential republic, wherein the President is the head of State and the Prime Minister is the head of government. The Russian Federation is fundamentally structured as a representative democracy.

In the Russian Federation, state power is divided into legislative, executive and judicial branches, and the bodies of such branches are independent.

The Federal Assembly - the parliament of the Russian Federation - is the representative and legislative body of the Russian Federation. The Federal Assembly has two chambers: the Federation Council and the State Duma.

The executive power of the Russian Federation is exercised by the Government of the Russian Federation. The Government of the Russian Federation comprises the Chairman of the Government of the Russian Federation, deputies of the Chairman of the Government of the Russian Federation, and federal ministers. The Chairman of the Government of the Russian Federation is appointed by the President of the Russian Federation with the approval of the State Duma.

Justice in the Russian Federation is administered only by the courts. Judicial power is exercised by means of constitutional, civil, administrative, and criminal proceedings. At the present time, administrative proceedings are provided in the Constitution, but there is no special legal instrument by which to enforce their rulings. The project of the Administrative Procedural Code recently has been submitted to the State Duma and is expected to be approved soon.

The Head of the State is the President of the Russian Federation. Although legally separated from all the branches of government, the President is, nonetheless, closer to the executive branch. The Constitution gives the President a number of powers that he can use in routine fashion to influence the Government's work. The President has, for example, significant constitutional prerogatives in deciding the Government's composition and work procedures. As well, he has the right independently to decide whether to dismiss the Government. As the commander in chief and chairman of the Security Council, the President has the right to preside over Government meetings and issue instructions to the Government and the federal executive bodies.

The President is elected by popular vote for a six-year term and may serve no more than two consecutive terms of office. The last election was held in 2012.

2.2. The constituent entities of the Federation and local authorities

There are 83 constituent entities in the Russian Federation. They exercise those powers that are not specifically reserved for the Federal Government, or which are exercised jointly. Thus, the regional

governments manage regional property, establish and execute regional budgets, establish and collect regional taxes, and maintain law and order.

There are very few shared powers between the regional and local authorities. According to Article 130 of the Russian Constitution, local self-government in the Russian Federation provides for the independent resolution by the population of issues of local importance. These local powers and functions are exercised by citizens through means of referendum, elections, and other forms of direct expression of their will, as well as by elected local officials and other bodies of local self-government.

It is important for foreign investors to know that regional legislation often concerns investments relations. When a foreign investor is considering investing in a particular Russian region, it is important to examine not only the relevant federal law, but also the relevant regional laws. As the various regions of Russia compete to attract foreign investors, each has passed its own laws, regulations, and other legal measures aimed at improving the particular social and economic conditions in their region.

2.3. The structure of court system and law enforcement system in Russia

The Federal Courts are the Constitutional Court of the Russian Federation, Courts of General Jurisdiction, and the Arbitration Court. There also are systems of courts for the constituent entities, which range from constitutional courts down to the level of local justices of the peace.

The courts of general jurisdiction hear mostly civil disputes with natural persons as parties thereto, such as family law and inheritance cases, labor disputes, and individual complaints against actions of state officials. The procedures in the courts of general jurisdiction are defined by the Civil Procedural Code of the Russian Federation.

The system of the general jurisdiction judiciary consists of justices of the peace (on the lowest level), city district courts, regional courts, courts of the republics and autonomous areas of the Russian Federation, district courts of military (navy), and the Supreme Court of the Russian Federation.

The Arbitration Court system consists of four levels:

- the first instance court for commercial disputes, which is one of the 81 regional Arbitration Courts;
- 20 appellate courts hear appeals from the regional Arbitration Courts;
- the courts of cassation are formed by ten federal district courts; and
- the Supreme Arbitration Court of the Russian Federation is the highest court, which oversees the supervisory procedure (the *nadzor*)

The procedural rules for the Arbitration Courts are set out in the Arbitration Procedural Code of the Russian Federation (the APC). Generally, these rules are based on the general principles adopted throughout continental Europe.

In November, 2013, the State Duma passed a bill providing for the abolition of the Supreme Arbitration Court. This law had been introduced by the President of the Russian Federation Vladimir Putin and it is expected that this reform will be completed in the beginning of 2014. The Supreme Court of the Russian Federation would become the highest level of general jurisdiction and state Arbitration Courts. The supervisory procedure will be exercised by the single Supreme Court.

On 1 August 2013, the Intellectual Property and Copyright Court began its operations in Moscow as part of the system of arbitration proceedings. The Copyright Court reviews disputes regarding copyrights (as established by the copyright holder) and the violation of rights.

The Constitutional Court resolves issues relating to compliance of federal and regional laws and regulations with the Russian Constitution; but this institution does not concern the matters of international investors.

Arbitration is an alternative means to resolve disputes. The dispute may be considered in an ad hoc arbitration or in an institutional arbitration tribunal, inside or outside the Russian Federation, depending on the provisions of the arbitration clause.

Some categories of disputes may not be heard through arbitration, however. For example, disputes arising from administrative relations (*e.g.*, tax and customs) or which fall within the exclusive jurisdiction of the Arbitration Courts (*e.g.*, disputes arising from bankruptcy proceedings or other disputes specifically reserved for the APC) may not be referred to arbitration.

One of the most prominent arbitration centers is the International Commercial Arbitration Court at the RF Chamber of Commerce. The legal basis of its operations is the Federal Law "On International Commercial Arbitration" (7 July 1993). The procedural rules stated in this legislation are identical to the provisions of the Model UNCITRAL Law.

Law enforcement in Russia falls under the responsibility of a variety of agencies. The Russian police is the primary law enforcement agency, under the Ministry of the Interior. The Investigative Committee of Russia is the main investigative agency. The Federal Security Service is the main domestic security agency.

2.4. The average time for trial of an action in commercial courts

The Arbitration Procedural Code regulates terms of trial in Arbitration Courts, but, as a practical matter, these are not observed. The stages of civil proceedings in Arbitration Courts are determined by the APC. The main stages are:

- preparation for a trial, which may take up to two months (§§134-135 APC);
- trial proceedings (generally, a case must be considered in the arbitration court within three months);
- appellate proceedings (one month, §267 APC);

- cassation proceedings (one month, §285 APC); and
- proceedings for review in the supervisory procedure (from one to, roughly, six months if the application ifor review is accepted).

In all, it takes approximately one year for a commercial dispute to pass from the court of first instance to the Supreme Arbitration Court, if there is no remand.

2.5. Public institutions that protect foreign investors' rights in Russia

The Federal Law "On Foreign Investments in the Russian Federation" (1999) is the basic law to protect the rights of foreign investors in Russia. In addition, investor investments and rights are protected by the following federal laws:

- "On Procedures of Foreign Investments in Business Entities of Strategic Importance for Russian National Defense and Security" (2008);
- "On Investment Activity in the Russian Federation" (1999);
- "On Investment Activity in the RSFSR" (1991); and
- "On Investment Activity in the Russian Federation in the Form of Capital Investments" (1999).

Statutory regulations for the protection of Korean investors' rights are addressed in the following bilateral intergovernmental agreements:

- "Agreement between the Government of the Union of Soviet Socialist Republics and the Government of the Republic of Korea on Promotion and Mutual Protection of Capital Investments" (1990); and
- Convention between the Government of the Russian Federation and the Government of the Republic of Korea "On Avoidance of Double Taxation in Respect of Income Taxes" (19 November 1992).

At present, several government bodies in Russia, in various forms, protect the rights of foreign investments in the Russian Federation. Additional legal protections are being developed.

Thus, the Financial Markets Service became a subdivision of the Central Bank on 1 September 2013. Before then it was an independent agency. The Central Bank directly exercises the powers of a securities market regulator in Russia. The Financial Markets Service specifically protects the rights and legal interests of shareholders and investors in financial markets.

First and foremost, protection is exercised through legal liability on the part of persons who violate a foreign investor's rights. Cases may be referred for criminal prosecution. The General Prosecutor's Office, which is the highest in the hierarchy for the supervision of prosecutions, includes a special subdivision, the Department for Entrepreneurs' Rights and Compliance Monitoring, which specializes in the identification and suppression of any breaches of the rights and legal interests of entrepreneurs.

Protection of foreign investors' rights in Russia is extensively promoted by the Foreign Investors' Ombudsman within the Business Ombudsman's Office. The Ombudsman exercises general control over compliance with entrepreneurial rights; however, its operations are mostly focused on legal support to entrepreneurs, which interests need to be protected from any unlawful actions of federal and local government authorities. When deciding to establish the Ombudsman institution in 2012, the former President Dmitry Medvedev specified that the problem of protection of foreign investors' rights is a key government interest.

In addition, the Foreign Investment Advisory Council (FIAC) has operated under the Government of the Russian Federation since 1994. The FIAC is a permanent body, which includes major foreign investors operating in the country. The Chairman of the Russian Government serves as Chairman of the Council. A plenary meeting of the Advisory Council is held once a year. At these meetings, the members identify issues faced by foreign investors in Russia, and establish working committees to develop options to resolve these issues.

2.6. The structure of the Executive Branch

Based on the federalism principle, the system of executive authorities in Russia has both vertical and horizontal hierarchies. Executive authorities are divided into federal executive authorities and the executive authorities of constituent entities within Russia.

Federal executive authorities are headed by the Government of the Russian Federation, which reports to President of the Russian Federation. This system comprises ministries, services, and specialized agencies, and their local divisions.

According to the Constitution of the Russian Federation, the superior executive governmental authority in Russia is the Government of the Russian Federation, which is comprised of a Chairman, Deputy Chairmen, and federal ministers. The Government is responsible:

- to implement domestic and foreign policies of the Russian Federation;
- to regulate the social and economic fields;
- to ensure unity of the executive branch in Russia;
- to control the performance of its bodies;
- to establish federal target programs and implementation of the same; and

- to exercise the right to legislative initiative.

The Government holds special powers in specific fields. Firstly, these powers are in the economic field, where the Government:

- regulates economic processes;
- ensures common economic space, free economic activity, and the free movement of goods, services and financial resources;
- forecasts the social and economic development within Russia;
- implements the single financial, lending, and monetary policy;
- develops and implements programs of development of priority economic branches;
- develops and implements governmental, structural, and investment policy;
- manages federal properties;
- develops and implements the governmental policy in the field of economic, financial, and investment cooperation; and
- exercises overall management of customs procedures.

One of most important responsibilities of the Government is to propose legislation.

The Government adopts binding acts with respect to ordinances, which are of a regulatory nature, as well as executive orders, which implement them.

Ministries, being sections within the Russian Government, are federal executive authorities, which implement governmental policies and exercise management in the specified fields of governmental activity. Each ministry also coordinates the operations of federal executive authorities in its respective area of responsibility. A ministry acts on the basis of a single authority, and its minister bears personal liability for any failure to perform duties imposed on his or her ministry.

The system of executive authorities in the constituent entities of the Russian Federation is similar. Although there are two distinct levels of executive authorities, under the Constitution of the Russian Federation, federal executive authorities and executive authorities of the constituent entities together form a single, integrated executive system within the Russian Federation.

The Government answers to the President of the Russian Federation for its performance. The President of the Russian Federation may preside over meetings of the Russian Government, and appoints members of the Government. The Chairman of the Government is appointed with the consent of the State

Duma, the lower chamber of the Russian parliament, but may be dismissed solely by the President. The President also directly manages certain ministries, such as the Ministry of Defense and the Ministry of Foreign Affairs.

Subordination of federal ministers to the President of the Russian Federation must not distract them from their performance for the Russian Government. They participate in meetings of the Government and vote in making decisions, implement instructions of the Government, and bear the shared responsibility for performance of the Russian Government.

Ministries supervise federal services and federal agencies having narrow powers to supervise or provide public services in a certain field.

The system of federal executive authorities also includes their local bodies, which are subdivisions of federal executive authorities. The local bodies represent their respective federal executive authorities in regions and municipalities. Local bodies act under the guidance of respective federal executive authorities. With respect to matters referred to the competence of Russian constituent entities, the local offices of the federal executive authorities act in coordination with their counterparts for the constituent entities.

Besides federal authorities, the Russian executive branch also includes executive authorities of Russian constituent entities. These authorities are established by the Russian constituent entities themselves, but in strict compliance with constitutional fundamentals and principles of the Russian Federation, and with the general principles of organization of governmental authorities, as prescribed by federal law.

The system of executive authorities consists of the senior executive of a Russian constituent entity (Mayor, Governor, President, Head of Administration), a Government, various branch-specific executive authorities of the constituent entity, and local executive bodies of the constituent entity. The branch-specific and functional executive authorities of a Russian constituent entity (ministries, committees and other bodies) are subordinated to the senior executives of that constituent entity, and to the Government of that Russian constituent entity, which form and define their responsibilities and authority.

2.7. Regulatory authorities contacted by foreign investors in Russia

Investment activity by foreigners in Russia is regulated by registration, financial, tax, and customs authorities. Depending on the line of business, foreign investors come in contact with specialized regulating and supervising authorities (*e.g.*, *Rospotrebnadzor, Rostekhnadzor*).

According to Russian law, a representation or a branch of a foreign company must be accredited to carry on business in Russia by the State Registration Chamber under the Ministry of Justice of the Russian Federation. In certain cases, a specialized agency (*e.g.*, the Federal Air Transport Agency), competent in regulation of the business to be conducted by a prospective representation or a company, may act as an accreditor.

If a company is to be incorporated in the Russian Federation with involvement of foreigners, it will be necessary to contact the Federal Tax Service of the Russian Federation, which is responsible for state registration of legal entities. In addition, any matters connected with operations of joint-stock companies (*e.g.*, issue and registration of shares) are controlled by the Financial Markets Service of the Bank of Russia.

The Ministry of Finances of the Russian Federation acts as a regulator in the field of taxation and interprets financial and tax laws. Tax authorities (the Federal Tax Service of the Russian Federation and its local subdivisions) monitor the correct payment of taxes and maintain records of persons' payable taxes and levies.

In connection with the implementation of anti-money laundering legislation in the Russian Federation, foreign investors in Russia, where so provided for by law, must contact the Federal Financial Monitoring Service when making any major transactions or certain specified deals.

Entrepreneurs importing to and exporting goods from the Russian Federation must contact the Federal Customs Service of the Russian Federation. In addition to control and recording of imported and exported goods, the Service is also authorized to collect certain taxes and to suppress violations.

When making any foreign currency and cross-border transactions, foreign investors must report to currency regulation authorities, which, upon the discovery of any violation of currency laws, may hold a violator liable. The foreign currency regulation authority is the Bank of Russia, which is authorized to issue regulations in this field. Foreign currency transactions are regulated directly by tax control agents, such as tax authorities and customs authorities.

Other authorities also regulate foreign investments in Russia. The Governmental Commission for Control over Foreign Investments in Russia has been operating in the Russian Federation since 2008. The Commission approves transactions of foreign investors that result in the takeover of control, by an investor or a group or persons in which such investor is a member, over business entities having strategic importance for national defense and security.

The Federal Antimonopoly Service of Russia, which is responsible for controlling anti-competition activity and protecting business competition, also has a role in the regulation of foreign investments. The Central Office of the Federal Antimonopoly Service includes a specialized Foreign Investments Control Department.

When implementing any public-private partnership projects, foreign investors must contact the Department for Investment Policy and Private-Public Partnership Development under the Ministry of Economic Development of the Russian Federation. It prepares, selects and monitors PPP projects, and issues opinions as to whether such projects meet the interests of the Russian Federation.

3. Starting a Business in the Russian Federation

3.1. General provisions

Russian law provides for the following forms of business:

- registration as an individual entrepreneur;
- incorporation of a Russian legal entity; and
- opening of a branch or a representation of a foreign legal entity.

Russian legal entities are divided into the following types:

- profit companies, which, *inter alia*, include:
  - limited liability companies;
  - joint-stock company (closed and open);
  - full partnership; and
  - trust partnership.
- non-profit companies, which include, for example:
  - foundations;
  - associations;
  - unities;
  - institutions;
  - non-profit partnerships;
  - autonomous non-profit companies;
  - public associations;
  - consumer cooperatives; and
  - certain other forms of non-profit organizations.

3.2. Main business forms in Russia

The most popular forms for large and medium businesses are limited liability companies and joint-stock companies. The distinction between LLCs and JSCs is that according to the Russian securities law, shares in LLCs are not recognized as securities; but shares in JSCs are recognized as such and must be registered with the Federal Financial Market Service.

Limited liability company (*OOO* in Russian)

A limited liability company is a company with its charter capital divided into shares. Members of a limited liability company are not liable for its debts and bear the risk of loss associated with operations of the company to the extent of the value of their shares in the charter capital of the company.

An LLC's charter may impose limitations on the transfer of members' shares to third parties. If any such limitation is contemplated by the charter, a member may, at any time, withdraw from the LLC and demand from the LLC (or its remaining members) a pro rata share of the company's net asset value.

A member, other than the sole member of an LLC, may withdraw from the company pursuant to its own request, if such an option is contemplated by the Charter.

An LLC's Charter may impose limitations on the transfer of shares or the obligation to seek approval from other members for the transfer of its own shares.

Joint-stock company

A joint-stock company is a company with its charter capital divided into a certain number of shares. Members of a joint-stock company are not liable for its debts, and bear the risk of loss associated with the operations of the company to the extent of the value of their shares.

Russian law permits the issuance of various kinds of shares and dividends. The right to vote conferred by each share of the same kind shall be the same.

There are two JSC forms: open joint-stock companies *(OAO* in Russian*)* and closed joint-stock companies *(ZAO* in Russian*)*. The major distinctive features of open and closed joint-stock companies are: the share placement terms and procedures; shareholder rights to dispose of shares; and the pre-emptive right to acquire shares.

Open and closed joint-stock companies may issue ordinary or preferred shares and bonds. The statutory reporting rules and mandatory limitations apply to both forms of joint-stock companies; however, disclosure requirements of closed joint-stock companies are less strict.

Russian law provides for the possibility to execute a shareholders' agreement, where members may, *inter alia*:

- establish obligations to vote at general meetings of members;

- establish the necessity to coordinate voting with other shareholders;
- determine a sale price of any offered share; and
- coordinate any other activities connected with JSC management, its operations, reorganization and liquidation.

The management bodies of a joint stock company are the general meeting of shareholders, the board of directors, and any other executive individuals or groups.

The supreme management body of a joint-stock company is the general meeting of shareholders. It deals with issues that are not referred to the exclusive authority of one of the other management bodies of the company. Upon the recommendation of the board of directors or at its own discretion, the general meeting of shareholders may delegate powers of an executive body to an outsourced for-profit company or an individual manager.

The following table outlines other principal differences between the open joint-stock company (OAO) and the closed joint-stock company (ZAO):

open joint-stock company (OAO)	closed joint-stock company (ZAO)
There is no maximum number of shareholders.	The is a maximum of 50 shareholders.
Newly issued shares are distributed by open subscription.	Newly issued shares may be distributed only among founders.
Founders may be (however, in accordance with the certain limitations) the Russian Federation, a constituent entity of the Russian Federation, or a municipality.	Founders may be private entities only.
The minimum charter capital is RUB 100,000.	The minimum charter capital is RUB 10,000.
The company must publish annual reports of its performance in the mass media.	The company must disclose its financial performance only when required by relevant laws (e.g., upon any public offering of bonds and other securities).

Branches and representations

A foreign legal entity may act in the Russian Federation through its representative or branch.

Representatives and branches are not legal entities. They are vested with the assets of the legal entity, which opened them, and act pursuant to regulations approved by such legal entity. Heads of representatives and branches are appointed by the legal entity and act pursuant to its power of attorney.

It should be noted that any representations and branches of a foreign legal entity must be accredited with respective governmental authorities. Accreditation of representations and branches of

foreign legal entities is usually performed by the State Registration Chamber. However, the choice of such accreditor is subject to the specifics of a business conducted by a foreign legal entity. For example, airlines companies are accredited by the Federal Aviation Service of Russia.

A representation of a foreign legal entity is usually accredited for three years, and a branch for up to five years, with the possibility of further extension. Following the accreditation, a representative or a branch must register with the relevant governmental authorities, such as: the Federal Service of State Statistics, tax authorities; and authorities responsible for governmental extra-budgetary funds.

Accreditation of a representative or a branch usually takes from three to six weeks following the submission of all the necessary documents to the registration authorities.

3.3. Establishment, reorganization, liquidation, insolvency and bankruptcy

Registration

According to Russian law, the registration of a legal entity takes at least three to five weeks.

Registration of a joint-stock company takes an additional four weeks to register any issued shares with the Federal Financial Markets Service. “Ready-made companies” may be acquired, as well. However, this can be associated with certain risks.

Change of ownership is subject to registration, as well. It should be noted that any change of ownership, holding a block of voting shares in a joint-stock company exceeding 25%, or holding a 1/3 share in a limited liability company, may require the prior consent of the Federal Antimonopoly Service.

Liquidation

According to Russian law, a legal entity may be liquidated pursuant to:

- resolution of its founders on liquidation;
- court order, in the event of its insolvency or bankruptcy;
- court order, in the event of any gross violation of law within its corporation; or
- expiration or achievement of the purpose for which a company was established (if contemplated by the company’s charter).

The Civil Code of the Russian Federation governs the liquidation of a legal entity. Liquidation procedures include the establishment of the liquidation committee and performance of all the necessary procedures to end the company. De-registration with tax authorities may cause considerable delays.

Upon the establishment of a liquidation committee, all rights to operational management of a company must pass to the committee. If a company to be liquidated does not have enough assets to perform all of its obligations, the bankruptcy procedure must apply.

Insolvency (bankruptcy)

The Russian Bankruptcy Law protects company's creditors and establishes procedures to be performed in the event of bankruptcy.

Insolvency (bankruptcy) means the inability of a debtor to satisfy in full all creditors' monetary claims, or to perform the obligation to pay any mandatory payments, where such inability is recognized by an arbitration court.

A legal entity must be recognized as insolvent and, respectively, may be declared as bankrupt in court, if it fails to perform its financial obligations within three months following their maturity.

The bankruptcy procedure may be initiated against a legal entity if an amount due to its creditors exceeds RUB 100,000, or against an individual entrepreneur if an amount due to its creditors exceeds RUB 10,000.

Reorganization

The Civil Code, the Law on Joint-Stock Companies, and the Law on Limited Liability Companies provide for the amalgamation, consolidation, separation and transformation of companies.

Reorganization is subject to a series of actions: for example, a tax audit of a company by tax authorities, written notice to creditors of their right to accelerate performance, or terminate obligations of a company.

Licensing

Certain activities may only be carried out pursuant to a special license, which may be issued by authorized licensing bodies.

The following activities, *inter alia*, may not be carried out unless a license relating thereto is obtained:

- geodetic and cartographic works;
- pharmaceutical activity, production of medications and medical equipment;
- development and production;
- repair, disposal and sale of armaments and military machines;

- international and domestic conveyance of passengers and cargoes by water transport means;
- use of explosives and hazardous chemical substances;
- production, storage, use and sale of explosives for industrial purposes; and
- activity connected with the distribution of narcotic drugs and psychotropic substances.

Licenses are issued both at the federal and regional levels, upon application to the relevant licensing authorities.

Licensing requirements are similar for most activities. A decision to grant or deny a license is usually taken within a period of five days upon receipt of the application for license and all required supporting documents. A license term depends on the activity licensed, but licenses are usually issued for an unlimited timeframe.

3.4. Ease of doing business in Russia - statistics and analyzes.[3]

How easy is it to establish a business in Russia?

Procedures and requirements that may be encountered during the course of business establishment in Russia are outlined in the tables, below. This information relates to actions, time, and financial commitments that are required to start the simplest form of a limited liability company.

Registration of enterprises

This table relates to common requirements and issues in setting up a business.

indicator	Russian Federation	Europe and Central Asia	OECD
procedures (number)	8	6	5
time (days)	18	14	12
cost (% of income per capita)	2.0	6.8	4.5
minimum paid-in capital (% of gross income per capita)	1.4	5.0	13.3

[3] Source: http://russian.doingbusiness.org/data/exploreeconomies/russia/#protecting-investors 2013. The World Bank.

Registration of ownership

This table, below, relates to procedures that may be encountered in course of registration of ownership, actions to be taken, timeframes, and costs that are required to register property:

indicator	Russian Federation	Europe and Central Asia	OECD
procedures (number)	5	6	5
time (days)	44	30	26
cost (% of property value)	0.2	2.7	4.5

Lending

This table specifies availability level of credit information and the legal rights of lenders and borrowers. The index of legal rights is a scale from 0 to 10, with the higher numbers indicating that these laws are elaborated better in terms of access to loans.

The index of credit information shows the range, accessibility, and volume of credit information available in public registers or private bureaus. This index is a scale from 0 and 6. Higher index numbers indicate that more credit information is available in a public register or a private bureau.

indicator	Russian Federation	Europe and Central Asia	OECD
index of legal rights	3	7	7
index of credit information	5	5	5
number of persons in a public register (% of adults)	0.0	17.3	10.2
number of persons listed in public bureaus	45.4	29.8	67.4

Protection of investors

This table contains comparative indices covering the following investor interest protection aspects:

- transparency of transactions (extent of disclosure index);
- propensity to abuse powers for self-profit (extent of director liability index);
- possibility for shareholders to prosecute officials and directors for official misconduct (extent of ease through which to commence an action by the shareholders' index); and
- and the extent of the investor interest protection index.

Indices are measured using a scale from 0 to 10, with the higher values showing greater transparency, higher liability of directors, higher influence of shareholders on transactions, and better protection of investors' interests.

indicator	Russian Federation	Europe and Central Asia	OECD
extent of disclosure index	6	7	6
extent of director liability index	2	5	5
extent of easiness to commence an action by shareholders index	6	6	7
extent of investor interest protection index	4.7	5.9	6.1

Taxation

This table displays the taxes that a mid-size company must pay or withdraw in a certain year. The administrative burden connected with payment of taxes is included, as well.

indicator	Russian Federation	Europe and Central Asia	OECD
payments (number)	6	7	6
time (hours)	177	260	176
profit tax (% of profit)	7.1	9.1	15.2
payroll tax and payments (% of profit)	41.2	22.1	23.8
other taxes (% of profit)	5.8	9.3	3.7
total tax rate (% of profit)	54.1	40.5	42.7

Enforcement of contracts

This table suggests the relative efficiency of enforcement of contracts, expressed in terms of time, costs, and procedures involved from submission of a claim to a court until payment.

indicator	Russian Federation	Europe and Central Asia	OECD
time (days)	270	414	510
legal costs (% of claim cost)	13.4	25.8	20.1
procedures (number)	36	37	31

4. Legal Regulation of Foreign Investments

To increase its investment appeal, the Russian Federation is continuously developing and improving the legislation regulating investment activity. The Federal Law "On Foreign Investments in the Russian Federation" (1999) (the "Foreign Investments Law") is the core legal regulation that regulates matters of foreign investments. The relations in this field also are regulated by these Federal Laws:

- "On Procedures of Foreign Investments in Business Entities of Strategic Importance for Russian National Defense and Security" (2008);
- "On Investment Activity in the Russian Federation" (1999);
- "On Investment Activity in the Russian Federation in the Form of Capital Investments" (1999); and
- the RSFSR Law "On Investment Activity in the RSFSR" (1991).

However, particularly important for relations between Russia and Korean investors are the bilateral treaties between the Republic of Korea and the Russian Federation. These include:

- the Agreement between the Government of the Union of Soviet Socialist Republics and the Government of the Republic of Korea on Promotion and Mutual Protection of Capital Investments (1990) (the "Agreement"), and
- the Convention between the Government of the Russian Federation and the Government of the Republic of Korea "On Avoidance of Double Taxation in respect of Income Taxes" (19 November 1992).

These intergovernmental agreements provide Russia's guarantees to Korean investors, and establish measures protecting investments of Korean investors, as well as their income and profit.

The core term of the Agreement is "capital investment." However, its meaning coincides with the meaning of "investments," as given in Russian laws. According to Article 1 of the Agreement, "capital investment" means all types of property values invested in by an investor from one Contracting Party in the territory of the other Contracting Party, including, but not limited to:

- movable and immovable property, and any related property rights, such as right of pledge;
- shares, deposits, bonds or any other forms of participation in a company, enterprise or joint venture;
- claims for money or any obligations that have economic value and relate to capital investment;

- rights to intellectual property, including copyrights, rights to trademarks, patents, industrial designs, technical processes, know-how, trade secrets, secrets, trade names, and goodwill; and

- any rights, whether statutory or contractual, including survey, production, extraction, development, or exploitation of natural resources.

In relation to both the Russian party and the Korean party, the term "investor" means an individual who is a citizen of the respective member country to the agreement according to its laws, any other corporations, companies, firms, enterprises, organizations, and associations incorporated according to the applicable laws of Russia or Korea; provided that such an individual, corporation, company, firm, enterprise, organization, or association is legally competent under the laws of their respective country to make investments in the territory of the other Contracting Party.

4.1. System of guarantees for foreign investors under Russian law

Russian laws on foreign investments provide a well-developed system of guarantees that ensure the stable legal status of investors in the Russian market. These laws thus are an important factor to increase the appeal of the Russian economy to foreign investors. Basic guarantees to foreign investors are recognized at the federal level. Guarantees provided by the Russian Federation to investors from any specific country are recognized in the relevant bilateral treaties. This model for the provision of guarantees to foreign investors is typical for relations between Russia and the Republic of Korea, as well.

There are several general groups of guarantees under Russian law:

Tax regime stability guarantee for investors

Article 9 of the Federal Law "On Foreign Investments in the Russian Federation" provides that certain amendments to the Federal Law shall not apply during the investment payback period, which may not exceed seven years from the commencement date of project financing with the participation of foreign investments. These amendments and supplements include, for example:

- any new Federal Law that changes the amount of any federal taxes (other than excise taxes and VAT on goods produced in the Russian Federation) and contributions to governmental extra-budgetary funds (other than contributions to the Pension Fund of the Russian Federation); and

- any amendments and additions to such Federal Laws that increase the overall tax burden on a foreign investor implementing a priority investment project, and other legal regulations of the Russian Federation.

The tax regime stability guarantee to investors under the Federal Law "On Investment Activity in the Russian Federation in the Form of Capital Investments," is provided the same way.

Within this context, the Convention on Avoidance of Double Taxation in respect of Income Taxes (19 November 1992) between the Government of the Russian Federation and the Government of the Republic of Korea also provides protections. The Convention establishes the principle according to which business profits are subject to taxation in the country where a person receiving such profit is a resident . This is usually where the investor is incorporated or domiciled. If such a person carries on business in the other country through any of its permanent representatives, profit received directly by that permanent representative is subject to taxation in that other country.

Guarantee of various forms of investments for a foreign investor in the Russian Federation

Russian laws take a liberal approach on the issue of possible limitations on business forms and methods for foreign investments in Russia. Russian federal legislation does not establish any severe limitations. Rather, they provide maximum freedom in the selection of investment forms, and provide for equal investment opportunities, both for Russian residents and for foreign investors.

A foreign investor in the Russian Federation is given full and unconditional protection of its rights and interests *pari passu* with domestic investors under Article 5 of the Federal Law "On Foreign Investments".

Guarantees of choice of appropriate dispute settlement option

Thanks to the provisions included in the Agreement, in the event of any claims by a Russian party, a Korean investor would have the discretion to select the most appropriate option to settle a dispute. They may either apply to a competent national court, or submit a dispute to international arbitration according to UNCITRAL Arbitration Rules. Any dispute in appointing the appropriate authority is decided by Secretary-General of the Permanent Court of Arbitration in The Hague.

Guarantees of investor's property against expropriation or nationalization

The Russian-Korean Agreement guarantees investors that their investments will not be nationalized, expropriated, or become subject to any other similar measures, unless for the benefit of the public. If any statutory events for expropriation of investor property have occurred, such expropriation is subject to non-discriminatory payment of timely and sufficient compensation.

According to experts, foreign investors in the Russian Federation are usually mostly attracted by these sectors:

- oil and gas sector;
- metallurgy industry;
- mining industry; and
- consumer sector.

Foreign investors also show considerable interest in the Russian banking sector.

4.2. Special Economic Zones

The Special Economic Zone (SEZ) is a part of the Russian Federation, as determined by the Government of the Russian Federation, with a special business environment, where a special customs procedure may also apply.

Creation of such zones is a necessary element of any successful large-scale economy, as it meets market development demands, and makes the domestic economy attractive to foreign investors.

At present, Russian SEZ laws are modern and well-developed, supporting the development of high-tech economy branches, import substitution industries, and tourism and sanatorium-and-spa resorts in a consistent manner. They also allow for the development and production of new types of products, as well as the expansion of transportation and logistics systems. Thus, major regulations in this field are:

- the Law on Special Economic Zones in the Russian Federation (2005);
- the Law on the Special Economic Zone in the Kaliningrad Region (2006);
- the Law on Special Economic Zone in the Magadan Region (1999); and
- other regulations adopted pursuant to these laws *(e.g.*, Ordinances of the Government of the Russian Federation).

At present, there are four types of SEZs in Russia; namely:

Industrial/production zones

Portions of the domestic customs territory have been designated for special regulations benefiting the production of certain industrial products. These zones have access to ready-made infrastructure, traffic arteries, and the resource base. At the same time, possibilities for scientific research associated with such production exist, since many of these SEZs are platforms for the implementation of mostly high-tech projects, such as medical equipment production, instrument engineering, and automobile manufacturing. Investors realize the potential of these SEZs to help them to approach new markets.

Currently there are industrial/production SEZs in these locations:

- Lipetsk IPSEZ - in the Gryazi District, Lipetsk Region;
- Tolyatti IPSEZ - in the Samara Region;
- Titanium Valley IPSEZ - in the Sverdlovsk Region;

- Moglino IPSEZ - in the Sverdlovsk Region; and
- Ludinovo IPSEZ - in the Sverdlovsk Region.

Technical/implementation zones

These also are known as "innovation SEZs." They are geographical areas, where research, design, engineering bureaus and companies are located. The projects implemented in these SEZs are focused on the development of innovative products and technologies. In addition to tax relief and other economic benefits, investors in Russian innovation SEZs have the opportunity to use highly-trained personnel and research potential in these areas, as well as unique development opportunities on the premises of Russian research institutions and universities.

Currently there are technical/implementation SEZs in these locations:

- Zelenograd TISEZ - in Moscow;
- Saint Petersburg TISEZ - in St. Petersburg;
- Dubna TISEZ - in Dubna (Moscow Region);
- Tomsk TISEZ - in Tomsk; and
- Innopolis TISEZ - in the Republic of Tatarstan.

Port zones

These SEZs are close to major global transit corridors. Their location enables access to rapidly growing markets of highly sought-after harbor and logistic services. In these SEZs, special emphasis is placed on the construction of sea vessels and aircraft, transport terminals, large warehouse complexes, and terminal points, as well as the development of sea product processing enterprises.

Currently there are port SEZs at these locations:

- Ulyanovsk PSEZ - in the Ulyanovsk Region;
- Sovetskaya Gavan PSEZ - in the Khabarovsk Krai; and
- Murmansk PSEZ - in Murmansk, Murmansk Region.

Tourist/recreation zones

These "tourist SEZs" are geographical areas where a range of tourist and recreation businesses are conducted, such as: the creation, reconstruction, and development of tourism and leisure infrastructure;

and the development and delivery of tourist services. The purposes of tourist/recreation zones are to increase the competitiveness of Russian tourist businesses, to develop health and recreation resorts, and to develop medical care management and disease prevention.

Currently there are tourist/recreation SEZs at these locations:

- Altay Valley TRSEZ - in the Altai District, Altai Krai;
- Baikal Harbor TRSEZ - in the Republic of Buryatiya;
- Biruzovaya Katun TRSEZ - in the Republic of Altai;
- Grand Spa Juca TRSEZ - in the Stavropol Krai;
- Baikal Gates TRSEZ - in the Irkutsk Region;
- Russky Island TRSEZ - in the Russky Island, Primorsky Krai; and
- the North Caucasian Tourist Cluster, which comprises several territories

Tax benefits for SEZ residents

Favorable economic conditions for SEZ resident entrepreneurs are the main reasons to invest in SEZs.

The choice of tax benefits depend on an SEZ type and certain business.

Russian laws provide for a favorable tax regime for SEZ residents, which includes, *inter alia*, the following:

- **corporate profit tax**

  According to clause 1, Article 284 of the Tax Code of the Russian Federation, the applicable rate of this tax for all taxpayers is 20%, 18% of which is payable to a regional budget, and 2% to the federal budget. According to the laws of a constituent entity of the Russian Federation, residents of a special economic zone may be granted a reduced rate of the tax to an extent that it is payable to the budget of such constituent entity, but not to be greater than 13.5%; the tax rate payable to the federal budget is 2%. However, residents of a Technical/Implementation SEZ and residents of a Tourist/Recreation SEZ united in the cluster may enjoy a 0% rate of the tax payable to the federal budget.

- **value added tax**

Operations of residents of a port special economic zone that relate to the performance of works (delivery of services) within a port SEZ, are VAT exempt.

- **corporate property tax**

This tax is regional and is statutorily regulated by Chapter 30 of the Tax Code of the Russian Federation and the laws of constituent entities of the Russian Federation. Tax rates established by the laws of constituent entities of the Russian Federation may not exceed 2.2%.

Residents of a special economic zone are exempt from corporate property tax for a period of 10 years, provided that they comply with the following terms and conditions:

- The property was recognized in the books of a special economic zone resident.
- The property was created or acquired for the purposes of business in the territory of a special economic zone.
- The property is located and utilized in the territory of a special economic zone, pursuant to an agreement on the establishment of a special economic zone.

- **land tax**

This tax is local and is statutorily regulated by Chapter 31 of the Tax Code of the Russian Federation and legal regulations issued by representative bodies of municipalities. SEZ residents, other than shipbuilders having the status of an industrial/production special economic zone resident, are exempt from land taxes for a period of five years in respect of any land plots located within the SEZ.

In most SEZs, residents are exempt from transportation taxes.

Excise tax exemption of excisable goods imported to a port special economic zone from any other part of the Russian Federation may also be considered as a tax benefit.

It should be noted that the territories of special economic zones are recognized as free customs zones, where foreign goods may be placed and used free of customs duties and value added taxes. By reason of free customs zones, foreign equipment, raw materials, components, and construction materials are exempt from import customs duties and VAT.

Other benefits and preferences may be granted to SEZ residents, where so provided by applicable laws.

5. The Russian Financial System

5.1. The securities market.

Government securities market - development factors and general parameters

The securities market in Russia is a young, dynamic market with various financial instruments and diversified regulatory and information infrastructure. The following are factors in the development of the securities market:

- large-scale privatization and associated high-volume issue of securities in the 1990s;
- annunciation of the first large-scale investment manufacturing projects;
- development of bonded loans, which are cheaper in comparison to banking loans; and
- opened access to international capital markets.

The major players in the Russian securities markets include:

- banks and investment institutes;
- stock exchanges;
- institutional investors, including major credit and financial institutions; and
- the Depository Clearing Network.

There also is a significant market for governmental debt instruments, such as long-term and mid-termed bonded loans, vouchers (*i.e.*, a type of governmental security), as well as bonds of banks and companies.

Current condition of the securities market in Russia

At present, the market is well-organized and is closely controlled by the Central Bank of the Russian Federation. In recent years, the Russian securities market has exhibited the following trends:

- concentration and centralization;
- market internationalization;
- growth and increased reliability; and

- computerization.

Since 2002, Russia has observed extensive growth of investment activities, as more and more companies have approached the securities market. This was connected with growth of the domestic, GDP growth, the absence of a federal budget deficit, and a highly favorable environment for the Russian Federation in the world energy market.

Prospects of securities market development

Securities, securities transactions, and the securities market in the Russian Federation are still in formative stages in some respects. This situation presents positive and negative aspects. This evolving state has motivated and contributed to the improvement of the legislative and legal regulatory framework of the securities market, and the regulation of financial activity of business entities developing under market economy conditions.

Recently, the Russian banking sector has grown by 19.3% and has shown record-breaking profits in 2012. The total amount of money invested in deposits increased in 2012 by 20% to RUB 14.3 billion. The total amount of loans granted by Russian banks increased by 17%, from RUB 29 billion in 2011 to RUB 34 billion in 2012.

In early 2013, Russian credit organizations included 956 banks, the majority of which are controlled by the government. The state-controlled banks include:

- Sberbank;
- VTB;
- Gazprombank; and
- Russian Agricultural Bank.

Deposit Insurance Agency

This organization was established in 2004. Its major functions include:

- deposit insurance;
- keeping the register of banks participating in the deposit insurance system;
- generation of the deposit insurance fund; and
- management of the deposit insurance fund.

In early 2013, 891 banks joined the banking deposit insurance system. During this period, the banking deposit insurance fund grew to RUB 176.4 billion

5.2. Anti-money laundering legislation

Since 2001, a large number of measures have been taken to bring the anti-money laundering legislation in line with international standards. The following measures were implemented:

- introduction of specialized control over monetary remittances;
- introduction of a new system of money regulation and control by the Central Bank; and
- monitoring and reporting requirements for financial organizations, such as banks, insurance companies, and leasing companies.

The Russian legislation is being brought into full compliance with the recommendations of the international Financial Action Task Force (FATF). The Russian Federation joined FATF in 2003, and 2013, is Chair of the Group. Russia is also a member of the European Group for Anti-Money Laundering and Combating Financing of Terrorism, established in 2004.

5.3. Taxes and levies in the Russian Federation

Taxes and levies are mandatory payments withheld from individuals and legal entities to finance operations of the government and municipalities. Taxes are non-refundable payments. Levies, unlike taxes, imply any fee-based legal acts of governmental or municipal authorities, such as the granting of certain rights or permissions (licenses). The types of federal, regional, and local taxes and levies, and special tax regimes, are defined in the Tax Code of the Russian Federation.

Federal taxes and levies

Federal taxes and levies must be paid in all parts of the Russian Federation. Certain types of federal taxes may be abolished under special tax regimes.

Value added tax (VAT) is an indirect tax withdrawn from the budget to the extent of added value. VAT payable to the budget is calculated as the difference between taxes charged to buyers, as recorded in sales book, and taxes charged by suppliers, as recorded in purchase books.

The VAT rates, as of 2013, are:

- 18% VAT applied in most cases;
- 10% VAT rate for certain commodity groups; and

- 0% VAT rate mostly for export, trade in precious metals, and space exploration related goods and services,

Individual income tax (IIT) is the major type of direct tax, which is calculated as a percentage of the aggregate income of individuals, decreased by statutory deductions. IIT is calculated and paid, and IIT tax returns must be drafted, by employers, who paid income to respective taxpayers (individuals), and otherwise, by the taxpayers, themselves.

The individual income tax rates as of 2013 are:

- 13% standard IIT rate applicable to any income, other than those subject to special rates 9%, 15%, 30%, and 35%

- 35% IIT rate applicable to:

  - income from gambling winnings and prizes to the extent they exceed specified amounts;

  - income from interest on banking deposits to the extent they exceed specified amounts; and

  - savings on interest upon receipt by taxpayers (borrowers) of loans to the extent they exceed specified amounts.

- 30% IIT rate applicable to income of individuals who are not Russian tax residents, other than income in the form of dividends payable for shared participation in Russian companies

- 15% IIT rate applicable to income of individuals who are not Russian tax residents in the form of dividends payable for shared participation in Russian companies

- 9% IIT rate applicable to:

  - income from shared participation in companies in the form of dividends received by individuals who are Russian tax residents;

  - income in the form of interest on mortgage-secured bonds issued before 1 January 2007; and

  - income of founders of a mortgage security trust, as received under acquired mortgage participation certificates issued by the mortgage security manager before 1 January 2007.

Mineral extraction tax (MET) applies to products of the mining industry and quarry mining that are contained in raw mineral materials actually extracted from subsoil. The value of extracted minerals is evaluated by a taxpayer at its discretion based on their sale prices or calculated value. Extraction of

minerals is subject to tax rates from 0 to 8% and governed by Article 342 of the Tax Code of the Russian Federation.

Corporate profit tax is a percent of profit, which is defined as the difference between corporate income and corporate expenses incurred. Corporate profit taxes are a direct tax. The tax is paid, in advance, based on the tax return. The tax rate is 20%.

Water tax is paid by legal entities and individuals, dealing with specific or special water use according to the laws of the Russian Federation, such as:

- water extraction from bodies of water;
- use of defined water zones;
- use of water bodies for hydraulic power purposes; and
- use of water bodies for timber rafting.

Excise taxes are indirect taxes that are charged on articles of general consumption (such as alcoholic and tobacco products, motor vehicles, and fuel) and on utilities, transportation, and other services. Excise taxes are included in the price of goods or services. Excise tax rates are separately established for each type of excisable goods.

Levies on the use of fauna and aquatic biological resources are paid by persons having a license or permit to extract such resources. These levies are paid upon obtaining the license or during the validity period of the permit to extract the resources. The tax rate varies from RUB 20 to RUB 15,000 per animal.

Regional taxes and levies

Regional taxes are governed by the tax laws of the constituent entities of the Russian Federation and must be paid within those respective constituent entities. Like federal taxes, certain regional taxes may be abolished by special tax regimes.

Governmental authorities of constituent entities of the Russian Federation determine tax rates, their payment procedure and timeframe, tax benefits, as well as the reasons and procedure of their application. All other taxation elements and taxpayers are determined by the Tax Code.

Corporate property tax payers are legal entities holding movable and immovable property recognized on the respective balance sheet as fixed assets, other than land plots, as well as any property held by federal executive authorities on the basis of operational management. The tax base is determined as an annual average residual value of the taxable property. Tax rates are established by the laws of constituent entities of the Russian Federation and may not exceed 2.2 %.

Transportation taxes are paid by persons in whose name transportation vehicles are registered. Such transport vehicles include motor vehicles, bikes, motor scooters, buses, aid and water transport,

snowmobiles, and motor sledges. Tax rates are subject to type of transport vehicle and the region in which it is registered.

Gambling taxes are paid by persons engaged in the business of gambling. Taxable items are gambling tables and gaming machines, and counters in betting houses and bookmaker's offices. The tax base and tax rate is separately determined for each such item.

Local taxes

Local taxes are governed by legal regulations of representative bodies of municipalities, and must be paid within the respective municipalities. Certain local taxes may be abolished by special tax regimes.

Representative bodies of municipalities determine tax rates, their payment procedure and timeframe, and may establish tax benefits, as well as the reasons and procedure for their application. Other local taxation elements and taxpayers are determined by the Tax Code of the Russian Federation.

Land taxes are assessed against individuals and legal entities that own land plots within a municipality; and the tax base is the cadastral value of the land. The maximum tax rates applicable to items described as farmlands under housing stock, as acquired for personal subsistence economy purposes, is 0.3%. The tax rates for other items may not exceed 1.5%.

Individual property taxes are assessed against individuals who own property, such as residential houses, apartments, dachas, and garages. Tax rates are determined by the regulations of representative bodies of local government authorities. Local government authorities may differentiate the rates within the specified range depending on overall inventory value and use of a taxable item.

Individual property tax rates as of 2013 are:

- For residential houses, apartments, rooms, dachas, other dwellings, premises and structures, and a share in common ownership to the said property:
  - 0.1% up to RUB 300,000 (inclusive)
  - 0.2% from RUB 300,000 to RUB 500,000 (inclusive)
  - 0.31% over RUB 500,000
- For garages, other non-residential buildings, premises and structures, and a share in common ownership to the said property:
  - 0.1% up to RUB 300,000 (inclusive)
  - 0.3% from RUB 300,000 to RUB 500,000 (inclusive)
  - 2.9% over RUB 500,000

Special tax regimes

Special tax regimes may include federal taxes not specified above, as well as exemption from certain federal, regional, and local taxes and levies.

Single Agricultural Tax (SAT) is a taxation system for legal entities and individual entrepreneurs that produce agricultural products. Taxpayers applying this tax regime are exempt from taxes on profit, property, and VAT. Income less expenses is the basis for taxation, and the tax rate is 6%.

Single Tax on Imputed Income (STIC) is applied to certain businesses, such as household services, motor transportation services, retail, and public catering. The STIC tax base is imputed income calculated as a product of a basic rate of return over a tax period, and a physical parameter attributed to a respective business. The tax rate is 15% of imputed income.

The **Simplified Taxation System** (STS) may be applied by legal entities and individual entrepreneurs, if their income over nine months of the current year has not exceeded RUB 45 million. If the taxable item is income, the tax rate is 6%. If the taxable item is chosen as "income less expenses," the tax rate is 15%. For purposes of the tax base calculation, taxpayers must record transactions in their income and expenses ledger.

The **taxation system for the implementation of production sharing agreements** establishes a special tax regime, applicable in the event of implementation of the agreements executed according to the Federal Law "On Production Sharing Agreements." Payers of taxes and levies under this regime are legal entities investing their own, borrowed, or attracted funds, property, or property rights in exploration and extraction of mineral raw materials and using subsoils under production-sharing agreements. The tax rate is subject to the agreement, but may not be less than 32% of the overall quantity produced.

Import VAT

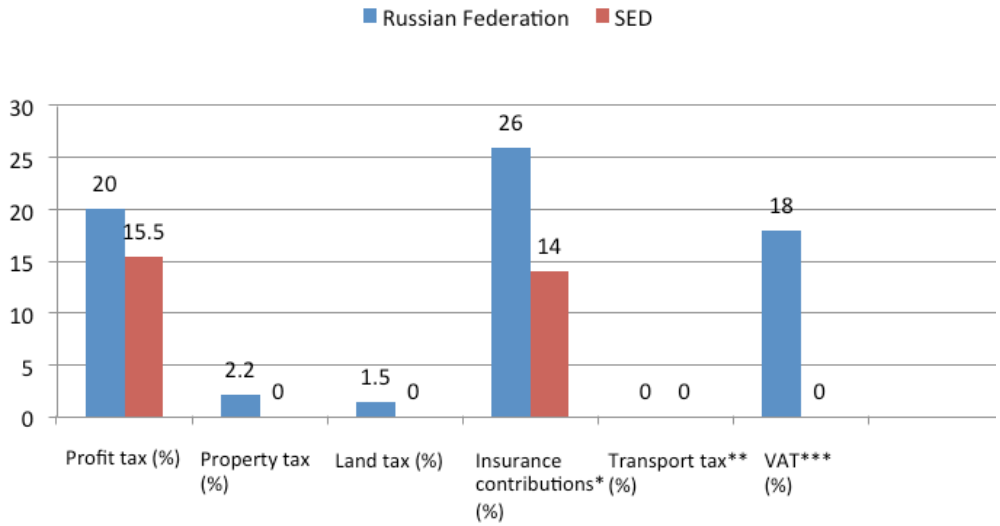
VAT may be refunded to legal entities and individual entrepreneurs that apply the general taxation system and acquire things or products for resale or for use in any taxable operations. They must have a document evidencing that the tax has been paid in respect of goods that have crossed the Russian border, and the cargo must be recognized as entered into the corporate books.

Import VAT may be paid without any customs formalities, *i.e.*, there is no need to complete a customs declaration. This provision applies where the aggregate value of goods does not exceed € 1,000. In such a case, the so-called declarative documents for goods may be transportation or shipping documents, commercial documents describing the goods, or other papers containing sufficient details required for release of the cargo.

One category of importers is not recognized as taxpayers. These are companies and entrepreneurs applying special tax regimes. Tax amounts paid by them upon importation of goods to the customs territory are recognized in the value of such goods.

If a legal entity or an individual entrepreneur applies a taxation regime, where a taxation item is "income less expenses," VAT amounts in respect of paid goods (works, services) are included in expenses.

Existing tax preferences



** For Technical/Implementation SEZ*

*** Transport Tax rate is subject to engine power, jet-engine performance or gross tonnage of transport vehicles, vehicle category per transport vehicle engine horsepower, one kilogram-force of jet-engine performance, one register ton of transport vehicle or transport vehicle unit.*

**** VAT for Port SEZ*

5.4. Insurance

Insurance in the Russian Federation is governed by the Federal Law "On Insurance Business Management in the Russian Federation." At present, the Russian insurance services markets are undergoing consolidation. The result of this policy is increasing stability and a decreasing number of companies providing substandard insurance services.

Russian laws impose limitations on insurance companies, which are representations of foreign companies, or on those companies in which a charter capital of 49% or more is held by a foreign company. There is a quota of 50% for foreign capital in gross charter capital of all insurance companies represented in the Russian Federation.

According to Russian laws, there are two types of insurance:

- personal insurance (life, health insurance); and
- property insurance (property, liability, risk insurance).

Third party liability insurance is one of the most important aspects of business in the Russian Federation. Third party liability insurance affects the liability of the insurant/insured arising from damage to the property, life, or health of third parties.

In particular, the insurance of hazardous industrial facilities is very clearly regulated in the Russian Federation.

Insurance of hazardous industrial facilities

Hazardous industrial facilities include facilities, where:

- Hazardous substances are obtained, used, processed, originate, stored, transported, or destroyed.
- Equipment operates under pressure over 0.07 MPa or under water heating temperature over 115^{o} C is used.
- Fixed hoisting machines, escalators (including lifts and escalators in blocks of apartments, retail facilities, public catering facilities, administrative buildings, and other life supporting facilities), ropeways, and funiculars are used.
- Ferrous and non-ferrous metals are melted, and alloys based on such melts are obtained.
- Mining, mineral dressing, and underground operations are performed.

Liability insurance is also important liquid gas fuel transportation and filling stations, as well as in a wide range of activities related to waterworks, such as:

- dams;
- hydroelectric power plant buildings and related structures;
- shipping locks and shiplifts;
- structures for protection against flooding and destruction of reservoir shorelines, shores and river beds; and
- dams and other retention structures enclosing the storage of liquid waste produced by industrial and agricultural companies, scour prevention structures, and other devices to prevent adverse effect of contaminated waters and liquid waste.

Employer liability insurance

In many countries, compensation for any occupational injuries and professional diseases is included in the public social insurance system, through a compulsory program of employee insurance against occupational accidents or other compulsory insurance of employer liability. In Russia, public compensation systems prevail. Indemnities payable under public social systems in Russia are low; and even upon indemnity payment by the Social Insurance Fund, an employee may seek further damages from judicial authorities, if the employee believes that the indemnity has not covered all of the expenses that are legally eligible for compensation.

Provisions to require employer liability insurance may be included in a contract, frequently on the demand of a customer or an investor.

Liability insurance is not required to protect against the risks of claims by employees; but such coverage can have a positive effect by demonstrating an employer's intention to provide safe working conditions for employees and voluntarily to ensure additional coverage for them in the even of an accident. Documentation of the employer's safety and work environment policies may be made conditions of coverage.

Employer liability insurance is used to increase insurance indemnities in the Russian public social insurance system. It protects an employer from subrogation by the public health authorities or public social insurance authorities arising from employee claims.

This type of insurance also protects an employer from legal actions initiated by employees.

Environmental insurance

Enterprises carry on industrial, defense, economic and other activities while coming in close contact with the ecological environment. They are sources of man-made hazards to the natural environment, directly affect nature, pollute it, and constitute an environmental hazard that can give rise to significant risk and potential liability.

Currently, environmental insurance and financial guarantees in the event of environmental damages are gaining in importance in the Russian Federation. This is connected to environmental safety assurance and the correction or mitigation of negative environmental impacts.

Compulsory medical insurance

The Federal Law "On Medical Insurance," requires the following enterprises to participate in the compulsory medical insurance system for their employees:

- organizations with employees;
- individual entrepreneurs;

- individuals not recognized as individual entrepreneurs but which have employees; and
- individual entrepreneurs engaged in the private practice of a profession, such as notaries and lawyers.

Medical insurance is required for the following employees:

- citizens of the Russian Federation;
- foreign citizens temporarily or permanently residing in the Russian Federation; and
- stateless persons (other than highly skilled specialists and their family members).

Employers must register and de-register for purposes of compulsory medical insurance, and must pay insurance contributions to the compulsory medical insurance fund, in full, and in a timely manner.

6. Contract Law

6.1. Fundamentals of the legal regulation of contracts

Contract agreement

One of the most widely used forms of contracts is the contract agreement, which, according to applicable laws, includes provisions obliging one party to perform certain work, and the other party to accept deliverables of such work and pay for the same. The specifics of legal regulation of a contract agreement are special provisions that relate to certain types of a contract agreement and are included in civil laws.

Types of contract agreements

Russian law distinguishes the following types of a contract agreement:

- consumer work contract;
- construction contract agreement;
- design and survey contract agreement; and
- contract agreement for public or municipal needs.

Parties to a contract agreement

Under Russian law, there are two parties to a contract agreement: a contractor and a customer. The contractor is the party that undertakes to perform certain work. The customer is the party that instructs on the performance of certain work. The parties may be individuals or corporate legal entities, but both parties must be legally capable of making transactions.

Unless otherwise specified in a contract agreement, a contractor may engage third parties (subcontractors) to perform the customer's assignment upon which a contractor becomes a general contractor. However, a general contractor remains liable to a customer for any default by the subcontractors, and liable to subcontractors for any default by a customer.

Material terms of a contract agreement

According to Russian law, the following terms of a contract agreement are recognized as material:

- the subject of a contract agreement (*i.e.*, the end product of a contractor's performance relating to the creation, modification, processing or re-processing of anything); and

- the term of a contract agreement (defined by stated commencement and completion dates of work).

By implication of law, the subject matter of a contract agreement must be delivered to a customer fully completed. This may be accomplished by the signing of an acceptance statement by the customer or by actual delivery of the subject matter to the customer.

If work is to be performed over a long period of time, a contract agreement may provide for milestones. The parties to a contract agreement often draft and incorporate work schedules specifying certain work to be completed within certain time periods.

Contract value is not a material term of a contract agreement. It may be expressed either in monetary terms, in the form of certain property to be transferred, or for certain services to be delivered.

Form and performance of a contract agreement

The parties usually formalize their mutual obligations in a written contract agreement; however, in certain cases, the contract agreement may be executed orally, subject to delivery of documentary evidence of the completion of the work, such as a cashier's receipt.

A contractor's obligations under a contract agreement include:

- to perform the work within a certain period;
- to perform the work by one's own efforts, using one's own materials and tools (unless otherwise is provided for by a contract agreement);
- to perform the work in a workmanlike manner; and
- to inform the customer of any circumstances that prevent performance or change the deliverables.

Under Russian law, the customer's obligations are to accept and pay for work deliverables, and to perform any other terms and conditions specified by the parties in the contract agreement.

Investment contract agreement

An investment agreement is an agreement under which one party (investor) undertakes to transfer investments, and the other party (investment arranger) undertakes, for a certain fee, to invest the same in an investment project; so that the investor further receives ownership of property from the investment arranger within the period prescribed by the agreement.

This type of civil law contract is not recognized by the Civil Code of the Russian Federation. This results in the use of contractual investment forms; but the issue of legally enforceable rights and obligations of parties to an investment arrangement remains open.

Investment activity includes corporate activity connected to the following operations:

- acquisition of any land plots, buildings, structures, equipment, other assets, and their sale;
- construction of such property; and
- disposal of financial investments.

An investment agreement must be drafted taking into account the following factors:

- The agreement must establish, in detail, all the rights and obligations of the parties at each investment project stage, including any actions or conditions to minimize the risks to each member of the project. However, there is no requirement that risk mitigation must result in zero risk.
- The agreement must be drafted on the basis of well-elaborated project documentation. The concept, detailed action plan, and project budget must be reviewed and approved.
- The risk associated with the transfer of ownership must be clearly formulated. Because in investment agreements are not regulated by law to a sufficient extent, they often contain very specific terms and conditions. This may be undertaken at certain project stages, or after completion of an investment project, or both.

7. Competition Regulation

7.1. Scope of antimonopoly legislation

The basic law of the Russian Federation, regulating the relations in the area of competition, is the Federal Law No. "On Protection of Competition" (hereinafter the "Competition Law"), that was adopted on 26 July 2006. It stipulated the basic prohibitions and procedures of Russian competition law, as well as the rules aimed at creation of the conditions for the development of market relations.

The Competition Law establishes the organizational and legal basis of prevention, limitation, and suppression of monopolistic activity and unfair competition, and is aimed at providing the conditions for creation and effective functioning of product markets.

In accordance with the Competition Law, Russian antimonopoly legislation consists of the Constitution of the Russian Federation, Civil Code of the Russian Federation, the Competition Law, and other laws adopted in accordance therewith, Decrees of the Russian Federation, legal acts of the federal antimonopoly authority, as well as other federal laws.

The basic institutes provided by the Competition Law are:

- prohibition on abuse of dominance;
- prohibition on agreements restricting competition (including cartels);
- prohibition on concerted actions between economic entities that restrict competition;
- prohibition on unfair competition;
- prohibition on acts and omissions of the public authorities of the Russian Federation;
- antimonopoly requirements for bidding procedures;
- control over the granting of state preferences; and
- state control over economic concentration.

Antimonopoly legislation covers relations that have an impact on competition in the product markets of the Russian Federation, where Russian and foreign legal entities, federal executive bodies, executive bodies of the subject of the Russian Federation, local authorities and private individuals are concerned. The Russian Competition Law has an exterritorial application, *i.e.*, it is applied to foreign entities, if their actions (*e.g.*, transactions, entering into agreements) have an impact on the competition in the territory of the Russian Federation.

State policy in Russia is aimed at the prevention of prohibited agreements, and the protection of competition in all sectors of the economy, among other things.

In accordance with the Competition Law control over adherence to the antimonopoly legislation is exercised by the Federal Antimonopoly Service of Russia (the FAS Russia), as regulated by the Government of the Russian Federation. In order to perform its functions, FAS Russia creates territorial subdivisions and nominates the heads of such subdivisions.

The FAS Russia:

- exercises state control over adherence to the antimonopoly legislation;
- allocates violations of the antimonopoly legislation, takes necessary measures on the prevention and termination of the violations, and holds offenders accountable; and
- exercises state control over economic concentration.

The FAS Russia has the following powers, which are aimed at developing competition and entrepreneurship:

- conducting analyzes of the competition conditions in the product markets;
- determination of the dominant position of the economic entity;
- preparation of recommendations on the development of competition in the product markets; and
- explanation of the issues of the antimonopoly legislation application.

The FAS Russia has the following powers on the exercise of state control over the antimonopoly legislation observation:

- to conduct scheduled and unscheduled (“dawn raid”) examinations;
- to initiate and consider cases on antimonopoly legislation violations;
- to issue decisions and binding prescriptions in cases of antimonopoly legislation violations;
- to impose liability on offenders within the frames of the administrative procedures; and
- to initiate law suits.

Antimonopoly legislation in the Russian Federation is closely related to other spheres of regulation, like foreign investments, intellectual property rights protection, and consumers` rights protection.

7.2. Abuse of dominance.

Competition law establishes prohibits the abuse of dominance while conducting economic activities. A dominant position is considered to arise when a single economic entity or a group of economic entities have a decisive influence on the common conditions of the turnover of goods in the appropriate market, so as to remove rivals from the market or to obstruct their access to the market.

Thus, the Competition Law prohibits such actions or omissions of a dominant entity that result in, or can result in, prohibition, limitation, or suppression of competition, or an infringement of the interests of other entities. The range of such impermissible actions is open.

The liability for an abuse of dominance by economic entities and their officials is stipulated by Art. 14.31 and 14.31.1 of the Code of Administrative Offenses of the Russian Federation (the 'Administrative Code'). It can be in the form of an administrative fine in an amount up to 15% of the earnings of the offender from the realization of goods and services in the market in which the administrative offense took place, and a fine of up to RUB 20,000 for officials of the offender entity or group.

7.3. Cartels.

The fight against cartels continues to be the main strategic activity of FAS Russia. For the last five years, significant developments have occurred in legislation, law enforcement, and judicial practice in prevention, discovery, and suppression of cartels.

At the beginning of January 2012, significant amendments to the Russian competition legislation (Federal Law No. 401-FZ of 6 December 2011) took effect. One important achievement of that reform was to introduce the definition of a cartel that is now, in accordance with Article 11 of the Competition Law, a horizontal agreement between competitors that leads, or may lead to:

- fixing, or maintaining prices, discounts, bonus payments or surcharges;
- division of the market by territory, volume of sales and purchases, assortment of goods and services, or range of sellers or purchasers;
- reduction or termination of production of goods;
- refusal to enter into a contract with a particular customer or seller; or
- increasing, reducing or maintaining the prices of tenders.

The list of *per se* restrictions was limited in these amendments. Any other types of agreements are prohibited only if it is discovered that they lead, or may lead, to the restriction of competition.

The Competition Law is commonly applicable to all sectors of the economy, and there are no sector-specific offenses or exemptions with respect to cartels.

The Competition Law is extraterritorial in nature. The Competition Law applies to agreements made outside Russian territory between Russian and foreign entities or organisations, as well as actions made by them to the extent that such agreements have an impact on competition within Russian territory. The character and extent of such an impact shall be assessed by FAS Russia in each case. Thus, foreign companies may be fined under the Administrative Code, and foreign officials are also subject to criminal prosecution under the Criminal Code. Since 2012, FAS Russia investigated a number of cartels against foreign undertakings. For example, these are the antitrust cases against Pacific Andes (the "pollack cartel case") and against Siemens (conspiracy concerning a public tender for the supply of medical equipment). The respective decisions of the antimonopoly authorities are being challenged in the commercial courts now.

The cartel prohibition has both an administrative and criminal nature. Article 14.32 of the Administrative Code establishes administrative liability for violations by cartels and their officials, and Article 178 of the Criminal Code provides criminal sanctions for individuals. Under the latest amendments, any other prohibitive horizontal or vertical agreements are now decriminalised.

A concluded or exercised cartel is established through the decision of the antimonopoly authority, which determines the geographic, product, and time boundaries of the product market, as well as the basic market members-competitors. The same decision names the consequences to which creation of the cartel has led, or might have led. FAS Russia only has administrative investigatory powers, and only the Ministry of Internal Affairs (the MIA) and its divisions have criminal investigatory powers.

FAS Russia is very attentive to competition, as regards to exposing cartels, in the markets for chemical products, pharmaceuticals, food products, air carriages, financial services, energy products, funeral services, and various others.

One of the much-publicised cartel cases of 2012 was a typical price cartel case with respect to sodium hydrate. The fine for the initiator of this cartel exceeded RUB 912 million, which is the highest pecuniary penalty ever imposed on a cartel in Russia. The decision of FAS Russia is still being challenged in the commercial courts. The "fish cartels" are the most discussed cases of 2013.

Inspections

In April, 2012, the new FAS Russia regulations on competition law compliance inspections came into force. There are two types of inspections: scheduled and unscheduled. Both may be conducted with a "camera" (or documentary review) or on-site. The grounds to initiate a scheduled inspection expires three years from the date of either the incorporation of a legal entity or the completion of the latter inspection. Information about the schedules of inspections can be found on the official FAS website.

The grounds for the initiation of an unscheduled inspection include:

- receipt of materials from the state and municipal authorities or from public associations indicating characteristics of antimonopoly law infringements;
- receipt of reports and claims from persons or from the mass media indicating characteristics of antimonopoly law infringements;
- passing of the deadline to perform a binding prescription issued by the FAS (in this case, only the compliance with the prescription is inspected);
- mandates issued by the president of the Russian Federation or the government of the Russian Federation; or
- discovery by the FAS of characteristics of antimonopoly law infringements.

An inspection is conducted in accordance with the relevant decree issued by the head of the antimonopoly authority. The inspectee must be notified no less than three days prior to a scheduled inspection. No prior notification is provided for inspections that determine compliance with Article 11 of the Competition Law, which prohibits cartels and prohibitive agreements.

The maximum term of any inspection is one month from the commencement date, as indicated in the decree, until the date that the certificate of inspection is sent. This term can be extended for up to two months by the head of the antimonopoly authority.

Under the Administrative Code, the FAS is entitled to impose a fine for: failure to obey the lawful prescription of the FAS officials that are issued, *inter alia*, during inspections; failure to submit information requested by the antimonopoly authorities; provision of misleading information; and the untimely submission of requested information. The FAS often enforces these rules against offenders. The Criminal Code provides much more severe sanctions for the obstruction of the MIA's or prosecutor's investigations, or of the court's activity. These include fines, compulsory community service, apprehension, or imprisonment.

Enforcement

The FAS opens an investigation on its own initiative. The grounds for the investigation are based on information received from: other state or municipal authorities; individuals and legal entities, mass media sources; from the results of the FAS's own inspections; or from the discovery of other evidence of a cartel. The FAS considers whether it may initiate a case and open proceedings within one month from the day it received the information. This period may be extended up to three months if additional information is required.

In each initiated case, a special commission must be established that, as a rule, is composed of FAS officials. If the investigation concerns a Competition Law violation in the banking sector, or is committed by financial institutions licensed by the Federal Service of Financial Markets of Russia

(FSFM), representatives of the Central Bank of Russia or FSFM, respectively, also participate. During the hearings held by the commission, all interested parties are entitled to submit written and oral explanations. The commission issues its final decision and binding prescription by simple majority of its members. This normally occurs within three months of the assignment of the case, but this term may be extended for up to six months, without regard to procedural suspensions.

Sanctions

A pecuniary penalty for Competition Law infringement is of an administrative nature, as a measure of public liability. FAS Russia may impose a fine on cartels for entering into, or participating in, a cartel, the amount of which depends on the share of a company's income from sales of a product in which the market the violation has been committed.

If the cartel's income from the sales of the product does not exceed 75% of the total company's income, then the imposing fine will range from 1% to 15% of the company's income from the sales of the product.

The calculation of fines has been made very simple as a result of the latest amendments to the Administrative Code. The default amount is 8% of the relevant income. Any mitigating circumstance reduces the standard fine amount by 1.75% of the relevant income, while an aggravating circumstance increases it by the same percentage.

If the cartel's income from the sales of the product exceeds 75% of the total company's income, or if the violation has been committed on the regulated price market, then the fine may range from 0.3% to 3% of the company's income from the sales of the relevant product, but will not be less than RUB 100,000. The default amount is 1.65% of the relevant income. A mitigating circumstance will reduce the standard fine amount by 0.3375% of the relevant income, while an aggravating circumstance will increase it by the same percentage.

A special fine amount is provided for cartels that lead, or may lead, to increasing, reducing, or maintaining prices on tenders, ranging from 10% to 50% of the tender object amount, but not less than RUB 100,000.

Along with an administrative fine, the Competition Law allows FAS Russia to require that an offender transfer to the federal budget the revenue gained from the violation of the Competition Law. The Constitutional Court of the Russian Federation has held that FAS Russia may use both of these forms of liability with respect to a single violation.

FAS Russia may issue a prescription binding an offender to eliminate the negative consequences of the cartel's activity and to perform actions aimed at procuring the competition. FAS Russia is also entitled to initiate actions in the commercial court to invalidate agreements that are in conflict with the Competition Law.

Leniency

In 2012, amendments to the Federal Law introduced a new special set of mitigating and aggravating circumstances to be applied by FAS Russia when hearing the cartel cases. These are generally known as the leniency program for cartel violations.

When holding an undertaking administrative liable, FAS Russia should consider as mitigating circumstances whether the offender:

- did not initiate a cartel or receive binding instructions to participate therein;
- did not start to perform the cartel's activities;
- voluntarily ceased performance of the cartel's activities;
- voluntarily notified the FAS of the arranged cartel;
- assisted the FAS in establishing the circumstances of the cartel;
- prevented harmful consequences of the cartel;
- was voluntarily compensated for damages suffered, or recovered the harm inflicted; and
- voluntarily and duly performed a binding prescription issued by the FAS before the case on an administrative violation was completed.

The current legislation does not provide for grounds to reduce the amount of fines, owing to financial hardship or inability to pay. Before the amendments to the Administrative Code were made, a court, when challenging the decision of the antimonopoly authority, was entitled, at its own discretion, to decrease the amount of a fine by applying other mitigating circumstances allowed by the general provisions of the Code. Now, only a limited number of special mitigating circumstances are allowed.

However, on 17 January 2013, the Constitutional Court of the Russian Federation ruled that the minimum administrative fine for not providing documents and information upon the lawful request of a competition authority, and the inability to decrease it, does not comply with the principles of reasonableness and adequacy of penalty. Lawyers share this position, and consider it a sign of a shift to the same approach to turnover-based fines in the future.

Full immunity from administrative liability is available to offenders. A cartel that has voluntarily notified the FAS that it entered into, or participated in a cartel, shall be relieved from administrative liability, provided that:

- the FAS does not already have in its possession documents and information with respect to the committed offense when the leniency application is received;[4]

- the offender terminated the current or further participation in, or performing of, the cartel arrangements; and

- information and documents provided by an offender were sufficient to establish circumstances of the offense.

Release from liability applies to the cartel member that first satisfied all of the conditions mentioned above, and the FAS will not consider a joint application submitted by more than one cartel member.

Unfortunately, Russian legislation does not provide clear and effective guarantees for undertakings who wish to take advantage of the leniency program. The FAS expressly declares the guarantee of confidentiality of a leniency application on its official website. However, this regime is not reflected in legislative acts. Notwithstanding that an offender may admit the existence of a cartel, and notifies FAS officials verbally, the risk of disclosure of this information remains.

The competition legislation does not provide for any special early resolution or settlement procedures, other than leniency. FAS Russia may close the cartel investigation early if the violation of the Competition Law ceases, and its consequences were eliminated voluntarily by the cartelists.

The leniency program provides for a decisive release from the administrative liability of a legal entity, but it does not guarantee the "automatic" release of a private individual who participated in a cartel arrangement. Such an individual should actively cooperate and compensate damages, or otherwise actively assist in effective restitution.

On 18 June 2013, the State Duma passed in the first reading the draft Federal Law on amendments to Article 178 of the Criminal Code. The amendments are intended to synchronise FAS activity with the activity of law-enforcement authorities. This draft law stipulates:

- guarantees of relief from criminal prosecution for private individuals who first provide the necessary data to hold the members of the cartel liable during the antitrust investigation (*i.e.*, plea bargaining);

- a procedure for cooperation between antimonopoly and law-enforcing authorities during the investigation of cartel cases, including exchanges of information; and

- a provision for members of an operational investigation activity to transfer information and materials to the antimonopoly authorities.

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[4] There is no agreed opinion on the deadline within which to submit the relevant information. One view states that such an application may be submitted prior to announcement by the FAS of its decision on the case of competition law infringement.

7.4. Vertical agreements.

Regulation of "vertical" agreements is very important for South Korean companies that invest in commodity markets that are in line with distribution chains (automobile industry, electronic devices industry, food industry and many others). There are some general rules on vertical agreements.

No general restrictions are applied to agreements of commercial concessions.

Vertical agreements between economic entities (except vertica' agreements between financial organizations) are permitted if the share of each economic entity in any commodity market does not exceed 20%.

Vertical agreements between economic entities are forbidden (except for vertical agreements that are allowed under special provisions of the Competition Law) if:

- Such agreements have led, or may lead, to fixing resale prices; or
- Through such agreements, sellers require buyers not to sell their competitors' goods. This prohibition does not cover those buyers' agreements to organize goods that are sold under the seller's or manufacturer's trademark or brand name.

The latest successful example of self-regulation is the Code of Automakers' Conduct, which was drafted by the Association of European Businesses in Russia and FAS Russia in December 2013. The Code is intended to help to reduce unfair practices of automobile dealers and distributors in sales and maintenance services, as well as the price of spare parts and service. The Code promulgates fundamental principles of interactions among carmakers, their distributors, their dealers, and the independent service centers. The main purpose of the document is to establish a transparent, non-discriminatory system through self-regulation.

7.5. Concerted actions.

Since 2012, the provisions of the Competition Law prohibiting concerted actions between economic entities have been significantly amended, and now this institute is enforced very rarely. The Competition Law draws a clear line between "concerted actions" and "actions performed under prohibited agreements."

Concerted actions are the actions of economic entities in a commodity market that are exercised in the absence of an agreement and meet the totality of the following conditions:

- The outcome of such actions meets the interests of each of the participating entities.
- The actions are known in advance to each of the participating economic entities due to a public statement, made by one of them, about exercising such actions.

- Actions of each of the participating entities are caused by the actions of other economic entities that are participating in the same concerted actions, and are not due to the circumstances equally affecting all of the economic entities in the relevant commodity market.

The Competition Law enumerates the prohibited actions. These are the actions that lead, or may lead, to:

- fixing or maintaining prices (tariffs), discounts, markups (surcharges), or additions to prices;
- increasing, reducing, or maintaining prices within the course of competitive bidding;
- dividing the goods market according to a geographic principle, quantity of sales, or purchase of goods, the combination of goods, or a composition of buyers or sellers (customers);
- reducing or terminating production of the goods; or
- refusing to conclude contracts with particular sellers or buyers (customers), if such a refusal is not directly authorized in the Federal Law.

7.6. Unfair competition.

Competition is considered unfair when the economic entities intend to receive benefits in the course of business through means that are inconsistent with the legislation of the Russian Federation, business customs, honesty requirements, and reasonableness, or that may inflict damages upon other economic entities or their reputations.

Under Article 10*bis* (2) of the Paris Convention, any act of competition that is contrary to honesty practices in industrial or commercial matters constitutes an act of unfair competition. FAS Russia often enforces the Paris Convention of 1883, which allows the competition authority to expand the qualification of unfair competition to the widely differing practices of undertakings.

The Competition Law specifically prohibits unfair competition and, namely, the sale, exchange or any other means to introduce goods into the commodity market, if the results of intellectual activity, the equivalent means of the individualisation of a legal entity, products, works, and services were used illegally. The FAS decisions on the existing cases of the Competition Law violations may be submitted to Rospatent by an interested party in order to invalidate the legal protection for trademarks.

7.7. Competition-restrictive practices and agreements by public bodies

According to the statistics of FAS Russia, more than one half of all of the antitrust cases involve public authorities. These public authorities include, *e.g.*, Federal executive authorities, public authorities

of the Russian Federation, local authorities, and other bodies or organizations exercising the functions of the above-mentioned authorities.

The Competition Law prohibits acts and omissions that lead, or may lead, to prevention, restriction, or elimination of competition, in particular:

- the introduction of restrictions concerning creation of economic entities in any sphere of activity, as well as the imposition of bans or introduction of restrictions concerning specific activities or the production of certain types of products;
- unreasonably preventing activities of economic entities, by establishing requirements for goods or economic entities that are not authorised by the legislation of the Russian Federation;
- the imposition of bans or the introduction of restrictions concerning the free movement of products in the territory of the Russian Federation, or other restrictions of the rights of economic entities for the sale, purchase, other acquisition, or exchange of commodities;
- requests to economic entities concerning the priority supply of products for a certain category of purchases (customers), or for the conclusion of contracts in priority order; or
- imposing restrictions on purchasers of products concerning the choice of economic entities that provide such products.

The Competition Law also prohibits concerted actions and agreements between public authorities, or between them and certain economic entities, that lead, or may lead, to the prevention, restriction, or elimination of competition.

7.8. Merger control

Relevant authorities and legislation

The Federal Antimonopoly Service of Russia and its territorial divisions are the main merger control authority in Russia. The Central Bank of the Russian Federation (the "CBR") also performs some merger control functions with respect to transactions involving banks and financial institutions.

The essential source of the Russian merger legislation is the Competition Law, which is accompanied by the merger legislation for foreign mergers, as well as the legislation for mergers in particular sectors. The Competition Law is enforced via the relevant decrees and regulations adopted by the Russian Government and the FAS.

The Competition Law applies to "foreign to foreign" transactions with respect to Russia-based assets, shares, participation interests in Russian undertakings, and rights over such undertakings that are subject to Russian merger controls; or if they have, or may have, another form of impact on competition in the Russian Federation.

In accordance with Article 26.1 of the Competition Law, transactions and other actions with respect to manufacturing means, material assets, voting shares, rights with regard to foreign entities and organizations, supplying goods in Russian Federation territory in an amount exceeding RUB 1 billion during the year preceding the transaction competition date, as well as other actions, are subject to antitrust control.

Thus, Russian legislation uses the value of the goods supplied in the territory of the Russian Federation as a criterion of the possible impact of merger and acquisition transactions with regard to foreign legal entities who are in competition in Russia. Those goods that are valued should be those that are supplied by the object of a merger or an acquisition.[5] .

There is other relevant legislation governing foreign mergers in the Russian Federation that are based on other federal laws, the list of which is quite extensive. The most important relevant legislation for foreign mergers in certain sectors, such as natural monopolies, banking, and insurance sectors, are:

- Federal Law No. 147-FZ "On Natural Monopolies" (17 August 1995);
- Federal Law No. 395-1 "On Banks and Banking Activities (2 December 1990);
- Federal Law No. 4015-1 "On the Organization of Insurance in the Russian Federation" (27 November 1992);
- Federal Law No. 178-FZ "On Privatization of State and Municipal Property" (as amended) (21 December 2001); and
- Federal Law No. 29-FZ (27 February 2003).

Russian legislation regarding issues with group structures of companies is significantly different from South Korean legislation. The principal difference is the formation of a group structure.

Transactions subject to merger control legislation

The Competition Law lists the five types of situations that are subject to merger control:

- **Type 1**:[6] the acquisition by a person or a group of persons of more than 25%, 50 %, or 75% of the shares in a target stock company, or more than 1/3, 1/2, or 2/3 of the participatory interest in a target limited liability company;

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[5] It should be noted that the words *merger* and *acquisition* do not refer to specific legal forms of transactions undere Russian law, but are used only as aggregate descriptive terms.

[6] These designations as "Types" are used only for purposes of presenting this information in this book in a simple, understandable manner. They are not specifically defined or described as "Types" by the Competition Law or other applicable legislation.

- **Type 2**: the acquisition of more than 20% of production or intangible assets (such as machinery and production facilities; but excluding land plots or non-industrial buildings, unfinished buildings, structures, construction, premises and portions of premises) from another target company;

- **Type 3**: the acquisition of direct or indirect rights to determine the commercial policy of the target company, or of the right to perform the functions of its executive bodies;

- **Type 4**: the incorporation of a new company if its charter capital is to be paid for in shares, participatory interests, or rights, in any of the three types of transactions described in the bullet points immediately above; and

- **Type 5**: the merger and consolidation of several companies.

A direct or indirect acquisition of a minority stake of any size that results in the acquirer obtaining sufficient rights to determine the commercial policy of the target company are also subject to merger control.

The jurisdictional thresholds for application of merger control

Under the Competition Law, the application of merger control (notification) differs in two forms – pre-merger filing and post-completion notification. Therefore, the thresholds may be divided into the following groups:

- **Pre-merger permission** from FAS Russia is required for the first three types of transactions subject to merger control, as described in the immediately preceeding section, if at least one of the following thresholds is met:

  - The aggregate book value of the assets of the purchaser and the target company (including their respective groups of persons) exceeds RUB 7 billion (approximately € 164 million), and the book value of the total assets of the target company and its group of persons exceeds RUB 250 million (approximately € 5.8 million); or

  - The aggregate annual revenue earned by the purchaser and the target company (including their respective groups of persons) from the sale of goods in the past calendar year exceeds RUB 10 billion (approximately € 234 million), and the book value of the total assets of the target company and its group of persons exceeds RUB 250 million (approximately € 5.8 million); or

  - Either the purchaser or the target company (including their respective groups of persons) is included in the FAS Register of dominant entities or legal entities having a Russian market share greater than 35%, irrespective of their assets and revenue.

  If none of these thresholds are met, post-completion notification with respect to the first three types of transactions subject to merger control is required when:

- The aggregate book value of assets or the aggregate annual revenue of the purchaser and the target company (including their respective groups of persons) is greater than RUB 400 million RUB (approximately € 9.4 million); and

- The aggregate book value of assets of the target company and its group exceeds RUB 60 million (approximately € 1.4 million).

Post-completion notification has been abolished effective in the beginning of 2014, under a Federal Law that has already been passed by the Russian Federal Assembly.

- **The incorporation of a new company** (a "Type 4" transaction, as described in the previous section) must be preliminarily approved by FAS Russia if:

  - The aggregate book value of assets of its founders' groups and the group of the company whose shares, participatory interest, assets, or obligations are contributed by the founders to the charter capital of this new company, exceeds RUB 7 billion (approximately € 164 million); or

  - The aggregate annual revenue earned by its founders' groups and the group of the company whose shares, participatory interest, assets or obligations are contributed by the founders to the charter capital of this new company, exceeds RUB 10 billion (approximately € 234 million); or

  - The company whose shares, participatory interest, assets or obligations are contributed by the founders to the charter capital of this new company, is included in the FAS Register.

- **A merger or consolidation of several companies** is subject to prior consent by FAS Russia if:

  - The aggregate book value of assets of the companies involved in such a merger or consolidation (together with their respective groups of persons) exceeds RUB 3 billion (approximately € 70 million); or

  - The aggregate annual revenue earned by the companies involved in such a merger or consolidation exceeds RUB 6 billion (approximately € 140 million); or

  - One of the companies involved in such a merger or consolidation is included in the FAS Register.

Post-completion notification must be filed with FAS Russia if the aggregate book value of assets or aggregate annual revenue of the companies involved in such a merger or consolidation exceeds RUB 400 million (approximately € 9.4 million).

Post-completion notification has been abolished effecive in the beginning of 2014, under a Federal Law that has already been passed by the Russian Federal Assembly.

All the above thresholds are not applicable to the finance sector (*e.g.*, insurance, banking services), which has its own complex threshold criteria.

Notification and its impact on the transaction timetable

If pre-acquisition filing is still required, the law provides some rules about when the respective party may submit post-completion notification, including whether:

- The proposed transaction (action) constitutes an intra-group transaction; and
  - Any of the parties thereto have disclosed the group structure to FAS Russia no later than one month prior to the completion date; and
  - As of this completion date, the group structure has not been changed; or[7]
- The parties to the proposed transaction that are involved in certain actions are a parent company and its direct subsidiary.

Prescribed format of notification

There is a prescribed format for the notification envisioned in a special decree of FAS Russia. There are also certain requirements and standard forms that are encountered while preparing additional materials for the filing. Those requirements are stated in the Competition Law and various FAS Russia decrees. All official documents in a foreign language must be apostilled and translated into Russian; and the translation must be notarized by a Russian notary.

The acquirer (purchaser) must obtain the antitrust clearance, and the founder(s) should file for the incorporation of a new company. Both parties engaged in mergers and consolidations are responsible for both pre-merger filings.

The FAS is required to consider a pre-acquisition filing within 30 days. This deadline can be postponed for a further two months; and in some exceptional cases, the term may be extended for a maximum of nine months.

Sanctions for violations of merger control requirements

Violations of merger control requirements risk both administrative and civil liability.

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[7] It should be noted that the interpretation of this provision excludes also transactions (actions) between a parent company and any of its indirect subsidiaries, as well as between subsidiaries of the same parent company. In any case, the main idea is that final control still remains with the parent company.

Administrative fines are permitted for failure to file a pre-acquisition notification. They may range from RUB 300,000 to RUB 500,000 (approximately € 7,000 to € 12,000) for legal entities, and from RUB 15,000 to RUB 20,000 (approximately € 350 to € 470) for officers. For the failure to file post-completion notifications, the ranges are correspondingly one-half to two-thirds lower. Those fines are imposed by FAS Russia.

FAS Russia may bring a civil action to invalidate transactions that violate the Competition Law. If the compulsory prior consent has not been obtained, or the post-completion notification has not been submitted, a company that was incorporated as a result of consolidation, or by contribution by another company's assets or shares, may be liquidated or reorganized in the form of a split-up or split-off. The same consequences may also be suffered under the same circumstances by a company reorganized by means of another company's accession. However, such a liquidation or reorganization is only possible in judicial proceedings initiated by the antimonopoly authorities.

The offender may be brought to face justice under the administrative laws within one year from the date the offense was committed, or following the detection thereof in relation to continuous offenses. The general time limit for civil liability is three years, except for a claim of invalidation of the transaction, which may be brought within a year from the date upon which FAS Russia learned, or should have learned, of the facts indicating the grounds for the invalidation.

7.9. Liability for violation of the Competition Law

Individuals (including officials) and legal entities bear legal responsibility for violations of the Competition Law. For example, administrative and criminal liabilities apply to individuals, and legal entities are subject to civil and administrative liabilities.

Criminal liability

The sanctions for officers of legal entities are dual in nature due to the existence of both administrative and criminal liability. Administrative liability for entering into, or participating in, a cartel may result in a fine of RUB 20,000 to RUB 50,000, or disqualification for up to three years. Criminal liability for the same offense having material consequences leads to either a criminal fine of up to RUB 1 million, or up to five years imprisonment, with or without disqualification of one to three years. Some qualified offenses may be punished with more severe criminal penalties.

The sanction of disqualification means prohibition from:

- taking a position in the executive body of a legal entity;
- being a member of the board of directors (supervisory board);
- conducting business activities in the management of a legal entity; and
- conducting the management of a legal entity in other cases stipulated by Russian legislation.

The criminal liability for violation of the Competition Law is set forth in Article 178 of the Criminal code of the Russian Federation. These offenses are:

- creation of a cartel; and
- repeated abuse of dominant position in a commodity market (if a person is liable for administrative offenses more than two times in three years).

  To result in criminal liability, the abuse must have been committed in connection with:

  - a high or low fixed price of goods;
  - an unreasoned denial or rejection to conclude a contract; or
  - restricted access to a market.

The actions that constituted the violation must have resulted in:

- the infliction of "large" (greater than RUB 1 million) or "particularly large" (greater than RUB 3 million) damages to individuals, associations, or the state; or
- deriving of "large" (greater than RUB 5 million) or "particularly large" (greater than RUB 25 million) revenues.

Administrative liability

The Administrative Code also stipulates liability for violation of the Competition Law:

Articles 14.31 and 14.31.1 of the Administrative Code provide sanctions for abuse of a dominant position in a commodity market. Officers are subject to an administrative fine of RUB 15,000 to RUB 20,000. For legal entities the administrative fine is equal to 1% to 15% of the company's income from sales of the product in the market in which the offense has been committed, with a minimum fine of RUB 100,000.

Article 14.32 of the Administrative Code imposes similar liability for violation of Articles 11, 11(1), and 16 of the Competition Law, which prohibit anti-competitive agreements and concerted action. Sanctions on officers may include administrative fines from RUB 20,000 to RUB 50,000, or disqualification for a term of up to three years. For legal entities the administrative fine is equal to 1% to 15% of the company's income from sales of the product in the market in which the offense has been committed, with a minimum fine of RUB 100,000.

Article 14.33 of the Administrative Code stipulates the liability for violation of Article 14 of the Competition Law, which prohibits unfair competition. Officers are subject to an administrative fine between RUB 12,000 and RUB 20,000, or disqualification for up to three years. For legal entities the

administrative fine is equal to 1% to 15% of the company's income from sales of the product in the market in which the offense has been committed, with a minimum fine of RUB 100,000.

Article 19.8 of the Administrative Code provides sanctions for the non-filing and non-presentation of information and documents requested by FAS Russia. Individuals are subject to an administrative fine of RUB 800 to RUB 2,000. For officers the administrative fine may range from RUB 2,000 RUB to RUB 20,000. Legal entities are subject to an administrative fine of RUB 50,000 to RUB 500,000.

Civil liability

Violation of the Competition Law may result in civil liability to parties whose legal rights or interests have been injured by a violation of the Competition Law. The Competition Law grants the right of persons to claim damages caused by a violation of antimonopoly law. The Civil Code of the Russian Federation governs the determination of civil liability and the award of damages and remedies.

7.10. State preferences

The Competition Law allows public authorities to transfer funds and assets, and to provide preferences, to economic entities. The granting of such rights may have an impact on competition. These preferences should be preliminarily approved by FAS Russia before they are granted. Foreign investors also may use the benefits of the state preferences.

The preferences are granted for the following basic purposes:

- developing education and sciences;
- encouraging scientific research;
- protection of the environment;
- preserving cultural heritage;
- promoting physical training and sports;
- national defense and security;
- producing agricultural products;
- enhancing social welfare;
- enhancing the healthcare of individuals;
- supporting small and medium-sized businesses; and

- other purposes cited in other Russian Federal laws and legal documents.

In 2011, more than 87% of the applications for state preferences were reported to have been approved.

8. Public procurement

8.1 General provisions

The spending on public or corporate procurements accounts for 15% of the GDP. The total amount of Russia's public and corporate procurement in 2012 is estimated to have been around RUB 13 trillion (€ 400 billion), and exceeds more than 50% of all federal expenditures. This sector of the Russian economy is very attractive to foreign investors.

The existing legislation on public procurement regulates the issues related to placing orders, execution of works, rendering of services for the state, municipal orders, and orders for state-financed institutions. These actions are understood as the acts of the customers, authorized agencies in respect to the selection of the contractors (suppliers) for state or municipal contracts pursuant to the legislation. Other ways of concluding government contracts are unknown under the legislation on the placing of orders.

Federal Law No. 44-FZ "On Contract System in Procurement of Goods, Works, Services for State and Municipal Needs' (5 April 2013) (the "Contract System Law") entered into force on 1 January 2014. This law is expected to govern a wide range of issues related to public procurement procedures, and to regulate the whole cycle of procurement procedures from its planning to its execution and auditing. When the Contract System Law went into effect, it replaced provisions of Federal Law 94-FZ "On Placement of Orders to Supply Goods, Carry Out Works and Render Services for Meeting State and Municipal Needs" (21 July 2005) ("the Law on Placement of Orders").

Corporate procurement for the needs of state-owned corporations, public companies and other entities with government interests is processed in accordance with the Federal Law No. 223-FZ "On Goods, Works, Services Procurement by Certain Types of Legal Entities" (18 July 2011) ("the Corporate Procurement Law").

Corporate procurement is different from public procurement. The Corporate Procurement Law stipulates general requirements for procurement of state-owned corporations. However, the procedural rules, forms, durations and requirements of such procurements are established by companies themselves. Pursuant to the Corporate Procurement Law, state-owned corporations, public companies, and other entities with government interests must announce and disclose their procurement plans (documents regarding the procurement procedure) on the official website created for placing orders.

The current official website for placing public and corporate orders is zakupki.gov.ru. The access to this website is free and available 24 hours per day; thus, it does not require any special registration. The customer should disclose information concerning procurement (tender announcement, required documents, "Qs and As," interim and final decisions on procurement, and a register of state contracts) on the official website. The legislation on placing orders promulgated such principles as universal access, transparency, openness to the public, and non-discrimination. The customer is obliged to disclose

information on the official website, which will lead to the realization of the aforementioned principles. Moreover, the Contract System Law introduces the Uniform Information System, which will contain all the information and data regarding public procurements, from planning to execution.

8.2 Types of bidding procedures

The basic types of tenders under the current law are competitive tenders, auctions (including electronic auctions), requests for quotations (RFQs), and procurement with a single supplier. The new Contract System Law has added requests for proposals to this list. The tender may be processed in open form, with the invitation to apply submitted to the general public. Alternatively the tender may be or in concealed form, with the invitation to apply submitted only to persons appointed by the client in accordance with the procurement legislation. The selection of tender form is strictly regulated and depends on the subject matter, stating the (maximum) price, and duration of the contract.

The most preferred methods of tendering under the Law on Placement of Orders were competitive tenders and auctions. These are considered to be competitive and accessible types of tenders for a wide range of participants. In accordance with the Contract System Law, the main type of tender must be competitive biddings in all cases, except for the direct reference to the application of other procedures. The customer selects a form of tender between competitive tenders and auctions. In this case, the Government of Russia may ascertain the list of goods, works, and services tendered exclusively by auctions. More than 55% of all tenders have been processed by means of electronic auctions. Notably, more than 41% of tenders in Russia have been in the area of construction, reconstruction, and maintenance.

- **Competitive tenders**

  A competitive tender means that the winner shall be the person who has offered the best terms and conditions of implementation of a state or municipal contract, and to whose application for participation in the tender the first number is awarded. The application period for competitive tender had been less than 30 days, until the opening of the envelopes with applications. (The Contract System Law reduces this minimum period to 20 days.)

  The applications are assessed by the tender, subject to the evaluation criteria established by the tender documentation. After ten days from the disclosure of the application assessment on the official website, a contract may be concluded. The Contract System Law also prescribes that the application deadline may not exceed 20 days from the disclosure of the final documents on the website. The participant is given a ten-day period to file any appeals to the antimonopoly agency after publication of the final results, until the date of concluding the contract. Thus, a dissenting participant in the tender will be able to reinstate his or her rights by applying to the antimonopoly agency immediately before the concluding of the state contract.

- **Auctions**

  In an auction for a state or municipal contract, the person who offers the lowest price is declared the winner. The most widespread form is an electronic auction, which is held on five electronic platforms accredited to process the tender. The former law required that information on electronic auctions should be announced on the official website no later than 20 days before the opening of the envelopes containing the applications. From 1 January 2014, this duration has been reduced to seven days. The auction is processed while the starting (*i.e.*, the maximum) price decreases. The winner who proposed the lowest price may conclude a contract no later than ten days after the disclosure of the results on the website.

- **Requests for quotations**

  In requests for quotations, the information concerning the need for goods, works, or services to meet state or municipal needs is delivered to an unlimited number of persons through a notice on the official website. The participant that quotes the lowest contract price is the winner. The information on requests for quotations must be announced on the official website no later than seven business days before the deadline for quotations.

- **Requests for proposals**

  In requests for proposals, information concerning the needs in goods, works, or services for meeting state or municipal needs is delivered to an unlimited number of persons through a notice on the offical website. The participant that submits the proposal that best satisfies the needs of the customer is the winner. The application period must be at least five days.

In some cases, which are strictly governed by law, the customer may offer to conclude a contract with a certain party.

8.3 Stages of tender process

The placing of state orders usually consists of several stages:

- decision-making on a tender (necessary paperwork done by state or municipal customers);
- disclosure of procurement plan on the website (zakupki.gov.ru) (with the obligatory minimum application period dependant on the form of the tender);
- processing of tender (evaluation and assessment of applications);
- announcement of results and tender award; and
- signing of state contract.

In each step of the tender process, the procedure and its terms are strictly regulated. The entry into force of the new Contract System Law will also include changes such as: tender planning; public debate on the tender (otherwise provided by the law); stages of the tender; and subsequent auditing, monitoring and control over the placing of orders and execution of state contracts.

Today, there is public discussion of tenders with starting (maximum) prices of more than RUB 1 billion RUB (€ 22 million).

8.4 Requirements for tender participants

Under Russian public procurement law, any legal entity, irrespective of legal structure, ownership form, place of location and place of assets, or any individual, such as a sole proprietor, may participate in tenders.

The Contract System Law requires the equal treatment of foreign goods, works, and services rendered by foreign participants with those of Russian origin or provided by Russian entities, in accordance with international treaties of the Russian Federation.

However, for protection of the constitutional order, the security, and the domestic market of Russia, the government of the Russian Federation may impose prohibitions and restrictions on the access of goods from foreign countries, works and services rendered by foreign entities.

The Federal Law on state regulation of foreign trade activities prohibits the following goods to be imported into Russia:

- goods that are inconsistent with technical, pharmacological, sanitary, veterinary, phytosanitary, and ecological requirements in Russia;
- goods that have no certificates, markings, or signs, as required by the law on the certification of products and services, or by other Russian law;
- prohibited dangerous consumer goods; and
- dangerous or defective consumer goods.

The major requirements for tender participants are as follows:

- compliance of the participants in the order's placement with the requirements established by the legislation of the Russian Federation;
- capacity of the participants to conclude a contract;
- no liquidation or bankruptcy of the participants;

- non-suspension of activities of the participant in the order's placement in the procedure provided for by the Code of Administrative Offenses of the Russian Federation;
- absence of tax liabilities from the previous calendar year in an amount greater than 25% of the balance sheet asset of the participants;
- non-inclusion in the registry of suppliers in bad faith;
- absence of public officials with criminal records or administrative penalties in the form of disqualification, and officials who are banned from holding certain positions related to the supply of goods, works and services; and
- possession of exclusive rights in intellectual properties, provided that the customer acquires such rights during the course of an execution.

The law also prescribes additional requirements for participants.

Notably, the legislation on public procurement has a strictly formalized approach, which should be taken into account when preparing and applying for tenders.

8.5 State contracts

State contracts are concluded with the winner of the tender. The contract is made in accordance with the general provisions of the civil law and the law on placing orders. Generally, the price of contract is fixed and cannot be changed in the course of its execution.

State contracts may be terminated by the parties' agreement, unilaterally, or through a court decision. Until quite recently, state contracts were terminated only by the parties' agreement, or judicially. Due to a modification in the Law on Placement of Orders that was made in June 2013, it is now possible for a party to repudiate the contract unilaterally, provided that such provision is contained in the state contract, and the other party substantially has violated the terms and conditions of the contract.

8.6 FAS authority over public procurement

The Federal Antimonopoly Service is an agency authorized to exercise control over approved tenders. The law on placing orders and the Contract System Law provide an accelerated processing of complaints due to the acts of the customer (five days). At the same time, a complaint may be filed until the application deadline. The subsequent appeal is permitted exclusively to those persons who have applied for tenders within ten days of the publication of respective protocols prior to the concluding of a state contract.

In respect of corporate procurement, the complaint is filed in a manner provided for by the Competition Law. FAS Russia must process the complaint within no later than seven business days of filing.

At the end of the review, the agency may acknowledge the violation of the law, issue instructions to eliminate the defects, and bind the customer to annul the tender. However, the agency itself cannot invalidate the tender. Only the courts have that power.

8.7. Competition requirements for tenders

Antimonopoly requirements apply to competitive tenders, auctions, and requests for quotations.

Any acts of tender participants, customers, tendering organizers, or professional associations, that lead to the prohibition, restriction, or elimination of competition, are not permitted under Russian competition legislation. The following are examples of prohibited conduct:

- coordination of the tender by organizers or customers;
- creation of preferential conditions for one or several participants in tenders (including by means of favorable access to information);
- violation of procedures for determination of a winner or winners;
- participation of tender organizers or customers and (or) their employees; and
- restricted participation, if tender organizers or customers are government agencies.

An agreement among bidders about tender participation (*i.e.*, "bid rigging") is considered to be a cartel agreement.

Effective remedies for protection of infringed rights include:

- filing with the Federal Antimonopoly Service (under a very effective five-day procedure); and
- filing a lawsuit requesting the court to invalidate the bidding procedure.

9. Real Estate and Construction

9.1. General provisions

The Russian Constitution recognizes the following types of property: private, state, municipal and other forms of property, where "other forms" are deemed as the property of various public associations, such as political parties and trade unions. Private property is first on the list, and the Constitution, in so doing, acknowledges the importance of such form in comparison to others.

The legislative foundations of Russian property law include the following:

- The Civil Code (Part One) (30 November 1994) and the Civil Code (Part Two) (26 January 1996) govern the basic rules of civil turnover of any kind of property, including real estate.
- The Land Code (25 October 2001) was adopted as a special code in order to create a unified act to regulate the fundamental rules of dealing with land plots. The Land Code developed and clarified the general rules in the Civil Code.
- Federal Law No. 122-FZ "On State Registration of Rights to Real Estate Property and Transactions Thereto" (21 July 1997) (as amended) (the "Registration Law") regulates all aspects of registration of transfers of title, encumbrances, and other rights and obligations with respect to real estate.
- Federal Law No. 221-FZ "On the State Cadastre of Real Estate" (24 July 2007) (as amended) establishes and governs a system of the federal cadastral accounting of real estate on the territory of Russian Federation.

Rights to real estate

Russian law recognizes the following types of rights over land:

- ownership;
- the right of the inherited life possession of a land plot;
- the right of the permanent (perpetual) use of a land plot;
- easement;
- lease;
- the right of economic management; and
- the right of operation management.

9.2. Registration of title to real estate

In Russia, cadastral information on all land types and their permitted use is recorded in the State Cadastre of Real Estate (or "State Cadastre). All rights on land plots and transactions associated therewith, including encumbrances created by various legal arrangements, (*i.e.*, pledges and lease agreements for more than a one-year term) must be registered in the Unified State Register of Rights to Real Estate Property and Transactions Therewith (the "EGRP").

The "Federal Service for State Registration, Cadastre and Cartography" (*Rosreestr*) is the federal executive authority performing the function of the registration of titles and transactions with real estate. The "Cadastral Chamber of the Federal Service for State Registration, Cadastre and Cartography" (the "Cadastral Chamber**"**) maintains the State Cadastre where cadastral information on real estate is recorded. The difference between the two agencies is that Rosreestr maintain records on titles, and the Cadastral Chamber maintains cadastral information regarding the property registered by the Rosreestr.

Land leases, subleases, and fixed-term uncompensated use of land plot rights, signed for less than one year, are not required to be registered.

Applications for the registration of rights and encumbrances to real estate property may be submitted electronically, but the remainder of the documents must be presented in person.

Registration of ownership is executed under the application of a title holder, parties to a contract, or another person duly authorized by a power of attorney and certified by a notary. Together with an identity document and/or power of attorney, one of the following documents must also be provided:

- acts of state or municipal authorities;
- contracts and other transactions concerning the real estate;
- acts (certificates) of privatization;
- inheritance certificates;
- judicial acts;
- acts (certificates) on ownership right, issued by the executive authority; or
- other acts confirming a title, its termination, the transfer thereof, or encumbrances thereon.

Information from either the State Cadastre or the EGRP can be accessed electronically.

Public access to the EGRP and cadastral records

There are no restrictions on public access to the EGRP register and cadastral records. Article 131 of the Civil Code requires Rosreestr and the Cadastral Chamber to provide information on registered titles and transactions with real estate to any person. Any information may be retrieved from the recording registries; however, limited public access to certain records is stipulated by federal law. The buyer of real estate can personally obtain all information regarding encumbrances and other rights affecting the real estate to be acquired.

9.3. Minimum procedural requirements to sell real estate

The minimum requirements are as follows:

- The seller is the lawful owner of the property.
- The seller is entitled to sell the property.
- The contract should be executed in writing as a single document, signed by both parties.
- The contract should explicitly define the property and its price.
- Transfer of title to the property should be registered with Rosreestr.

Together with informing the buyer concerning any encumbrances on the property or ancillary titles or limitations that may affect the rights of the buyer, the seller has a duty to inform the buyer of any defects of the property, and has an obligation to transfer the real estate in the condition as described in the contract. A fundamental inclusion in a sale and purchase agreement of an apartment, residential house, part of a house or an apartment, where other persons retain their right to reside after the purchase, is a list of such persons, with their titles, and their right of use of such property.

The seller is liable for misrepresentations, either due to negligence or intentional actions. The legal implications of such misrepresentation must be determined by a court decision.

Sellers usually give contractual warranties that the property is free from any encumbrances, and guarantees to provide all necessary documents to Rosreestr for transaction and ownership title registration, and to pay half of the registration fee. Warranties, to a certain extent, are a substitute for the buyer carrying out one's own diligence, especially in large transactions.

As a warranty of title, the seller usually provides an extract from the Unified State Register of Rights to Real Estate Property and Transactions Therewith. The buyer can also obtain such a statement upon request. This statement contains information on ownership title and encumbrances on real estate.

According to the Civil Code, the buyer is obliged to take possession of the real estate property, pay the agreed purchase price, and complete other actions that are required for the registration of the title

transfer, such as to go to the office of Rosreestr, along with the seller, to file an application and other required documents.

Lending money to acquire real estate

Presidential Decree No. 1180 "On Housing Credits" (10 June 1994) determines the general regime of credit-finance support to citizens for the purchase, development, or mortgage of housing.

Federal Law No. 102-FZ "On Mortgage" (16 July 1998) provides for the automatic creation of mortgage security to loans provided for the acquisition or construction of real estate property.

However, the legal regimes for either non-resident individuals or legal entities and for resident individuals and legal entities are virtually the same, although some additional currency control regulations may apply to cross-border transactions.

Mortgage of real estate

Lenders will usually seek to secure a real estate loan by a mortgage. The Civil Code and the Mortgage Law requires a borrower, depending on who possesses the property, to insure, at the borrower's expense, the real estate against loss and damage risks.

Only real estate recorded in the EGRP can be mortgaged. The law prohibits mortgage agreements in relation to property, withdrawn from civil circulation, the realization of which is impossible under foreclosure proceedings.

Foreclosure on mortgages

Russian mortgage legislation provides two ways of foreclosure on mortgages: by application to the court and though non-judicial procedure.

Mortgaged property that has been foreclosed by a lender by means of a court judgment is normally sold at public auction. However, the parties may supplement the mortgage agreement with the conditions and order of a non-judicial procedure for foreclosing the mortgaged property. This authorizes the mortgagee to initiate such procedure after receiving an executive endorsement made by a notary without the need to file a claim to the court.

9.4. Taxation of transactions with real estate

Transfer tax on real estate transactions

There is no transfer tax in Russia for any transfer of real estate; however, profit tax may be applied if seller profits from the sale of the real estate. Profit is calculated as a positive difference of a sale price to the price for which seller has initially acquired the real estate.

Income Tax

According to Article 220 of the Tax Code (part 1), if the property had been in the possession of an individual for less than three years and is priced over RUB 1 million, it is subject to income tax (13%) for the amount of income in excess of RUB 1 million. Income from buy-sell transactions of real estate that have been in the possession of an individual for more than three years is exempt from income taxation.

VAT

As a general rule, real estate transactions are subject to VAT, according to the Tax Code.

The Tax Code limits the scope of VAT payers by legal entities (including institutions and state and municipal entities), as well as individual entrepreneurs registered and operating in accordance with the legislation of the Russian Federation.

Non-resident companies trading with resident companies and individual entrepreneurs are also liable for VAT, where the Russian party acts as a tax agent for non-resident companies having no branches registered in the Russian Federation.

The standard VAT rate is 18%; but certain transactions, such as the realization of residential buildings, apartments, as well as shares therein, are exempt from VAT. Land plots are also exempt from VAT.

Other applicable taxes

Generally, the seller pays the VAT and profit taxes. Depending on the legal nature of the seller, the following options may arise:

- If the seller is a legal entity, or an individual entrepreneur sells the real estate: VAT and profit taxes (subject to certain exemptions provided by the Tax Code).
- If the seller is an individual person: tax on personal income (13%).
- If the seller is a non-resident legal entity: none.
- If the sale is to an individual person: none.
- If the sale is to an individual entrepreneur or a legal entity: VAT (18%) and profit tax (20%).

As a general rule, non-resident companies are liable for 20% profit taxes if they sell the shares of a Russian company, more than 50% of the assets of which consist of an immovable property located within the territory of the Russian Federation.

9.5. Commercial leases

General principles regulating the lease of property are provided in Chapter 34 of Part II of the Civil Code. All leases concluded for the term of one year or longer are subject to state registration according to Federal Law No. 122-FZ "On State Registration of Rights to Real Estate Property and Transactions with It"(21 July 1997).

Marketing practice acknowledges the following leases based on the type of premises: lease of warehouse premises; lease of retail premises; lease of office premises; and lease of multifunctional premises. Since there is no legal definition of "business premises," the classifications may vary.

Typical conditions of commercial lease agreements

Length of term: Legislation currently in effect provides no minimum term. All agreements concluded for an undefined term are deemed to be concluded for the maximum term, which may be defined from time-to-time by the law for various types of real estate.

Rent increases: The Civil Code allows rental rates to change, as defined by the parties, but only once a year.

Tenant's right to sell or sub-lease: The Civil Code allows a tenant to sub-lease premises, subject to the prior consent of the landlord. Under current law, a tenant cannot sell leased premises; however, a tenant may sell its rights to lease the premises to a third party, subject to the prior consent of the landlord.

Insurance: There is a common commercial practice, although not legally mandatory, for commercial leases to include the tenant's duty to insure its liabilities in favor of the landlord.

Change of control of the tenant: There are no special regulations that limit a tenant's right to change its corporate or shareholding structure.

Transfer of the lease as a result of a corporate restructuring (*e.g.*, merger): The legal successor of the tenant is entitled to replace the original tenant without any additional consent or permits of the landlord.

Repairs: According to the Civil Code, the tenant is responsible for the current maintenance of the leased premises, while the landlord is responsible for all capital repair works. These provisions may also be altered by the mutual agreement of the parties, or by law.

Usual circumstances when a lease could be terminated

The Civil Code provides two basic ways of lease termination: lease expiry and early termination. Expiration of a lease term is the normal manner to terminate a lease agreement. Early termination may occur in the following cases:

- Early termination of the contract may occur by the mutual agreement of the parties.

- Early termination of the contract may occur at the request of the landlord in the following cases:
  - The tenant substantially breaches the designated use of the premises stipulated by the lease agreement;
  - The tenant substantially worsens the condition of the leased property;
  - More than two times in a row, the tenant breaches its obligation to pay the rent within the terms stipulated by the lease agreement;
  - The landlord does not perform the capital repairs of the leased property, according to the conditions of the lease agreement or due to an applicable legislation; or
  - Early termination by the landlord is requested for another reason authorized under the terms of the lease agreement.
- Early termination of the contract may occur at the request of the tenant in the following cases:
  - The landlord does not deliver the subject of the lease;
  - The landlord impedes the proper use of the property, as stipulated in the lease agreement;
  - The property provided by the landlord has substantial defects or shortcomings that prevent the tenant from enjoying the proper use of such property in accordance with the lease agreement;
  - The landlord, being responsible for capital repairs of the leased property, does not perform its duty within the terms stipulated in the lease agreement, or within a reasonable term if there are no terms for capital repairs in the lease agreement; or
  - Early termination by the tenant is requested for another reason authorized under the terms of the lease agreement.

There are no specific legislative rules allowing the tenant unilaterally to extend or renew the lease agreement,when there are no such provisions in the agreement itself. However, upon the expiration of the lease, the current tenant has a pre-emptive right to conclude a new lease with the landlord.

Compensation paid upon the termination of a lease may be divided into two groups:

- **Provided by the agreement**: Such compensation is usually paid as a penalty for an early termination of lease.

- **Provided by law**: According to the Civil Code, the tenant is entitled to claim compensation for the permanent improvements that have been implemented to the subject of the lease with the consent of the landlord.

In some cases, and only if directly permitted by law, the landlord or the tenant may transfer their rights and obligations under the lease agreement to a third party. However, the original tenant or the original landlord may still be liable for any breaches of the contract arising prior to the assignment of rights and obligations under the lease agreement.

9.6. Governmental regulation of land use

Laws that govern zoning and related matters concerning the use and occupation of land

- **Zoning and related matters:**

  - Federal Law No. 136-FZ "The Land Code of the Russian Federation" (25 October 2001) stipulates the general principles, state policies, rights, and obligations of all involved parties in respect of the acquisition, use, state supervision, and alienation of land plots.

  - Federal Law No. 190-FZ "The Urban Development Code of the Russian Federation" (29 December 2004) regulates urban planning and the construction activities on land plots, classifying land plots for various construction purposes or banning construction thereon.

  - Federal Law No. 101-FZ "On Transactions with Agricultural Lands" (24 July 2002) regulates transactions with agricultural lands, distinguishing such lands due to the importance of public interest in respect of such lands.

  - Federal Law No. 172-FZ "On the Transfer of Lands or Land Plots from One Category to Another" (21 December 2004) describes the legal routine for changing the category of a land plot from one category to another.

- **Environmental laws:**

  - Federal Law No. 7-FZ "On Environmental Protection" (10 January 2002) defines general principles in respect of state policies in the area of state protection of the environment, providing proper conditions for the development of biodiversity and natural resources.

  - Federal Law No. 33-FZ "On Specially Protected Natural Areas" (14 March 1995). protects special territories, where any activities of persons are prohibited, due to the scientific, recreational, or substantial natural importance of such areas.

9.7. Redemption of land plots

Russian legislation recognizes redemption of land plots from their lawful owners, but only in strictly limited cases.

The Civil Code requires the following conditions to be met:

- The land plot may be withdrawn from the owner only for state or municipal needs.
- The withdrawal of the land plot may be executed only by way of redemption.
- A decision on the withdrawal must be adopted by the Russian Federation, by a constituent entity of the Russian Federation, or by a municipal body, depending on which will obtain the land plot following the redemption.
- The owner should be notified no later than one year prior to the withdrawal.
- A decision on the withdrawal of the land plot adopted by the relevant body must be registered with the state body responsible for the state registration of rights to real estate property (*Rosreestr*).
- The redemption price must be based on the market price of the land plot and must be defined by an agreement with the owner.

There are two other particular grounds for withdrawal of the land plots from their owners:

- withdrawal of a land plot that is not used in accordance with its designated purpose; and
- withdrawal of a land plot used in violation of land use laws or environmental laws.

In order to stimulate construction of major infrastructure projects, a special federal law could be adopted. Such a law could provide a simplified and accelerated order for the redemption of land plots for state or municipal needs.

For example, such provisions were included in:

- Federal Law No. 310-FZ "On the Organization and Holding of the XXII Olympic Winter Games and XI Paralympic Winter Games of 2014 in Sochi, the Development of Sochi as a Mountain Resort and Amendments to Certain Legislative Acts of the Russian Federation" (1 December 2007); and
- Federal Law No. 43-FZ "On Peculiarities of Legal Regulation of the Individual in Connection with the Accession to the Subject of the Russian Federation - Moscow City

Federal territories and on Amendments to Certain Legislative Acts of the Russian Federation" (5 April 2013).

Both laws provide simplified procedures to acquire land plots for state or municipal needs in order to accelerate the development of urban areas, with respect to the timely implementation of federal infrastructure projects.

Protection of historical heritage

Russian law provides extended rules for the protection of historic and cultural monuments.

- The Law of the RSFSR "On the Use and Protection of Monuments of History and Culture," (15 December 1978); and
- Federal Law No. 73-FZ "On the Objects of Cultural Heritage (Monuments of History and Culture) of the Russian Federation" (25 June 2002).

The latter Federal Law No. 73-FZ enacted special regulation for objects of historical and cultural heritage, providing that such objects must be included in the unified state register of objects of cultural heritage (monuments of history and culture) of the peoples of the Russian Federation. Objects of cultural heritage, *e.g.*, objects of world heritage, are exclusively owned by the state. Other objects of cultural and historical heritage could be assigned to individuals or legal entities, but owners of these objects must comply with various obligations aimed at their protection and proper maintenance.

9.8. Governmental regulation of construction activities

Phases of the construction process

The main legislative act governing construction activities in Russia is the Federal Law No. 190-FZ "Urban Planning Code of the Russian Federation" (29 December 2004) (as amended 29 December 2006). The Urban Planning Code regulates all construction and related urban planning activities from the beginning of construction until the commissioning of a building. For this purpose, a special chapter in the Urban Planning Code divides construction into several phases:

- engineering survey;
- architectural and construction design;
- state review of the project documentation and engineering research;
- non-state examination of the project documentation;
- receipt of the construction permit;
- implementation of construction;

- construction control;
- state control of construction activities; and
- issuance of the permit for putting the structure into operation.

Engineering survey

The purpose of the "engineering survey" stage is to study the characteristics of the soil area whereupon the building will be erected, including geological factors, to guarantee further safe operations for construction. This research is usually made by a third-party research and engineering company, which produces a report, which will be the basis for technical designs and economics calculations at further stages of the project.

Architectural and construction design

In accordance with Article 48 of the Urban Planning Code, the architectural and construction design stage is aimed at the preparation of the project documentation. These documents contain information in the form of text and maps (schemes). They define the architectural, functional and technical, manufacturing, and engineering solutions for the construction.

Review of the project documentation

Preparation of project documentation may be performed by the developer alone, by a contractor engaged by the developer, or by an entity that meets the requirements of the Russian law governing the licensing of persons engaged in architecture and structural design.

Approval of project documentation is made by a developer, except for the cases specified by the law, but only after the state examination and approval of the documentation. The difference between these types of expertise lies in the fact that the state expertise is compulsory (with some exceptions listed in Article 49), and non-governmental examination is provided by accredited non-governmental organizations contracted by the developer.

Construction permit

According to Article 51 of the Urban Planning Code, the construction permit is a document confirming that the project documentation complies with the urban plan of the land, project area, or land survey project (in the case of construction or reconstruction of linear objects). The permit gives the developer the right to carry out the construction or reconstruction, or both, of the objects of capital construction.

Implementation of construction

According to Article 52 of the Urban Planning Code, a person engaged in construction, reconstruction, or major repair of a capital construction project ("a person engaged in construction") may

be a developer, or an individual, or a legal entity engaged by a developer, or a technical customer under a contract.

Any construction, reconstruction, or major repair of capital construction properties, which affects the safety of capital construction facilities, may be performed only by individual entrepreneurs or legal entities having certificates of admission to such work, issued by a self-regulated organization. Other construction, reconstruction, or major repair of capital construction properties may be undertaken by any individuals and legal entities.

Construction control

According to Article 53 of the Urban Planning Code, construction control is carried out in the course of construction, reconstruction, and repair of capital construction projects in order to verify compliance of works of design documentation, the technical regulations, the results of engineering studies, as well as the requirements of the urban plan of the land.

Construction control is carried out by the person performing the construction. In the case of construction, reconstruction, or major repairs on the basis of the contract, the construction control is carried out by the developer or technical customer, or by a person or legal entity engaged by them on a contractual basis. The developer or technical customer may take the initiative to involve the person in charge with the preparation of project documentation to verify that the works are performed in compliance with the project documentation.

State control of construction activities is carried out in the cases provided by Article 54 of the Urban Planning Code. As a general rule, state control is not carried out for the construction project documentation that is exempt from state examination.

Use permit

According to Article 55 of the Urban Planning Code, the use permit (permits for putting into operation) is the main document that validates the results of the construction activities and precedes registration of ownership of real estate in Rosreestr.

In some cases, additional permits and licenses are required. This is common for special purpose construction, which include objects connected with increased danger, such as boiler houses, power stations, and other similar buildings.

9.9. Licensing of construction activities

Centralized licensing of construction market players was abolished in Russia in 2010. Licensing was replaced with membership in self-regulated construction organizations. A self-regulated organization is a non-profit partnership, and its owners or managers are the market players. To carry on their activity, builders unite and perform under the control and support of a self-regulated organization in which they are members. The establishment and operations of self-regulated organizations are governed by Federal Law No. 315-FZ “On Self-Regulated Organizations” (1 December 2007).

As noted above, Article 52 of the Urban Planning Code requires that a self-regulated organization must have a permit to undertake certain construction works. The list of such works is established by the Order of Ministry of Regional Development of the Russian Federation No. 624 dated 30 December 2009 "On Approval of the List of Works Related to Engineering Survey, Design Documentation Drafting, Construction, Reconstruction, Major Repair of Capital Construction Properties, which Affect Safety of Capital Construction Properties."

A person engaged in works listed in this ordinance must first become a member of a non-profit partnership self-regulated construction organization and obtain a permit to perform such works. For this purpose, the applicant must qualify as required by the self-regulated organization. Typical requirements include a certain number of employees with diplomas of higher or secondary education and work experience exceeding a certain number of years. The applicant must also submit documents evidencing company registration, qualification of employees, and availability of facilities, equipment, and other resources. Contributions to the funds of the self-regulating organization must also be paid.

10. Public-Private Partnership

A special form of relationship between the business and the authorities, *i.e.*, the public-private partnership (PPP), has appeared in the economies of certain developed and developing countries, in the past recent decades.

The first PPP projects began to be implemented in Russia more than ten years ago. At present, there are a number of successful PPP projects. For example, the Pulkovo Airport Reconstruction and Development Project, which was recognized among the world's best PPP projects in 2013, is considered as the most successful PPP project in Russia. That project's advantages included, *inter alia*, the full financing of the project at the expense of the private sector, with the private sector's assuming of 100% of the risk.

Several other factors in the Russian economy have made PPPs very attractive and practical structures for major projects. The circumstances include:

- the worn-out state of infrastructure facilities throughout the Russian Federation, and the necessity to implement projects for their renewal;
- the impossibility of implementing projects at the expense of private investors only, due to their high investment value or long-term payback period;
- the need for innovative development of infrastructure facilities;
- the interest in combating corruption;
- the need for provision of services in the most efficient and cost-effective manner;
- the desire for maximum utilization of resources;
- the cumulative effect of infrastructure investments in maximizing and achieving the growth potential of the Russian economy;
- the creation of conditions for investing in the infrastructure from extra-budgetary sources; and
- the opportunities provided by business diversification.

10.1. PPP statutory regulation

The federal law on PPP has not yet been adopted; however, it is under consideration by the State Duma of the Russian Federation. According to top public officials, the PPP law will be adopted by 2014. At the same time, other federal laws have been adopted that govern certain PPP forms, such as Federal Law No. 115-FZ "On Concession Agreements" (21 July 2005). There also are branch-specific legal regulations of PPPs as well as other acts and regulations that govern the operations of development institutes and certain subjects authorized in the PPP field.

In the absence of a federal Law on PPP, regional PPP legislation is developing. At present, a regional PPP law has been adopted in more than 60 constituent entities of the Russian Federation. For example, regional laws on Russia's constituent entity participation in public-private partnership were adopted in all 11 constituent entities of the Siberian Federal District. Efforts to adopt PPP legislation are also being actively undertaken in constituent entities of the Far Eastern Federal District. In constituent entities, where the PPP law has not been adopted, draft laws are being debated.

PPP forms

There are two basic forms of public-private partnerships: concessional and non-concessional.

- concessional:
  - concessional agreement under the Federal Law No. 115-FZ "On Concessional Agreements" (25 July 2005)
  - life cycle contract
- non-concessional:
  - PPP agreement under regional laws
  - investment agreement (contract) for project implementation
  - agreement of a public (municipal) property lease with the making of permanent improvements (modernization/reconstruction)
  - services contract (*e.g.*, trust management)

One of the conditions of the bidding for the award of a PPP agreement is the obligation of the successful bidder to finance the project implementation. Considering the current condition of the Russian financing market, high capital costs, and long-term payback of infrastructure facilities, PPP projects in Russia may be financed by the following financing institutions:

- Russian and international development institutes;
- Russian non-governmental pension funds (NPFs)[8]; and
- international direct investment funds operating in the Russian Federation.

The most demanded fields for PPP implementation in Russia are:

[8] NPF investments must be guaranteed, as required by laws governing NPFs.

- transport industry (construction of motor roads, bridges, airports);
- housing and utilities infrastructure;
- ecology (creation of solid waste landfills); and
- construction of residential facilities and infrastructure.

PPP mechanisms have also gun to be widely used in these areas

- tourism;
- industrial parks;
- airport infrastructure;
- education; and
- medical care.

10.2. PPP projects in Russia

Considering the fact that the public-private partnership structure is still under development in Russia, there already are a significant number of PPP projects in constituent entities of the Russian Federation that are being successfully implemented. For example:

- In Krasnoyarsk Krai, RUSAL acts as a private investor of the "Comprehensive Development of Nizhneye Priangarye" project. This project includes the creation of a new industrial district in Krasnoyarsk Krai based on the power generated by the Boguchansk Hydro Power Plant and the resource potential of the region. Project implementation is supported by the Investment Fund of the Russian Federation.
- In the Yakutia Republic, the "Comprehensive Development of the South Yakutia" project includes the creation of a new major industrial district in Russia's Far East, based on public-private partnership principles, as well as hydraulic power and mineral raw resources available in the region, such as natural gas, apatites, coal, iron ore, and uranium ore.
- The project of construction of the 15 km - 58 km section of the Moscow-St. Petersburg highway is being implemented under a concession agreement. The concessionaire is North Western Concession Company (Vinci Group, France).
- The first concession agreement in the medical care field was executed in Moscow in May 2013 for the City Clinical Hospital No. 63.

Other major projects in the planning stages include:

- construction of a railway bridge crossing the Amur River at the Russian-Chinese frontier section;
- construction of a bridge crossing the Lena River;
- construction of the Angara-Yenisei cluster;
- construction of the Elegest-Kyzyl-Kuragino railway; and
- reconstruction and construction of Biysk airport facilities (Altai Krai).

Notwithstanding this progress, there still remain several obstacles to the PPP concept in Russia:

- There is no high quality process for the selection of projects.
- There is an absence of sufficient numbers people with PPP expertise in the government.
- At present, there is no legal regulatory framework at the federal level. This tends to discourage the implementation of potential major PPP projects with nationwide scope and significance.

10.3. The direction of PPP development in Russia

Because of its potential as a useful structure for major projects, Russia is paying growing attention to the development of the concept of the private-public partnership. For example:

- President Vladimir Putin has instructed the Russian Government to take efforts to create the legal and regulatory framework needed to support the implementation of investment projects based on PPP principles, to produce an attractive return on investment of funds from Fund of National Wealth and Pension Accruals.
- The legal and regulatory framework has been created to implement Tax Increment Financing (TIF). The TIF mechanism implies compensating a private investor for costs of infrastructure facility construction from additional tax proceeds collected from the implementation of the project.
- The legal and regulatory framework has also been created to attract private investments in the development of the railway industry.
- PPP mechanisms are being developed and used for port infrastructure development.
- There has been an increase in the number of PPP toll highways.

- PPP mechanisms are being used to support the clustering of plants.
- There is serious discussion of an initiative to attract private investments in the Russian space industry.

Rating of regions by readiness for PPPs[9]

region	score
Saint Petersburg	7.8
Republic of Tatarstan	6.6
Voronezh Region	6.5
Yaroslavl Region	6.3
Tula Region	6.1
Moscow	5.5
Krasnoyarsk Krai	5.4
Leningrad Region	5.0
Irkutsk Region	4.5
Omsk Region	4.7
Kamchatka Krai	1.4
Khabarovsk Krai	1.4
Primorsky Krai	0.0
Chukotka Autonomous District	0.0

[9] These ratings were developed by the PPP Center in February 2013, based on public-private partnership research in all 83 constituent entities of Russia. The regions in the table were scored on a scale of 0.0 to 10.0 according to their general investment appeal, experience in PPP projects, respective legislation, and well-established PPP project management systems.

11. Energy Law

Russia is one of the leaders in the global energy resource turnover system and takes an active part in the world trade in energy resources. The Fuel and Energy Complex (FEC), which produces more than 45% of the revenue side of Russia's consolidated budget, plays a key role in the domestic economy. The share of FEC industries in the gross domestic product is almost 30%.

Thus, covering almost and eighth of the land on the planet, Russia has a considerable potential – the world's largest in a number of resources – of minerals and renewable power sources. These have had, and will continue to have, a profound impact on Russia's development in general.

11.1. Legal regulation

Energy laws of the Russian Federation are based both on:

- general law, *e.g.*, civil, criminal, administrative, ecological; and
- special laws, such as:
  - the Federal Law "On Electric Power Generation Sector" and other federal laws regulating relations in the energy generation sector;
  - orders of the President of the Russian Federation; and
  - ordinances of the Government of the Russian Federation adopted pursuant to federal legislation.

Therefore, Russian energy law constitutes a wide system of legal provisions, which govern relations arising in due course and in connection with economic activity in the power generation sector.

11.2. Governmental control over power generation sector

Operations of the modern power generation system of the Russian Federation are based on a combination of technological and commercial infrastructure controlled by the government, on the one part, and organizations interacting with each other in a competitive environment and dealing with generation and sale of various types of energy, on the other part.

The supervising and regulatory functions in the power generation industry are exercised by the Ministry of Energy.

The Ministry of Energy is a federal executive authority, which develops and implements government policies, and exercises the legal regulation of the fuel and energy complex, including:

- electrical power;
- oil extraction and processing;
- the gas, coal, slate and peat industries;
- trunk oil pipelines;
- gas pipelines and pipelines for their refinement products;
- renewable power sources;
- hydrocarbon deposit development under production sharing agreements; and
- the hydrocarbon processing industry.

The Ministry of Energy also exercises industrial functions, such as the provision of public services, management of public properties in the field of production, and use of fuel and energy resources.

The Ministry of Energy has developed the governmental program "Energy Efficiency and Power Generation Sector Development in Russia" and the 2013-2018 action plan for the Ministry.

The key objectives of these programs are:

- modernization and construction of new generating capacities and power supply network facilities;
- making power generation infrastructure more available;
- modernization of the power metering system;
- construction of generating facilities operating under renewable energy sources; and
- creation and modernization of high-performance work stations.

11.3. Power generation industries

Electrical power generation sector

The unified energy system of Russia (Russian UES) consists of 69 regional energy systems, which, in turn, form seven united energy systems of East, Siberia, Urals, Mid-Volga Region, South, Center and North West. All energy systems are connected by inter-systemic high-voltage 220-500 kV and

higher power lines, and operate in a synchronous (parallel) mode. The Russian UES electrical power generation complex includes around 700 power stations with capacities over 5 MW.

At present, the Russian electric power market and capacities can be divided into two sections, retail and wholesale.

The wholesale market of power and capacity is the distribution chain of the special products of electrical power and capacity within the Unified Energy System of Russia and within the single economic space of the Russian Federation. The electrical power wholesale market players are major producers and major buyers of electrical power and capacity, and other persons with the status of a wholesale market entity.

The electrical power retail market offers electrical power purchased at the wholesale market of electrical power and capacity, as well as the electrical power of generating companies that are wholesale market players. The purpose of electrical power sales at the retail market is to supply power to end consumers.

The major entities in the electrical power generation sector are mostly privately managed and include:

- generating companies, which generate and sell electrical power in wholesale or retail markets to sales companies or large end consumers that are wholesale market players;
- grid companies, which deliver electrical power and connection facilities to power lines, and which are under governmental control; and
- sales companies, which purchase electrical energy in the wholesale and retail markets and sell it to end consumers.

Renewable power sources

Institutions supporting the utilization of renewable power sources are being widely developed in Russia at the present time.

Efforts to make the environment better, to take advantage of new opportunities to increase the public's quality of life, to participate in world development of advanced technologies, and to enhance the efficiency of economic development and international cooperation have contributed to the intensification of domestic initiatives to create more green power in the generation industry, and to move towards a low-carbon economy.

Laws relating to generators of renewable power sources provide for the uplift of the equilibrium price, as offered at the wholesale electric power market.

The Federal Law "On Electrical Power Generation Sector" promotes the development of renewable power generation not only through the wholesale market, but also forms the legal framework

to support small renewable power generating facilities (with capacity less than MW 25) in the retail market. This support consists of funding of the costs related to connection to small generating facility networks.

Technically available resources of renewable power sources in the Russian Federation amount to not less than the equivalent of 24 billion tons of coal.

Several regions of the Russian Federation (*e.g.*, Amur Region, Belgorod Region, Volgograd Region, Tomsk Region, and Krasnodar Krai) have adopted regional regulations aimed at increasing renewable power development.

The oil complex

The Russian oil industry comprises oil extraction enterprises, oil processing plants, and enterprises dealing with the transportation and sale of oil and oil products. There are 28 large-scale oil processing plants (each with a capacity at least one million tons per year), mini-refineries, and lubricant refining plants currently operating. The range of trunk oil pipelines is approximately 50,000 km, and that of the trunk oil-product pipeline is 19,300 km. In 2012, 301 companies were involved in oil extraction.

The oil sector comprises major vertically-integrated oil companies. The most powerful of these are oil companies, such as Rosneft, Gazprom Neft, Lukoil and Surgutneftegaz, Slavneft and Rusneft. Oil and oil products are transported by enterprises of the joint-stock companies, Transneft and Transnefteproduct.

The gas complex

Natural and associated petroleum gases are now the major sources to meet the domestic demand for primary power resources.

The Russian gas industry includes enterprises dealing with geological exploration, drilling of exploration and operating wells, gas extraction, transportation, and storage. The unified gas supply system includes more than 162,000 km of trunk gas pipelines and branch lines, 215 linear compressor plants with total capacity of gas compressor units of MW 42,100, six gas and gas condensate processing complexes, as well as 25 underground gas storage facilities.

The coal industry

Russia possesses prospected coal reserves of 193.3 billion tons.

At present, coal is extracted in 25 constituent entities of the Russian Federation, 16 coal basins, and 85 municipalities, 58 of which are coal provinces based on city-forming coal enterprises. Coal is extracted in 121 sections and 85 mines with the total annual production capacity of approximately 383 million tons.

As a result of privatization of coal assets in the course of the restructuring of the coal industry, all coal extraction is performed by privately-owned joint-stock companies. In this respect, a number of major

joint-stock companies (management companies) and holdings of coal assets were created. Almost all mines, where coking coal is extracted, are integrated into metallurgical holdings.

There currently are 16 management companies, including five coal metallurgic companies: Evraz Group, Severstal Resources (Severstal Holding), Mechel Mining (Mechel Group), the Ural Mining and Metallurgical Company, and the Industrial Metallurgical Holding. These companies share in 78% of the national coal extraction.

12. Natural Resources

At present, the Russian Federation is one of the leading countries in mineral extraction.

Russian mining and natural resources laws differ from the laws of most countries. The owner of all minerals is not the owner of the land in which the subsoil gas, coal, oil resources occur, but is the government. The right to develop a deposit (subsoil) may be granted under a license, which proves that the holder has the right to exploit the licensed resources

12.1. Natural resources legislation

Natural resources are regulated by the federal authorities and the authorities of constituent entities of the Russian Federation.

The Federal Law "On Subsoil Assets" is the basic legislation in the field of natural resources and is of paramount importance in Russian natural resources law. This law regulates the use of natural resources and matters connected with geology, exploration, and the extraction of natural resources.

Under Russian law, foreign companies may hold subsoil licenses. Offshore zones may be developed only by a Russian company with at least 50% Russian ownership. Such a company shall have at least five years of experience in off-shore zone operations. Although foreign companies have the right to be entitled to subsoil assets that are not strategically important for the Russian Federation, there are few cases in practice, in which a foreign company was granted subsoil rights. Usually, foreign companies enjoy title to subsoil assets through Russian representations, which have the right to subsoil assets and act within the Russian legal framework without siphoning their assets into offshore companies.

12.2. Mining licenses

Subsoil assets in the Russian Federation include:

- license to geological exploration;
- license to survey;
- license to extraction; and
- combined license.

The maximum validity period of a license to geological exploration is five years. However, this license may be extended.

Licenses to survey or to extraction may be issued for the entire project lifespan. In practice, a license typically is issued for 20 to 25 years and may be extended, provided that it is proven that the license holder does not willfully seek to extend the project implementation time.

Subsoil licenses are issued by the Federal Agency for Subsoil Use (Rosnedra). Rosnedra may not issue any licenses in respect of subsoils that are of strategic importance for the government. That right is vested only in the Government of the Russian Federation.

13. Intellectual Property Law

At present, intellectual property in all countries of the world is customarily recognized as the combination of literary, artistic and industrial property. The importance of intellectual property for development and expansion of production any country's economy, in general, is demonstrated by the fact that copyrighted activities alone contribute as much as 7% to the economy of some nations. Intellectual property generally also as become one of the most important factors in the social productivity and progress of a nation.

Many foreign companies that are engaged in business in the Russian Federation are connected in some way to intellectual property. Protection of a company from the unauthorized use of its intellectual property is a priority direction in the development of a company's business in Russia or anywhere else.

13.1. Legal regulation of intellectual property

Russian intellectual property law, at the national level, is primarily based on Part 4 of the Civil Code of the Russian Federation, as adopted in 2008. This part of the Civil Code united the former federal laws, which regulated protection of various forms of intellectual properties.

The Civil Code of the Russian Federation regulates the recognition and remedies for the protection of intellectual property rights such as copyrights and allied rights, the system of collective management of copyrights and allied rights, patent rights, designations, other types of intellectual property.

The formation and development of intellectual property law in Russia has been internationally driven. Russian intellectual property law includes conventions and international treaties ratified in the Russian Federation. The Russian Federation is a member of major international conventions, including:

- Universal Copyright Convention (1971) (as revised in Paris);
- Berne Convention for the Protection of Literary and Artistic Works (1886);
- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971);
- Paris Convention for the Protection of Industrial Property (1883); and
- Madrid Agreement Concerning the International Registration of Marks (1891).

13.2. Intellectual Property

At present, functions of regulation and protection of intellectual property in Russia extend to 16 properties specified in Article 1225 of the Civil Code of the Russian Federation, namely:

- scientific, literary and artistic works;
- computer programs;
- databases;
- performances;
- phonograms;
- over-the-air or cable broadcasting of radio and television programs (including over-the-air or cable broadcasting by a company);
- inventions;
- utility models;
- industrial designs;
- selection inventions;
- integrated-circuit layouts;
- production secrets (know how);
- trade names;
- trademarks and service marks;
- appellations of origin; and
- commercial names.

The following intellectual properties are widely used, mostly since the emergence of the modern Russian economy, and, therefore, have particular investment appeal:

Invention

Invention is defined under Russian law as any technical solution in any field directly connected with goods (in particular, with a device, substance, microbial strain or cells of plants and animals).

Patent protection is provided by the government, provided that the invention is new and industrially applicable. At present, the minimum period recognized by Russian law for patent protection of an invention is 20 years. The right to obtain a patent is vested in the inventor or his or her employer,

and their successors. A patent application must be submitted to the Federal Service for Intellectual Property, Patents and Trademarks (Rospatent), which decides whether to grant a patent.

Utility model

Utility model is defined as any technical solution relating to a certain device, or a utility. Legal regulation of this property is similar to the legal regulation of inventions. The period of public protection of a utility model is ten years following the submission of an application to Rospatent; however, it may be extended for another three years, subject to certain terms and conditions.

Industrial design

An industrial design is an artistic and engineering solution of a product, which determines its appearance. Industrial designs can be three-dimensional (models), ornamental (drawings) or a combination thereof. The protection term is 15 years; however, it may be extended for another ten years subject to certain terms and conditions.

No industrial design will be granted any legal protection under Russian law unless it is new and unique.

An industrial design is recognized as new if a combination of its essential features reflected on images of a product and specified in the list of essential features of an industrial design, is not known from the information publicly available in the world before the priority date of the industrial design.

An industrial design is recognized as unique if its essential features imply the creative nature of the aesthetic specifics of a product.

Computer program

A computer program is defined as a combination of data and commands in objective code, which is intended to make a computer and other computer devices function for the purposes of obtaining any certain result. The scope of the concept of a computer program also includes preparatory materials obtained in the course of the development of a computer program and audiovisuals generated thereby. A copyright to a computer program remains in effect from the creation of a computer program, throughout the creator's life, and 70 years after his or her death. Any use of computer programs and databases by third parties (users) is subject to an agreement with the copyright holder.

Database

A database is defined as a combination of independent materials in object code (items, calculations, regulations, court orders, and other similar materials) organized in such a manner so that such materials can be found and processed using a computer. The term of exclusive right is similar to the validity period of computer programs.

Integrated circuit layout

An integrated circuit layout is defined as the geometrical location of a collection of integrated circuit elements and connections between them, as recorded on a tangible medium. In this respect, an integrated circuit is a microelectronic product of final or interim form, which is intended to perform an electronic circuit function, and which elements and connections are inseparably formed inside and/or on the surface of the product material. The exclusive right to a protected layout remains in effect for ten years. Legal protection extends to only a unique topology. The layout is recognized as unique if it was created as a result of the author's creative work and was unknown to the author or layout development specialists as of the date of its creation.

Production secret ("know how")

A production secret (or "know how") is defined as information of any nature (production, technical, economical, organizational, or other), including information about intellectual deliverables in science and research, and information about methods of carrying on a professional activity. Exclusive right to a production secret shall remain valid only for as long as the confidentiality of the information constituting the production secret is maintained. As soon as this information ceases to be confidential, all right holders cease to enjoy the exclusive right to a production secret.

Trade name

A trade name is defined as a unique designation of a service, work, product, enterprise, or organization. A legal entity, whose trade name is duly registered, has an exclusive right to use the same. A person using another's registered trade name without authorization must, at the trade name right holder's request, cease its use and pay compensation for any damages incurred.

Trademarks and service marks

A trademark or service mark is a distinctive designation, which identifies certain goods or services produced or delivered by a certain person, enterprise, or a group of persons (enterprises), and which enables a consumer to tell the same from products and services of others. Certificates to a trademarks and service marks are issued in Russia for a term of ten years.

Commercial name

A commercial name is a brand of any trade, industrial entity, or other enterprise. The main distinction between commercial name and trade name is that the commercial name is not usually specified in constitutional documents of a company, and therefore is not subject to registration. It individualizes an enterprise as a property complex, rather than a company or an individual entrepreneur. The commercial name individualizes an enterprises owned by a company or an individual entrepreneur by placement of the commercial name on sign boards, released products, or advertisements.

The control over intellectual rights has been significantly tightened recently by Russian laws. In addition to Article 146 of the Civil Code of the Russian Federation, which has been in effect for a long time, and contemplates the liability arising from any breach of copyrights and allied rights, there now are

other legal regulations, including possible criminal liability with a maximum penalty of six years imprisonment.

13.3. Anti-counterfeiting law

The recent adoption by the Russian State Duma of the anti-counterfeiting law (Federal Law No. No. 187-FZ "On Amending Legislative Acts of the Russian Federation to the Extent of Protection of Intellectual Rights in Information and Telecommunication Networks"), which came into effect on 1 August 2013, has drawn wide public and political response. This new law considerably increases the liability of the citizens and Internet companies for the unlawful use of intellectual rights.

Provisions of this law imply the possibility to block, at the right holder's request, any website containing any unlicensed content. Initially, it was expected that this law would extend to all types of information; however, after modification, the law will apply only to video products. If website owners fail to remove any challenged material after a warning is given, the whole website will be blocked.

13.4. Parallel import

Another direction in the development of Russian intellectual property law is the matter of legalization by the Russian Government of the parallel import of goods. This issue was recently raised and is being discussed widely by the public and in political circles. These discussions involved the Federal Antimonopoly Service of Russia, as well. Thus, the head of FAS Russia, Igor Artemyev, discussed this issue numerous times and believes that legalization of parallel imports can lead to certain increase in intra-brand competition of official and independent importers, which, in turn, can result in the reduction of prices for goods.

There are two main principles in the world practice as to how exclusive rights of right holders may be exhausted. These are national and international principles. According to the national principle of exhaustion, which is applicable in the Russian Federation, right holder's exclusive rights to a trademark shall be recognized exhausted when a respective commodity is put into circulation within the country. If a commodity was re-sold abroad several times, its import to the country, where the national exhaustion principle is applied, shall be subject to only the trademark holder's permission.

13.5. Copyright Court

Heightened attention to intellectual property topics and to the improvement of governmental regulation in this area has resulted in the establishment of the Copyright Court in Russia. The Copyright Court is a specialized arbitration court, which, as a court of first instance and cassation, deals with disputes involving the protection of intellectual property within the court's jurisdiction.

13.6. Unfair competition and Russian intellectual property law

Legal regulation of unfair competition in the intellectual property sector implies the availability of legal remedies, which ensure fair competition in commodity markets. One of the provisions of Article 14 of Federal Law No. No. 135-FZ "On Protection of Competition" recognized the inadmissibility of any

unfair competition connected with the acquisition and use of the exclusive right to identifications of a legal entity, identifications of products, works, or services.

Fair competition is required for the implementation of economic and legal reforms that are needed so that Russian entrepreneurs and foreign investors will have enforceable guarantees of protection from any unfair competition. At present, Russia is making efforts to bring the protection of intellectual property rights from unfair competition in line with world standards. In this connection, Russian laws on intellectual property protection are constantly being perfected, while unfair competition is prohibited and is being suppressed.

13.7. Intellectual property and antimonopoly policy

The action plan (road map) of the National Entrepreneurial Initiative project "Competition Development and Antimonopoly Policy Development" was approved by the ordinance of the Government of the Russian Federation No. 2579-p (28 December 2012).

In the context of implementation of the "road map," draft Federal Law No. 199585-6 "On Amending the Federal Law 'On Protection of Competition'" has been submitted to the State Duma. This law would amend, *inter alia*, Articles 3 of the Competition Law by extending its antimonopoly provisions to the "circulation of goods produced with the use of exclusive rights to intellectual deliverables, if the contract [actions] connected with the use of exclusive rights is aimed at prevention, limitation or elimination of competition arising in the course of circulation of the respective goods."

14. Employment

14.1. Employment of foreign citizens

Like citizens of Russia, citizens of any foreign countries or stateless persons (hereinafter "foreigners") may be employed in the Russian Federation. However, their employment comes with certain requirements.

It is not enough for a foreigner, unlike a Russian citizen, to enter into an employment contract to be employed in the Russian Federation. A number of conditions must also be met. The following are the most important requirements.

Employment procedure

The legal status of foreigners is determined by the Federal Law 115-FZ "On Legal Status of Foreigners in the Russian Federation" (25 July 2002) (the "Law on Foreigners"). This law also prescribes the specifics of their employment. To be employed in the Russian Federation, a foreigner must not only enter into an employment contract with its employer (or a civil law contract with a "customer"), but also must obtain a work permit. The sequence of these actions is not important.

Employment contract or civil law contract with a foreigner

There are no fundamental differences in the procedure for employing a foreigner under an employment (civil law) contract. The main difference is that usually an employment contract with a foreigner is term-based, since the period of stay of the foreign employee in the Russian Federation is limited. Russian citizens usually enter into indefinite term employment contracts.

To formalize employment relations with a foreigner, an employer (the "customer" in the terminology of a civil law contract) must first obtain a permit to engage and employ foreign employees. However, such a permit is not required in some cases, such as when an employer enters into a contract with citizens arriving in Russia from countries with which Russia has established a non-visa regime (*e.g.*, Ukraine and Belarus). As of 1 January 2014 Russia and South Korea abolished the visa regime, which was a very welcomed economic and political decision for further development of the relationships betweenthe two countries.

Obtaining a work permit

Work permits for foreigners are issued by local bodies of the Federal Migration Service of Russia. To obtain a work permit, a foreign citizen must submit:

- an application;
- an identification document recognized as such in Russia;

- the executed employment (civil law) contract, if any; and
- a migration card and state duty payment receipt.

A work permit is issued for an unlimited period. Thus, it can be issued:

- for the period of a temporary stay (the validity period of the visa or, if no visa is required, up to 90 days); or
- for the term of the employment contract, but not more than one year.

Foreigners arriving in the Russian Federation for a temporary stay may extend the period of their stay upon obtaining a work permit.

Certain categories of employees may be employed in Russia without a work permit. In general, these are rare categories of employees, *e.g.*, officials of embassies and consulates. The most popular category of foreigners, who may be employed with a work permit, are foreigners permanently residing in the Russian Federation (*i.e.*, those who have residence permit).

On an annual basis, the government determines quotas for the maximum number of work permits that may be issued to foreigners engaged in various sectors of the economy, such as construction or trade. If quotas for the current year and for a respective industry have been already filled, a foreigner is denied a work permit. However, if a foreigner already has a work permit and applies for its extension, the extension is not subject to any established quotas.

A foreigner who has obtained a work permit may be employed only in the constituent entity of the Russian Federation for which the permit was issued. However, in certain cases, the Federal Migration Service of Russia may allow foreigners to be employed in several constituent entities under one work permit.

An employer may invite persons to be employed in the Russian Federation. In such a case, the employer must prepare all the documents required to obtain the work permits, including the invitation for entry to the Russian Federation for purposes of employment.

14.2. Employment of highly skilled foreign specialists

A highly skilled specialist is defined by Russian law as foreign citizen who has work experience, skills, or achievements in a specific activity.

Employment of highly skilled foreign specialists is separately regulated in the Law on Foreigners. The level of salary is usually the basis to decide whether a foreign employee belongs to this category. Highly skilled specialists are not subject to the quota for work permits to foreigners. They also enjoy other benefits, such as a three-year validity to their work permits. Highly skilled foreign specialists and their family members also may apply for a residence permit.

A foreigner may be recognized as a highly skilled specialist in two cases:

- if the employee is invited by an employer to be employed in such a status; or
- if the employee represents that he or she is a highly skilled specialist by petitioning the Federal Migration Service of Russia with documentary evidence of his or her work experience, skills, or achievements in a specialized activity.

According to the Employment Code, an employer decides certain issues based on the opinion of a respective trade union, if any exists in the company. As a rule, trade unions in Russia are established on the basis of enterprises rather than by industry sectors.

15. About ART DE LEX

ART DE LEX is a national law firm that advises Russian and foreign companies operating in the Russian Federation and abroad. ART DE LEX helps its clients to attain their goals by assisting them in projects that have key importance in respective economic sectors or influence on the public sector.

The firm offers services in the following fields:

- Real Estate and Construction;
- Antimonopoly Regulation;
- Settlement of Disputes and Medications;
- International Arbitration;
- Public-Private Partnership (PPP);
- M&A and Corporate Law
- Power Industry

ART DE LEX cooperates with leading foreign legal firms, which enables us to build a global infrastructure for our clients and to take advantage of valuable international experience when supporting projects in Russia and abroad.

ART DE LEX is an active member of international professional associations of lawyers, such as the International Bar Association, International Association of Judicial Independence and World Peace, International Association of Procedural Law.

ART DE LEX is a member of Deutsch-Russische Auslandshandelskammer and the Association of European Businesses.

While implementing the international development program in 2013, ART DE LEX created the South Korea Desk, which deals with the provision of legal services to South Korean companies investing in Russia, and with representation of Russian companies in the Republic of Korea.

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