



2015

DOING BUSINESS IN RUSSIA



Ally Law

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CONTENT

1. CORPORATE LEGAL STRUCTURE

- 1.1. **Current legal forms**
 - 1.1.1. Limited Liability Company
 - 1.1.2. Joint-Stock Company
 - 1.1.3. Representative office or branch
- 1.2. **New legal forms**
 - 1.2.1. Business Partnerships
 - 1.2.2. Investment Partnerships
- 1.3. **Registration of a Russian legal entity**

2. FOREIGN INVESTMENTS

- 2.1. **Foreign investment law**
- 2.2. **Currency Control**

3. BUSINESS AND PERSONAL TAXATION

- 3.1. **Tax registration and tax audit**
 - 3.1.1. Tax registration
 - 3.1.2. Tax audit
- 3.2. **Corporate taxation**
 - 3.2.1. Profit tax
 - 3.2.2. Value added tax
 - 3.2.3. Corporate Property Tax
 - 3.2.4. Social Insurance Contributions
 - 3.2.5. Excise tax
 - 3.2.6. Land tax
 - 3.2.7. Transport tax
- 3.3. **Personal Taxation**
 - 3.3.1. Personal income tax
 - 3.3.2. Personal property tax
 - 3.3.3. Transport tax and land tax

4. LABOR AND EMPLOYMENT

- 4.1. **Labor regulations**
- 4.2. **Employment conditions**
 - 4.2.1. Employee guarantees
 - 4.2.2. Collective bargaining agreement
- 4.3. **Specifics of employment of the foreign nationals**
 - 4.3.1. Work permits for foreign nationals
 - 4.3.2. Work permit application for highly-qualified specialists ("HQS")
 - 4.3.3. Migration registration procedure

5. ANTIMONOPOLY REGULATIONS

- 5.1. **General regulation**

- 5.2. Scope of application of Competition Law**
- 5.3. Anti-competitive Practices and restriction of competition**
 - 5.3.1. Abuse of a dominant position
 - 5.3.2. Cartel agreements and concerted actions
 - 5.3.3. Vertical agreements
 - 5.3.4. Economic coordination
 - 5.3.5. General restriction of competition
 - 5.3.6. Unfair competition
 - 5.3.7. Antimonopoly scrutiny of the transaction
- 5.4. Liability**
 - 5.4.1. General liability
 - 5.4.2. Specific forms of liability

6. REAL ESTATE AND CONSTRUCTION

- 6.1. General regulation**
- 6.2. Real estate rights**
- 6.3. Real estate transactions**
 - 6.3.1. Sale and purchase transactions
 - 6.3.2. Leases
 - 6.3.3. Mortgages

1. CORPORATE LEGAL STRUCTURE

1.1. CURRENT LEGAL FORMS

A foreign company may choose to establish a presence in Russia through a Russian subsidiary.

The most common business structures in Russia are Limited Liability Companies (**the "LLC"**) and Joint Stock Companies (**the "JSC"**).

In the LLC (the Russian abbreviation – "**ООО**") the participatory shares attributable to Shareholders (**the "Participants"**) are not considered securities under Russian securities legislation.

Shares in the JSC are considered to be securities and are subject to registration with the Central Bank of Russia.

Generally, one Participant (individual or legal entity) may establish an LLC or JSC. However, the legal entity, which is wholly owned by one Participant/Shareholder, cannot establish another 100%-owned LLC or JSC.

The current Russian legislation that provides the legal forms for corporate entities comprises the respective provisions of the Civil Code of the RF (**the "Civil Code"**), No. 14-FZ "On Limited Liability Companies" dated 8 February 1998 (**the "LLC Law"**) and the Federal Law No. 208-FZ "On Joint Stock Companies" dated 26 December 1995 (**the "JSC Law"**).

1.1.1. Limited Liability Company

A Limited Liability Company is currently deemed to be the most common and simple form of the Russian legal entity (prior to introduction of the Business Partnership, as specified in Section 1.2.2 below). The Limited Liability Company is often used by foreign investors who want to set up a wholly owned subsidiary.

Charter capital and contributions

The **charter capital** of a Limited Liability Company is divided into participatory shares ("*dol'*"). Unlike the shares issued by a Joint-Stock Company, these participatory shares are not deemed to be the securities and therefore shall not be subject to registration with the Central Bank of Russia. Each holder of the participatory share is referred to as a "Participant".

The minimum charter capital of a Limited Liability Company is currently RUB 10,000 (approximately, EUR 135). **Contributions** to the charter capital of a Limited Liability Company may be made in cash or in kind (i.e. securities, property or other tangible or intangible rights or assets having a monetary value).

The LLC Participant may not be released from the respective obligation to pay the agreed contribution to the charter capital. Upon a respective resolution of the general Participants' meeting additional contributions to the charter capital can be made by means of a debt-for-equity swap.

Assets contributed to the charter capital must be subject to independent appraisal in case if nominal value of the share interest paid is more than 20 000 rubles.

Net asset requirements

A Limited Liability Company must ensure that the value of its net assets does not fall below the amount of its charter capital. Failure to comply with this requirement may result in the company being required to decrease its charter capital accordingly. This shortfall may also be used as grounds for the company's compulsory liquidation if the value of its assets is less than the minimum charter capital amount.

Starting from 1 January 2012, a Limited Liability Company is obliged to provide all interested persons with the information about its net assets' value, but this does not mean that the company is obliged to disclose its balance sheet.

Participation Threshold

If the number of the LLC Participants exceeds 50, the company must either reduce the number of Participants or reregister as a Joint-Stock Company within a year.

All limited liability companies must maintain a register of Participants. This register sets out the names of the Participants and the number of participatory interests they have in the company.

As a general rule, responsibility of Participants for the company's liabilities is limited to payment (in full) of the amount of their participatory shares. In a limited number of cases however, the corporate veil can be pierced, resulting in the Participant's having unlimited liability for the obligations of the company. This can happen if, for example, a Participant had given binding instructions to the company that entailed its insolvency.

Management structure

The managing bodies of a Limited Liability Company are:

- the General Participants' Meeting;
- the General Director;
- the Board of Directors (optional); and
- the Executive Board – "*Pravlenie*" (optional).

Decisions on the most significant matters (such as amending the company's corporate documents, changing the charter capital, distributing profits and approving the annual reports and balance sheets of the company) must be adopted by the **Participants' Meeting**.

The annual Participants' Meeting must be held no earlier than two months before and no later than four months after the end of the company's financial year. Extraordinary Participants' Meetings may be held at any time. Participants' Meetings must be convened according to the procedure set out in the company's charter and the LLC Law.

Subject to contrary provisions in the company's charter, a Participant's voting power at a Participants' Meeting will normally correspond to the proportion of the company's charter capital it holds.

Generally, the corporate decisions are adopted by a simple majority of the votes of all Participants of the company. Higher voting majority may be specified in a company's charter, although certain majorities are fixed by law. All decisions (except approval of the company's annual reports and balance sheets) may be adopted without holding a meeting (by absent vote).

The **General Director** manages the day-to-day operations of the company and transactions with respect to all other matters not falling within the authority of the General Participants' Meeting and the Board of Directors (if there is one). The General Director acts on behalf of the company, represents its interests, enters into transactions on its behalf, issues powers of attorney and hires and dismisses employees.

The General Director is the only person who can represent the company without a power of attorney. The General Director's powers may be limited by the company's charter, meaning that certain transactions can be subject to approval by Board of Directors and thus the Director would not be entitled to make such transactions before obtaining proper approval. Upon a decision taken by the Participants' meeting, the General Director's authority may be transferred to a management company (in whole only). A foreign national may be appointed as General Director of a Limited Liability Company, subject to compliance with work permit regulations.

Starting from 1 September 2014 it is allowed to appoint two or more General Directors, acting jointly or separately. Unless otherwise stated in the Unified State Register of Legal Entities, the General Directors are deemed to be authorized to act independently on all matters of their competence. However, there is no practice of using such opportunity yet, so realization thereof will most likely lead to practical difficulties.

Board of Directors is an optional supervisory management body of a Limited Liability Company. The charter defines its authority, which typically might include appointment and dismissal of the General Director or approval of major transactions and interested-party transactions.

A Limited Liability Company can also have **Executive Board** acting along with the General Director. In this case the Executive Board will have its own competence. By law, the General Director chairs the Executive Board. Unlike the General Director, however, members of the Executive Board must obtain a power of attorney issued by the General Director in order to conduct transactions on company's behalf.

Audit

The charter may provide for an **internal auditor** (an individual or a commission). In companies with more than 15 Participants the internal auditor is required. In this case the general Participants' meeting will not be able to consider the company's annual reports and balance sheets without preliminary internal auditor's approval.

An **external auditor** may also be appointed by the Participants' meeting to audit the company's financial and business activity. If certain turnover or asset value thresholds are exceeded, or if the company conducts certain regulated activities, an external auditor must be appointed.

Transfer of participatory shares

Participatory shares are freely transferable between the Participants. However, the charter or a Participants' agreement may specify that a participatory share transfer requires the consent of the other Participants and/or the company. A Participant may transfer its participatory interest to third parties, subject to a statutory pre-emption right in favor of other Participants.

The charter may also provide for the company's pre-emption right. Further, the charter may prohibit the transfer of participatory shares to a third party or make such a transfer subject to the consent of the other Participants or of the company. If such consent is not given, the company itself is obliged, by law, to purchase the relevant participatory interests.

The procedure for selling participatory shares and for determining their offer price is set out in the LLC Law, although the company's charter and/or Participants' agreement may vary this statutory procedure.

A participatory share transfer agreement must be notarized and the participatory interest is transferred immediately upon notarization of the transfer agreement. This creates difficulties in the context of Russian agreements for the sale and purchase of participatory shares under which exchange and completion are to occur on different dates and especially where the sale agreement is conditional. By way of exception, notarization is not required:

- for the transfer of company-owned participatory shares to its current Participants or third parties;
- for the transfer of participatory share to the company; or
- for the sale of participatory shares from one Participant to another as a result of the exercise of pre-emption rights.

Where notarization is not required the transfer of title to the participatory shares is effective when the transfer is recorded in the Unified State Register of Legal Entities.

Participant's agreement

Russian law allows Participant's agreements under which Participants may agree on exercising their corporate rights in a certain way, e.g. to vote in a certain manner, to sell share interest or abstain from doing so. However, this institute is not well developed in Russia and courts have not tested it.

Expulsion of a Participant

A Participant may be expelled from an LLC pursuant to a court decision if Participants, together holding at least 10 % of shares, initiate legal proceedings and prove that the Participant whose expulsion is sought has grossly violated its duties or made the operation of the LLC impossible, or materially impaired its operation. If a Participant is expelled, the company must pay the expelled Participant the actual value of his share interest calculated according to the company's balance sheet as of the date of the court decision on the Participant's expulsion. There is an expulsion right available only to the shareholders of a Non-Public JSC.

1.1.2. Joint-Stock Company

JSC is a more complicated legal form of business compared to LLC.

The JSC is a legal entity that issues shares to generate capital for its activities. A Shareholder of the JSC is not generally liable for the JSC's obligations, and the Shareholder's losses are limited to the value of its respective shares. Different classes of shares are permitted; dividends and voting rights are equal for each share in a class.

Russian corporate law provides for the Shareholders' agreements under which the respective Shareholders may, *inter alia*, determine voting obligations at general Shareholder meetings, coordinate voting options with other Shareholders, determine the price at which shares can be sold and coordinate other actions related to the JSC's management, activities, reorganization and liquidation. However as well as Participant's agreements for LLC use of Shareholders agreements is not developed in Russia.

Public and Non-public Joint-Stock Companies

Legislation governing Russian joint-stock companies comprises Civil Code and the JSC Law.

A Joint-Stock Company can either be "Public" (PJSC) or "Non-Public" (NPJSC). Both types of joint stock companies may issue common or privileged shares.

A JSC is considered public if it publicly offers its shares or other securities convertible into shares. Rules applied for PJSC also apply to those JSCs charters and names of which contain the "public" wording.

The major differences between the two forms are as follows:

- public offering of shares is only possible for PJSC;
- there are statutory provisions regarding mandatory information disclosure regarding PJSCs, which generally do not apply to NPJSCs. However, those NPJSCs where the number of shareholders exceeds 50, should disclose the annual statement and annual accounting statement;
- shareholders in a NPJSC, as well as the NPJSC itself may enjoy the preemptive right in respect of the shares sold by other shareholders while such right cannot be provided for in the OJSC;
- the charter of the NPJSC may specify that a consent of other shareholders is required for alienation of shares to third parties, which does not apply to OJSC.

The PJSC may terminate its public status. This will imply applying to the Central bank of Russia for a permission not to disclose information in accordance with the laws and then applying to the tax authority in order to exclude the "public" wording from the name of the company. The public status terminates as of the day of state registration of the change of the name by the tax authority.

The NPJSC may acquire the public status by way of applying to the tax authority for state registration of the company's name including the "public" wording therein. The condition of such application is registration of the issue prospectus of the shares of the company as well as entering into a listing agreement with the trade institutor. The company acquires the public status as of the day of state registration of the change of the name by the tax authority.

Charter capital and contributions

The **charter capital** of a Joint-Stock Company is divided into shares (which may be split into ordinary shares and privileged shares). These shares are securities for the purposes of Russian securities legislation and must be registered with the Central Bank of Russia.

For a Public Joint-Stock Company the minimum charter capital is currently RUB 100,000 (approximately, EUR 1,350) and for a Non-public Joint-Stock Company it is RUB 10,000 (approximately, EUR 135). Similar to the limited liability companies, the **contributions** to the charter capital may be paid either in cash or in kind.

Other types of securities, such as corporate bonds, must be paid in cash only. It is possible to pay for new shares issued during closed subscription by way of a debt-for-equity swap.

The charter capital may be increased by issuing shares or increasing the nominal value of the shares already in issue. Each capital increase must be filed and registered with the Central Bank of Russia, which is a rather lengthy process.

As a general rule, responsibility of Shareholders for the company's liabilities is limited to the payment (in full) of their shares. In a limited number of cases however, the corporate veil can be pierced, resulting in the Shareholder's having unlimited liability for the obligations of the company. This can happen if, for example, a Shareholder gave binding instructions to the company that lead to its insolvency.

Net asset requirements and creditor protection

A Joint-Stock Company must ensure that the value of its net assets does not fall below the amount of its charter capital. Failure to comply with this requirement may result in the company being required to decrease its charter capital accordingly. This shortfall may also be used as grounds for the company's compulsory liquidation if the value of its assets is less than the minimum charter capital amount.

Joint-stock companies are obliged to file information on the value of their net assets with the Unified federal register of information on facts of activity of legal entities in addition to other filing obligations.

At least 5% of the founding capital of any Joint-Stock Company must be allocated to a reserve fund. This fund is created specifically to cover losses and to redeem bonds and shares of the company. Starting from 1 January 2012, Joint-Stock Companies have also been under an obligation to disclose information about their net asset value upon inquiry of the interested party, which is similar to the obligation on Limited Liability Companies.

Management structure

The managing bodies of a Joint-Stock Company are:

- the General Shareholders' meeting;
- the Board of Directors (optional for joint stock companies with fewer than 50 Shareholders holding voting shares);
- the General Director; and
- the Executive Board (optional).

The annual **Shareholders' meeting** must be held no earlier than two months before and no later than six months after the end of a company's financial year. Extraordinary Shareholders' meetings may be called by the Board of Directors, the external auditor, the internal auditor of the company or by Shareholders owning at least 10% of the voting shares in the company.

At Shareholders' meetings most decisions may be adopted by a simple majority of the Shareholders attending the meeting (e.g. with respect to appointment of the General Director). However a limited number of more significant decisions requires not less than 75% of the votes of the Shareholders attending the meeting (e.g. with respect to liquidation or reorganization of the company, amendments to the charter or approval of a new version of the charter). It is possible to increase such statutory thresholds for the NPJSC in the charter by way of unanimous decision of Shareholders.

One share gives one vote. Subject to certain exceptions Shareholders may adopt decisions without holding a meeting (by absent vote).

The **General Director** is the only person who can act on behalf of the company without a power of attorney. In companies where the Executive Board is also established the General Director is a chairman of the Executive Board. The General Director is responsible for the day-to-day operations of the company.

He or She is appointed and dismissed by the Shareholders, unless the company's charter stipulates that this decision falls within the authority of the Board of Directors. If the latter is the case, there is a legal procedure in order to avoid deadlocks relating to the appointment or dismissal of the General Director when, for any reason, the Board of Directors fails to agree on this matter.

The authority of the General Director may be transferred to a management company if the Shareholders so decide. As well as in LLC, General Director's powers may be limited by the company's charter with regard to certain transactions. A foreign national may be appointed as General Director of a Joint-Stock Company subject to compliance with work permit regulations.

As in LLCs, the law provides for a possibility to appoint two or more General Directors. However, this innovation has not been tested by court practice.

The **Board of Directors** is responsible for the general management of the company and has the authority to take decisions on almost any issue except those for which exclusive authority is reserved for the Shareholders' meeting. Members of the Board of Directors are elected by an annual/extraordinary Shareholders' meeting and serve as directors until the next annual Shareholders' meeting. There is no limit on the number of times that a member of the Board of Directors may be re-elected.

Like LLC Joint-Stock Company can also have the **Executive Board** with its own competence acting along with the General Director. Members of the Executive Board must obtain a power of attorney from the General Director in order to conduct transactions on the company's behalf.

Audit

Joint-Stock Companies are required to appoint an **internal auditor** (an individual or a commission) to audit the company's financial and business activity. Before the annual general Shareholders' meeting, the internal auditor prepares a report on the company's annual report and balance sheet. The internal auditor's report is then communicated to the Shareholders who are entitled to attend the meeting.

Additionally, the internal auditor (revision committee) may audit the company at any time:

- at its own initiative;
- upon a decision of the Shareholders' meeting;
- upon a decision of the Board of Directors;

or

- upon demand of a Shareholder or a group of Shareholders holding at least 10% of the voting rights in the company.

All Joint-Stock Companies are subject to a statutory annual audit by an **external auditor**.

Issue and transfer of shares

The shares of a Joint-Stock Company, whether Public or Non-Public, are considered as securities and as such are subject to the registration requirements provided by the Federal Law No. 39-FZ "On the Securities Market" dated 22 April 1996 (as amended). When issuing new shares, all joint-stock companies must carry out the requisite filings with the Central Bank of Russia.

The documents that must be filed comprise the decision to issue shares, the report on the results of the share issue and other documents as well as in certain cases, the prospectus for the share issue.

A share transfer takes effect when it is recorded in the register of Shareholders that all joint-stock companies are required to maintain. The register must be kept an independent company duly licensed by the Central Bank of Russia.

A **Public Joint-Stock Company** may make both closed and public offerings of its shares. There are no statutory pre-emption rights or restrictions on the transferability of shares in the company whether to other Shareholders or third parties. When the charter capital is increased by issuing additional shares by public subscription, however, existing Shareholders do have the benefit of statutory pre-emption rights.

Shares of a **Non-public Joint-Stock Company** are freely transferable between Shareholders. Share sales to third parties may be subject to the statutory pre-emption rights of other Shareholders and the company itself, if so provided in the charter. The charter of the NPJSC may specify that a consent of other shareholders is required for alienation of shares to third parties. Unless otherwise stated in the charter or in the decision on allocation of the additionally issued shares/ other emissive securities, shareholders of the NPJSC enjoy the preemptive right in respect of such additionally issued shares/ other emissive securities.

Redemption of shares

In certain cases where a Shareholder did not vote "pro" with regard to decisions taken at a Shareholders' meeting or did not take part in voting it may be allowed to require the company to purchase its shares.

This applies for the following situations:

- a decision has been taken to reorganize the company;
- a decision has been made to cease the public status of the company;
- a decision has been made to adopt charter amendments or to adopt a revised charter limiting the rights of the Shareholder in question;
- a major transaction has been approved; and
- a decision has been taken to apply for delisting of company's shares or other securities.

The shares will be redeemed at a price fixed by the Board of Directors or by the general meeting of Shareholders if there is no Board of Directors. This price may not be less than the market value of the shares as determined by an independent appraiser in accordance with the methods prescribed in the JSC Law.

In case of delisting, the price may not be less than the weighted average price for six months determined based on the results of the trades on the exchange market.

Expelling a Shareholder

The Shareholder may only be expelled from a Non-Public Joint-Stock Company. This possibility has recently been introduced to the Civil Code. However, the law does not specify whether any shareholder is entitled to demand expelling of another shareholder, or a certain amount of voting shares is required.

In the case of an Open Joint Stock Company a Shareholder that has acquired more than 95% of the voting shares may "squeeze out" the minority Shareholders.

1.1.3. Representative office or branch

A foreign company may choose to establish a presence in Russia through a representative office (the "RO") or branch. The RO or a branch is not a Russian legal entity but is a legal part of the foreign parent company, and, therefore, the head office bears full responsibility for the obligations and actions of the RO or branch. The RO is authorized to conduct certain "preparatory and auxiliary" activities for the head office.

The branch, on the other hand, is able to conduct all activities that the head office itself could perform, including the execution of sales contracts. However, the Russian customs authorities often try to identify the ultimate Russian buyers of the imported goods and question the right of the branches of foreign legal entities to declare goods for customs clearance; therefore, it may be difficult for a Russian branch to clear goods through customs.

An appropriate state authority must perform accreditation of the ROs and branches established by the foreign parent company. Typically the Federal Tax Service is the authorized state registration body. However, the appropriate authority will depend on the foreign company's activities – the Central Bank of the Russian Federation accredits foreign banks' representative offices, and the Federal Aviation Service accredits foreign aviation companies' representative offices.

Setting up the RO or branch can take not less than 3-6 weeks after all necessary documents have been submitted to the registration authorities in Moscow. The accreditation process requires the preparation, approval, and, in many cases, notarization and apostillation (legalization) of a large amount of documentation. The total time required may exceed the registration period stipulated by law.

The RO is authorized to conduct certain "preparatory and auxiliary" activities for its head office. A branch, on the other hand, is able to conduct all activities that the head office itself could perform, including the execution of sales contracts. Depending on the exact scope and nature of activities, both ROs and branches may create a taxable presence in Russia for their headquarter company.

1.2. New Legal Forms

1.2.1. Business Partnerships

From 1 July 2012, it is possible to incorporate a business in form of a **Business Partnership** ("*khozyaistvennoe partnerstvo*"). This new form of legal entity is designed for the new technology sector and is meant to provide more flexibility to its Participants than the existing Limited Liability Company and Joint-Stock Company forms.

This legal form is designed for companies involved in innovative activities (including venture capital financing). The constitutive document of a Business Partnership is the Articles of association.

A partnership can be created by two or more persons (both individuals and legal entities can participate in a partnership). A Business Partnership is governed in accordance with a special partnership management agreement concluded by the partners. This agreement is certified and kept by the notary.

The maximum number of partners in a Business Partnership is 50 persons. If the number of partners in a Business Partnership exceeds 50, it must be re-organized as a JSC within a year. Share capital of a Business Partnership shall be divided into shares.

Contributions to the share capital can be made in money, securities, property rights or other rights with a monetary value. The partners have the right to participate in managing the partnership and in allocation of profits and expenses. The allocation of profits and expenses can be disproportionate to number of shares owned.

All Shareholders by unanimous decision elect the governing bodies of the Business Partnership. The partnership must maintain a register of Participants, indicating the size of their stakes in the partnership capital and the stakes that belong to the partnership.

If the Business Partnership is technically insolvent and the intellectual property owned by it may be seized and sold, some or all of the partnership's Participants can fulfill its obligations.

Taking into consideration that the new law is effective starting from 1 July 2012, there is currently no practice related to establishing (including registering) Business Partnerships in Russia. Therefore, certain practical aspects of commercial activities and managing Business Partnerships are unclear.

Therefore it could be recommended to establish a Russian subsidiary in one of the most common legal forms — LLC or JSC.

1.2.2. Investment partnerships

Starting from 1 January 2012, Russian law has provided for an "**Investment Partnership**" ("*investitsionnoe tovarischestvo*"), which is not a legal entity but a variation of a simple partnership.

This is similar to the concept of limited liability partnerships that exist, for example, under German law ("*Kommanditgesellschaft*") and English law. An investment partnership is designed to be the appropriate organizational form for collectively accumulating funds for investment under Russian law. It is intended only for the joint acquisition and sale of shares for investment in unquoted companies and Business Partnerships, corporate bonds and futures instruments.

An investment partnership is based on an investment partnership agreement which must be notarized but does not require State registration.

1.3 Registration of a Russian legal entity

Incorporation of legal entities is mainly governed by the Federal Law on State Registration of the Legal Entities and Individual Entrepreneurs ("**the Registration Law**"), No. 129-FZ dated 8 August 2001 (as amended). The Registration Law provides for a single procedure for the registration of legal entities regardless of their organizational/legal form and the type of business activities they conduct.

Scope of registration

A company is deemed to be duly registered under Russian law once it has undergone:

- State registration (in the Unified State Register of Legal Entities);
- Tax registration; and
- Registration with the Federal Service for State Statistics and the three social funds (pension, social security and compulsory medical insurance).

Registration Procedure

The tax authorities are responsible for the state and tax registration of companies, as well as for forwarding documents to the Federal Service for State Statistics and the three social funds.

Registration takes seven days from the date of submitting the documents to the registration authorities. In practice the whole process of company incorporation, including collection of documents required, opening of the bank account, as well as registration with funds (i.e. for the company to be fully operational) takes approximately one or two months to complete.

The application to register the company can be filed by the applicant in person, can be sent by mail (the latter adding significant time to the registration process and being unreliable) or can be presented in electronic form. The applicant must be the General Director of the founding parent company or the new company's founder himself/herself (if an individual). It is not possible to appoint an attorney to sign the application which means the process of establishment will take longer where the chief executive/founder is unable to file/collect documents in person.

In case of documents submission in electronic form filing is made via Federal Tax Service of Russia website (nalog.ru) or the unified portal of the government and municipal services (gosuslugi.ru). Specifically, the procedure stipulates that documents should contain applicant's electronic signature. Likewise a notary can verify applicant's signature by electronic signature of his.

Before documents are submitted for state registration the new company must have identified its future premises (as the address is set out in the documents to be filed for state registration). It should have a lease agreement or a letter from the owner or landlord guaranteeing that, upon registration, the premises will be leased to the company. The registration application must be notarized and, if signed abroad, legalized. Foreign documents must also be accompanied by a certified Russian translation. The most practical approach is to execute the company charter and the supporting documents in Russia on the basis of a power of attorney (except for the application which must be signed in person by the chief executive of the founder as stated above).

Payment of charter capital

The charter capital must be paid up not later than 4 months after the registration for a Limited Liability Company. For a Joint-Stock Company, 50% of the shares should be paid up 3 months after the registration, and other 50% may be paid up within a year after the registration. If a founder fails to pay the total amount of its shares/participatory interests within these time limits, then the non-paid shares/participatory interests become the property of the company.

Registration of the initial share issue

As shares in joint-stock companies are treated as securities, there are certain additional registration requirements imposed by the Central Bank of Russia. The share issue registration process comprises the following stages:

- passing a decision to issue shares;
- approving the decision to issue shares;
- state registration of the share issue;
- subscription for shares; and
- state registration of the report on the results of the share issue.

2. FOREIGN INVESTMENTS

2.1. Foreign investment law

Foreign investors are guaranteed certain property rights to their investments in the Russian Federation and to profits derived from Russia. Foreign investments are regulated at both federal and regional level.

The principal law at the federal level is Federal Law No.160-FZ on Foreign Investments in the Russian Federation dated 9 July 1999 (the "Foreign Investment Law"). The Foreign Investment Law applies to various forms of foreign capital investment, except foreign capital investments in banks, credit organizations, insurance companies or non-commercial organizations; foreign investments in such entities are regulated under different Russian legislation.

According to the Foreign Investment Law, the rights of foreign investors to conduct business activities in Russia and their rights to dispose of profits gained in Russia cannot be less favorable than those of national investors. Certain limitations can be placed on foreign investors but only where such limitations are required to protect constitutional guarantees, the health, rights and lawful interests of nationals, or state defense and security measures.

The Foreign Investments Law provides a wide range of guarantees for foreign investors, including:

- Guarantees of legal protection for foreign investors' activities in the Russian Federation.
- Guarantees that foreign investments can be made in various forms in the Russian Federation.
- Guarantees of compensation for the nationalization and requisition of the property of a foreign investor or a commercial organization with foreign investments. In other words, the property of a foreign investor or company with foreign participation cannot be seized by way of nationalization or requisition except in the cases stipulated by Russian federal laws or international law. In case of requisition, the value of the seized property must be reimbursed to the foreign investor or company with foreign participation. In case of nationalization, the value of the nationalized property and incurred losses must be reimbursed.
- Guarantees for foreign investors and commercial entities with the foreign investments against unfavorable changes in the legislation of the Russian Federation. Particularly, one of the most important features of the Foreign Investment Law is the tax stabilization clause, also known as the 'Grandfather Clause', set forth in Article 9. This clause applies to foreign investors that are implementing 'priority investment projects', Russian companies with more than 25% foreign equity ownership, and Russian companies with some foreign participation that are implementing 'priority investment projects'.
- Guarantee of the proper resolution of a dispute arising in connection with the investment and business activities of a foreign investor in the Russian Federation.
- And other guarantees.

Foreign investments in the Russian Federation are also governed by other federal laws, regulatory acts and international conventions of the Russian Federation. These laws include Federal Law No. 57-FZ on the Procedure for Foreign Investment in Businesses of Strategic Significance for National Defense and State Security of the Russian Federation dated 29 April 2008 (the "Strategic Businesses Law").

The Strategic Businesses Law restricts foreign investments in companies that are of strategic importance to Russia ('strategic companies'). These companies operate in strategic sectors,

including services provided by natural monopolies (for instance, transportation of crude oil and petroleum products, pipeline transportation of gas, rail transportation), television and radio broadcasting in certain territories and certain other sectors.

A foreign investor is understood as a non-Russian incorporated legal entity or foreign individuals, as well as Russian companies and organizations controlled by foreign investors. The criteria for 'control by foreign investor' are defined in article 5 of the Strategic Businesses Law (e.g., purchase of more than 50 percent of the voting shares (participation units) in a strategic company, participation in the governing body of a strategic company, etc.).

Some transactions involving the acquisition of control over strategic companies (i.e. purchase of more than 5 % of voting shares/participatory interest in a strategic company (different thresholds are set for different types of strategic companies)) by foreign investors require prior approval by a state commission. The approval application is filed with the Federal Antimonopoly Service of the Russian Federation (the "FAS"). The initial period within which the governmental commission must make a decision on the application is three months from submission of the application.

There are regional variations in foreign investment regulations. Russia uses the well-tested practice of Special Economic Zones (the 'SEZ-s'). An SEZ is a designated state territory with special rules for business granting certain tax, customs and other concessions to its residents. Federal Law No. 116-FZ on Special Economic Zones in the Russian Federation dated 22 July 2005 provides for four types of SEZ-s: industrial and development SEZs, innovation SEZs, tourism and recreation SEZs, and port SEZ-s.

2.2. Currency Control

Federal Law No. 173-FZ on Currency Regulations and Currency Control dated 10 December 2003 (as amended) (the 'Currency Law') establishes the basic rules of currency regulation and control. The objective of the Currency Law is to ensure the stability of Russian financial markets and to create a stable Russian currency.

Currency transactions regulated by the Currency Law include foreign currency transactions between residents, foreign currency transactions between non-residents and foreign currency transactions between residents and non-residents.

Generally, foreign currency operations between residents are prohibited, although there are some exceptions. For example residents may borrow from, and then repay, Russian banks in foreign currency. Contracts in Russia may be concluded in foreign currencies. However, the actual payment must be made in rubles. This can lead to exchange rate differentials arising between the date the transaction is entered into and the payment date.

Payments in any currency are permitted without restriction between non-residents, provided that any such payments in Russian rubles in the Russian Federation are made to and from the non-residents' accounts opened with Russian authorized banks¹. Settlements in securities purchase and sale transactions between non-residents are also permitted, although they can be subject to Russian securities market and anti-monopoly regulations.

Generally, foreign currency transactions between residents and non-residents are also permitted without restriction. However, certain special rules are provided by the Currency Law.

Non-residents and residents must use special bank accounts for account transactions abroad or into Russia. A special bank account is an ordinary bank account with a bank that holds a license for foreign currency banking transactions (authorized bank). Residents must also notify the tax authorities of the opening of foreign accounts and submit regular cash flow reports for such accounts. State and municipal officials as well as their relatives do not have the right to open accounts abroad.

¹ Credit organizations holding a CBR license for conducting transactions in a foreign currency.

In accordance with the Currency Law, Russian companies must receive full payment due under a foreign trade contract to an account with Russian banks in accordance with the terms of the relevant foreign trade contract (the so-called "repatriation rule").

The Currency Law requires the opening of a "transaction passport" with an authorized bank (with which the resident has an account), which records foreign currency flows through Russian authorized banks. This rule applies to all transactions involving the import or export of goods, loans, the provision of services and intellectual property between residents and non-residents for the amount equal or exceeding the equivalent of USD 50 000. Under the transaction passport (and as part of its regular reporting), the bank reports the receipt and repayment of the currency to the Central Bank of Russia (the 'CBR').

Residents and non-residents can import and export cash foreign currency subject to the following rules:

- Import rules

Amount	Restriction requirements
Up to \$10,000	No restriction
Over \$10,000	Subject to written customs declaration

- Export rules

Amount	Restriction requirements
Up to \$10,000	No restriction
Over \$10,000	Subject to written customs declaration

Breach of the currency control rules may entail administrative or criminal liability.

The Administrative Penal Code prescribes administrative fines for illegal currency transactions that range from 75% to 100% of the restricted transaction's value. Fines may be imposed on individuals, legal entities, and company executives.

Violation of repatriation requirements in respect of foreign currency proceeds may result in administrative fines of 1/150 of the CBR refinancing rate (currently 8.25 % p. a.) on the proceeds not promptly repatriated for each day of such delay. Failure to repatriate foreign currency proceeds may result in a fine of up to 100 % of the amount of the proceeds.

More serious criminal sanctions may apply under the Criminal Code. In particular, persons not repatriating foreign currency to accounts in Russia where required by law may face detention, compulsory labor or imprisonment in each case for a term of up to five years. This type of punishment is only applicable to a company's general director.

3. BUSINESS AND PERSONAL TAXATION

The Tax Code of the Russian Federation establishes three levels of taxation:

- federal taxes (VAT, profit tax, excises, personal income tax, mineral extraction tax, state duty, water tax);
- regional taxes (corporate property tax, transportation tax, gambling tax);
- local taxes (land tax and personal property tax).

The taxation system is uniform across Russia, with only minor variations in regional and local taxes.

Other compulsory payments include, in particular:

- social security contributions.

3.1. Tax registration and tax audit

3.1.1. Tax registration

Under Russian legislation the following types of business entities may operate upon registration with the tax authorities:

- sole traders;
- Russian legal entities;
- Foreign legal entities.

Sole traders are individuals holding Russian Federation citizenship or residence who have been registered in accordance with the established procedure and carry out entrepreneurial activity without forming a legal entity. In most cases, the provisions of law concerning the business of sole traders coincide with the provisions concerning the business of Russian legal entities. Registration with tax authorities takes not more than five days.

A Russian legal entity is a legal entity formed in accordance with Russian Federation legislation. The following forms of commercial legal entity are open to foreign investors:

- full partnerships;
- limited partnerships;
- limited liability companies;
- additional liability companies;
- production cooperatives;
- joint-stock companies.

The term foreign legal entity includes companies and other corporate entities which have been established and possess civil capacity in accordance with legislation of foreign states, international organizations, as well as branches and representative offices thereof, and international organizations which have been established in the territory of the RF.

A foreign company that carries out activity in Russia through a "separate division" (a division with workplaces equipped for more than one month) is required to register with the Russian tax authorities within 30 days of commencing activities. This rule applies irrespective of whether the activity is taxable or not.

If a foreign company operates at more than one location, it must register separately for each location.

Each real estate project or construction site must also be separately registered with the respective local tax authority.

3.1.2. Tax audit

Office (cameral) tax audits

Office tax audits are performed at the tax authority on the basis of tax returns (calculations) and documents submitted by a taxpayer, and other documents concerning a taxpayer's activities that are in the possession of the tax authority.

Field tax audits

Field tax audits are performed at the site (on the premises) of a taxpayer on the basis of a decision of the director chief (deputy chief) of a tax authority. Where a taxpayer is unable to provide premises for the performance of a field tax audit, such tax audit may be performed at the tax authority.

Generally the period covered by a field tax audit may not exceed a period of more than three years preceding the year of the field tax audit.

Tax authorities do not have the right to perform two or more field audits in relation to the same taxes for one and the same period. A field tax audit may not take more than two months.

In certain cases, the period of field tax audit may be extended or suspended.

It is worth mentioning that over the past several years the Federal Tax Service has been taking systematic measures to prevent tax evasion by entering into transactions with unfair contractors paying special attention to the credibility of business operations (including cases when the Federal Tax Service has no claims in respect of the source documents).

Tax monitoring

On January 1, 2015 a new type of tax control – tax monitoring was introduced into the Tax Code.

Tax monitoring applies to the major taxpayers (volume of income – not less than 3 billion rubles and tax duties – not less than 300 million rubles) and only subject to their application.

Features of tax monitoring:

- a taxpayer allows tax authorities permanent and full access to its tax and accounting documentation;
- a taxpayer may request clarifications concerning the correctness of the tax accounting and tax payment from tax authorities in certain situations;
- no field tax audits are performed in respect of the taxpayer during the term of tax monitoring.

Transfer pricing control

Generally the contractual price agreed to by the parties, including related parties, is taken into account when determining income and expenses for the purposes of taxation.

Tax authorities have the right to verify the conformity of prices used in transactions to market prices in relation to controlled transactions. A transaction is a controlled transaction if the income from such transaction of all the parties for a particular calendar year exceeds the following thresholds:

<i>Type of transaction</i>		<i>Total revenue in a calendar year</i>
Transactions with residents of offshore states and territories indicated in the list established by the RF Ministry of Finance		RUB 60 million (approximately USD 950 k.)
Cross-border transactions with oil and petroleum products, ferrous and nonferrous metals, mineral fertilizers, precious metals and stones		RUB 60 million (approximately USD 950 k)
Transactions between related parties if at least one of the parties is non-resident of the RF		Regardless of the amount of income
Transactions between related parties if all parties are residents of the RF if:	One party uses market price to calculate mineral extraction tax	RUB 60 million (approximately USD 950 k)
	One party pays unified agricultural tax or unified tax on imputed income	RUB 100 million (approximately USD 1.6 million)
	One party applies profit tax preferences	RUB 60 million (approximately USD 950 k)

Other transactions between related parties if all parties are RF residents	RUB 2 billion (approximately USD 32 million)
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Transactions between taxpayers forming a consolidated taxpayer group are exempt from transfer pricing control.

The Tax Code of the Russian Federation sets forth five transfer pricing methods, of which the comparable market price method is the primary method.

3.2. Corporate taxation

3.2.1. Profit tax

Tax base

Russian organizations determine their tax base as total income received by a taxpayer, less expenses related thereto.

Foreign organizations operating in the Russian Federation through permanent establishments ("PE") determine their tax base as the total income received by the PE less related expenses of the PE.

Other foreign organizations pay taxes on the entire income derived from sources in the Russian Federation.

Recognition of income and expenses

For the purposes of the tax base, income and expenses are recognized on accruals basis (irrespective of actual receipt or payment of monetary funds).

Only taxpayers with an average income of less than RUB 1 million (approximately USD 16,000) per quarter for the previous four quarters can use cash basis.

Income received in a foreign currency must be converted into rubles at the official exchange rate set by the Central Bank of Russia at the date of the income was recognized.

Taxable and non-taxable income

Russian organizations include all their income when determining their tax base, except non-taxable income (the legislation provides an exhaustive list of non-taxable income).

Taxable income includes inter alia goods, works, services and property rights received free-of-charge, based on market value.

Property received free-of-charge by a Russian company from a parent or subsidiary where the parent owns more than 50% of the subsidiary is exempt from taxation provided the property is not transferred to a third party within one year.

Non-taxable income also includes property and property rights received as a contribution to a company's charter capital, leasehold improvements made by a lessee to the lessor's property, and interest received on overpaid tax.

Expenses

Expenses are considered deductible for profit tax purposes if they are economically justifiable (the expenses must be incurred in the course of a taxpayer's income generating activity) and supported by relevant documentation.

In practice, the tax authorities apply the general criteria very strictly and may challenge any expense that is not directly related to the generation of income. Expenditure that indirectly benefits or promotes the growth of the business may be considered "economically unjustified".

Moreover the Tax Code of the Russian Federation provides a list of non-deductible expenses (e.g., dividends, contributions to charter capital, value of assets which are transferred free of charge, any kinds of remunerations provided to management or workers in addition to remunerations which are payable on the basis of labor agreements etc.).

Accounting for specific types of expenses

Depreciation

Depreciable property is property, both tangible and intangible, which has the following characteristics:

- a useful life of at least 12 months;
- a value of no less than RUB 40,000 (approximately USD 645).

Interest Deductibility

Interest is deductible on the basis of the actual interest rate specified in the agreement except for the cases when the loan transaction is acknowledged a controlled transaction.

In the latter case, the interest amount deductible for the purposes of taxation is defined as specified in Article 269 of the Tax Code (depends, first of all, on the currency of the loan).

Any excessive part of the interest is not deductible.

If (i) the debtor is a Russian organization; and

(ii) the debt is owed to or secured by a foreign organization holding more than a 20% interest in the borrower company (or Russian affiliate of such a foreign organization); and

(iii) the amount of indebtedness is more than three times (or, in the case of banks and leasing companies, more than 12.5 times) the difference between the assets and obligations of the Debtor,

Then interest is deductible partly with respect to the capitalization ratio. Excess interest is not deductible. It is treated as dividend and subject to withholding tax.

Russian judicial practice assumes that double tax treaty benefits do not impede this restriction of interest deduction provided for in the national legislation.

Tax rates

The maximum profit tax rate is 20%, comprising:

- 2%, payable to the Federal budget;
- 18%, payable to the Regional budget.

Regional governments have the right to reduce their portion of profit tax by up to 4.5%.

Other tax rates are established for certain types of income:

- income from the sale of unlisted shares and participations in Russian companies, and of listed shares in Russian high-technology companies acquired after 1 January 2011 and held for at least 5 years, is subject to **0%** profit tax rate.
- a **15%** tax rate applies to interest income on state and municipal securities (other than the securities distributed outside the Russian Federation).
- a **30%** tax rate applies to interest income on securities issued by Russian legal entities rights in which are recorded in a depositary account of a foreign holder where that income is paid to persons in relation to which information was not provided to the tax agent.
- dividend income is taxable at the following rates:

% Rate	Type of income
0	Dividends received by a Russian company if the Russian company has owned at least 50 percent of shares in the dividend payer for 365 consecutive days, provided that the dividend payer is not a resident of an offshore country on the list established by the RF Ministry of Finance (the list includes 42 states and territories, e.g., BVI, Guernsey,

	Jersey)
13	Dividends received by the Russian company from the Russian company or foreign company
15	Dividends payable to the foreign company by Russian company.

Dividends paid by Russian companies are subject to withholding tax. Taxpayers that receive dividends from foreign organizations shall independently pay taxes on such dividends. For more information on reduced tax rates under DTTs see the section on withholding tax.

Permanent establishment

The Tax Code defines the term "*permanent establishment*" as a branch ("*filial*"), representative office or any other separate fixed place of activity, through which a foreign company regularly performs business activity in Russia related to:

- exploration for, or extraction of, natural resources;
- construction, installation, assembly, adjustment, maintenance and operation of machinery and equipment;
- sales from warehouses owned or rented by a foreign legal entity in Russia;
- provision of services or performance of any other activity, apart from "preparatory and auxiliary" activities.

A foreign legal entity may also be considered as having a PE if it conducts the activities listed above through a *dependent agent*. A dependent agent represents a foreign company in Russia under a contract, acts on its behalf, and has and regularly exercises the right to sign contracts on behalf of the foreign company, or negotiates the material terms thereof.

Preparatory and auxiliary activities include, in particular:

- the maintenance of a fixed place of business solely for the purpose of the purchase of goods by that foreign legal entity;
- gathering and distribution of information, marketing, advertising, market research where those activities are not the main activity of that legal entity.

Import and export of goods by a foreign company do not as such lead to the creation of a PE.

If a foreign company qualifies as a resident of a country with which Russia has a tax treaty in force, then the definition of PE in that treaty will prevail.

Taxation of foreign organizations that carry out their activities through PEs

Generally, Russian legal entities and foreign legal entities carrying out their activities through PE's apply similar rules for determining taxable profits.

The taxable profit of a foreign entity includes income derived from activities in the Russian Federation through PE, reduced by the amount of that PE's expenses.

Russian tax law does not impose a "branch profit" tax on profit repatriated by the PE to its head office.

Taxable income includes both income derived from activities of a PE, and income of foreign organization derived outside the Russian Federation that is associated with activities of a PE in the Russian Federation.

The allocation of income between the foreign company and its Russian PE is determined by reference to the foreign company's accounting policy and should take into account the functions to be performed in Russia, the assets to be used and the commercial risks to be borne.

Expenses incurred by the head office that relate to the PE are deductible in the cases provided by double tax treaties.

The tax authorities may require documentary support and justification of any amounts allocated.

Particulars of taxation of foreign companies compared to Russian companies:

- where a foreign organization has more than one division in the Russian Federation qualifying as a permanent establishment, the tax base and the tax due are calculated separately for each division.
- in contrast to the majority of Russian legal entities, which pay profit tax monthly in advance payment, foreign legal entities pay in advance on a quarterly basis.
- when a foreign entity has a PE because it performs preparatory and auxiliary activities in Russia for third parties on a free-of-charge basis, the PE will be deemed to have taxable income equal to 20% of the expenses of the PE.

Withholding income tax

A foreign company receiving Russian-sourced income that is not attributable to its Russian PE is subject to withholding income tax at source.

Taxable income

Withholding tax is applied to the following types of Russian-sourced income:

- dividends;
- income relating to the distribution of profit or property of a legal entity, including payments made upon liquidation;
- interest on debt instruments, including profit-sharing debt and convertible bonds;
- royalties;
- income from sales of immovable assets located in Russia;
- income from the sale of shares of a Russian company if more than 50% of its assets consist of immovable assets located in Russia, or from sales of financial instruments which are derived from such shares (excluding sales on a foreign stock exchange);
- income from sale of investment units in rental or realty closed investment funds;
- income from leases and sub-leases of property used in Russia (including shipping and aircraft);
- income from international freight, including demurrage and other payments relating to freight;
- fines and penalties due by Russian parties for breaking contractual obligations
- other similar types of income.

There is no withholding tax on the repatriation of profits from the local Russian representative office or branch of a foreign company to the head office.

Unless otherwise specified above, income generated from the sale of goods, works, and services in Russia is not subject to Russian withholding tax, provided that the activity does not lead to the creation of a Russian PE.

Withholding tax is applicable irrespective of the form of payment (including payments in kind or by means of a mutual set-off of obligations between the seller and the buyer).

Tax rate

Generally, foreign companies without a PE in Russia are subject to a 20% withholding income tax on most Russian source income such as interest, royalties, income from leasing and rental operations, etc.

Income from international freight is taxed at a 10% rate.

The general tax rate for dividend income is 15%.

Expenses are not deductible, except expenses related to income from the sale of shares or immovable assets, provided that the tax agent receives supporting documentation for the expenses before payment is made.

Procedure of withholding taxes

The responsibility for withholding tax lies with the tax agent — the Russian entity or foreign company with a registered PE — making the payment to the foreign company that does not have a Russian PE.

Tax should be withheld from income payable to the foreign company and remitted to the budget on the date payment is made to the foreign company.

Failure to withhold and (or) pay taxes to the budget may lead to fines of 20% of the tax amount and also to a duty to pay a tax at a tax agent's own expense.

The tax agent is not obliged to withhold tax if the tax agent has received notification from the taxpayer that the income relates to a PE of the taxpayer in Russia, and the taxpayer has provided a notarized copy of its tax registration certificate.

Reduced withholding tax rate under DTT

Withholding income tax rates may be reduced to 0% rate in accordance with double tax treaties concluded between the Russian Federation and the income recipient's home country.

The main conditions to enjoy the reduced withholding income tax rates are:

- the actual right of the foreign organization to receive income;
- evidence of the foreign organization's residency status. This evidence is in the form certificate issued by the relevant foreign authorities that must be provided before the payment date.

In the absence of the proper certificate or evidence of the actual right to income, tax should be withheld and remitted to the budget. If tax is withheld even though treaty relief is available, the foreign recipient can file a refund claim.

3.2.2. Value added tax

Taxable transactions

Generally VAT should be charged by on the following transactions:

- sale of goods (works, services);
- transfer of property rights;
- import of goods;
- construction and installation works carried out for internal consumption;
- transfer of goods, works and services for the taxpayer's own consumption if the incurred expenses are non-deductible for profits tax purposes.

The transactions referred to above are subject to Russian VAT, if they are performed on the territory of the Russian Federation and Russian continental shelf.

Goods are deemed sold in Russia if at the time of the commencement of shipment and transportation the goods are situated in the territory of the Russian Federation.

Works and services are subject to Russian VAT if:

- the work/services is/are directly connected with immovable property which is situated in the Russian territory;
- the work/services is/are directly connected with movable property that is situated in the Russian territory (installation, repair etc.);

- the purchaser of the work/services carries out activities in Russia – for provision of exclusive rights as well as for rendering certain types of services (consulting, legal, marketing etc.)
- the person providing work/services carries out activities in Russia – for the majority of other types of works/services.

Tax rates

The standard rate of VAT is **18%**.

A reduced VAT rate of **10%** shall apply to certain types of medical goods, books and periodicals, foods and children's goods (according to the list established by the RF Government).

The Tax Code also provides for a list of transactions that are charged at a 0% VAT rate. This list includes inter alia export sales, international transportation services and related freight forwarding services and the sale of precious metals.

VAT Exemptions

The Tax Code lists certain activities that are exempt from VAT, in particular:

- the letting of premises located in Russia to foreign individuals and foreign representative offices accredited in Russia;
- sale of land and residential real estate;
- sale of participating interests in the charter capital of organizations, securities and term transaction financial instruments;
- licensing or assigning of exclusive rights in inventions, utility models, industrial designs, computer programs and trade secrets (know-how);
- banking and insurance services;
- certain medical goods, medical services, public conveyance services, cultural services, art services, etc.

Import of the specific types of goods into Russia may also be VAT exempt.

Output VAT

Generally, the seller calculates VAT and issues a VAT invoice (a specific document for VAT recovery distinct from a commercial invoice) to the purchaser when advance payment is received or goods are dispatched.

When importing goods, VAT is calculated and paid by the importer together with import customs duties and other customs fees.

In all other cases, taxpayers calculate VAT on a quarterly basis.

Input VAT

Generally, Russian taxpayers are entitled to deduct input VAT related to purchased goods (works, services) and property rights, provided that:

- the goods, works, services and property rights are acquired for the purpose of carrying out VAT-able transactions;
- goods, works, services and property rights are booked in accounts;
- VAT invoices and primary documentation are duly generated.

Taxation of foreign legal entities

Foreign organizations which operate in the Russian Federation through permanent establishments or which are registered with the tax authorities as taxpayers on other grounds pay VAT on the same basis as Russian organizations.

When foreign organizations that are not registered with the tax authorities as taxpayers sell goods (works and services) the purchaser, as a Russian taxpayer, is deemed a tax agent and must withhold and pay VAT to the budget. When VAT is withheld by a tax agent, the input VAT is not deductible.

Submission of tax declarations

Since January 1, 2015 in the Russian Federation VAT returns are submitted only in an electronic form. The VAT return form effective year 2015 shall contain detailed information on the sale and purchase transactions made during the quarter (for the purpose of tax control and prevention of unjustified VAT refund).

3.2.3. Corporate property tax

Taxable property

Property tax is levied on:

- both movable and immovable property – for Russian companies and foreign companies which perform their activity via permanent establishments in Russia (but movable property which was entered in accounting records on or after 1 January 2013 as fixed assets is not subject to corporate property tax (except for the assets acquired during the company reorganization or under transactions between interdependent persons);
- immovable property – for foreign companies that own immovable property but do not perform their activity via permanent establishments in Russia.

Tax duty is levied on the property owner, or in the event of transfer of the property into temporary use or in trust – on the person holding the property on its balance sheet.

Land, water and other natural resources are not subject to property tax.

Tax base

The tax base is determined as:

- the average annual residual value of taxable property (i.e. cost less depreciation), calculated in accordance with Russian accounting principles – for Russian companies and foreign companies which perform their activity via permanent establishments in Russia;
- cadastral value – for foreign companies which own immovable property but do not perform their activity via permanent establishments in Russia.

For all the categories of taxpayers, administrative and business centers, shopping centers, and premises therein as well as dwelling houses and premises may be subject to tax at the cadastral value, if provided by regional law. This procedure has been introduced in Moscow and Moscow Oblast in 2014 for large shopping centers.

Tax rates

The maximum rate of the corporate property tax as set forth by the Tax Code is 2.2%. The rate may vary in some regions but 2.2% is currently applied in the majority of Russia's regions, including Moscow and St. Petersburg.

Property taxed at cadastral value is subject to lower rates (1.2% in Moscow in 2014, 1.5 % in Moscow Oblast).

Tax payments

The usual fiscal period is a calendar year.

Unless otherwise provided by regional law, taxpayers are required to make tax payments quarterly in advance (that is, calculated as the result of tax rate and $\frac{1}{4}$ of the average annual residual value or $\frac{1}{4}$ of cadastral value).

3.2.4. Social insurance contributions

Base for calculating social contributions (SIC)

SIC are levied on remuneration payable to individuals under:

- employment contracts;
- work and service agreements;
- authors' agreements (commission agreements; alienation of exclusive rights, license agreements for use of works of science, literature or art).

Payments to foreign citizens temporarily or permanently residing in the Russian Federation are also subject to SIC.

Additionally, payments to temporarily resident foreign nationals who have concluded an employment contract for an indefinite period or for a period of at least six months in a calendar year are subject to RF Pension Fund contributions.

If a Russian legal entity makes payments to employees carrying out labor activity at a separate division of that Russian legal entity which is set up outside Russian territory, then only payments to Russian citizens are subject to social contributions.

Social insurance contributions rates

SIC are payable wholly by the employer; the employee is not liable for any part of the contribution.

For the purposes of SIC calculating the employee income for the calendar year is calculated.

Payments to employees within the established caps are taxed at the following rates:

- 26% - for contributions payable to the RF Pension Fund;
- 2.9% - for contributions payable to the RF Social Insurance Fund;
- 5.1% - for contributions payable to the Federal Compulsory Medical Insurance Fund.

The SIC cap is established by the Government of Russian Federation and is increased annually. For 2015, the cap is RUB 670,000, that is, approximately USD 10,000).

Payments exceeding the cap are not subject to social insurance contributions to the RF Pension Fund.

There is also a special SIC for compulsory social insurance against industrial accidents and occupational diseases are established. Contributions are paid on payments to individuals (both Russian and foreign citizens) on the basis of:

- employment contracts;
- civil contract for works (if the payment of contributions provided by the contract).

SIC rates range from 0.2% to 8.5% depending on the type of economic activity.

Excisable goods

The primary categories of excisable goods are cigarettes and tobacco products, motor vehicles, ethyl alcohol and certain spirit-based and oil products. There is no excise tax on natural gas and crude oil.

Taxable transactions

Excises apply to the transfer of excisable goods by manufacturers thereof in the Russian Federation, as well as operations to import such goods into Russia.

Export of excised Russian goods outside of Russia is free from excise.

Tax rates and tax base

Excise rates vary depending on the category of excised goods. The rates are periodically adjusted. The tax base is determined by either the quantity of excisable goods or the value of such goods depending on whether the tax rates are specific (i.e. a fixed amount per unit) or *ad valorem* (a percentage of the sales price).

A producer of excised goods may deduct excise paid on the purchase or import of excisable goods used in the production of those goods. Otherwise, excise tax is non-deductible.

3.2.6. Land tax

Tax base

The tax base is the cadastral value of the land as determined on 1 January of the reporting year.

Cadastral value is determined by appraisers to order for the regional authorities, which approve the results of the appraisal. The taxpayer may dispute cadastral value if it exceeds market value. In this case the cadastral value will be the same as the market value assessed by the appraiser.

Tax rates

Tax rate set by local authorities may not exceed:

- 0.3% of the cadastral value of land which is either (i) used for agricultural purposes, or (ii) occupied by residential properties or utilities;
- 1.5% of the cadastral value of other land.

3.2.7. Transport tax

Taxable vehicles

The companies that are registered owners of "vehicles" are subject to transport tax.

Vehicles are not limited to cars, motorcycles, motor scooters or buses, but include other means of transport, including aircraft, helicopters, yachts, snowmobiles, etc.

However, aircraft, ships and river vessels owned by companies whose main activity is the transportation of passengers or freight are exempt, as are vehicles used in agricultural production.

Tax rates

Tax rates are set out in the Tax Code depending on the type of the vehicle and may be increased or reduced by regional authorities by no more than 90%.

For motorized transport vehicles tax rates vary from RUB 2.5 to 50 (approximately USD 0.04 to 0.81) per unit of horsepower.

3.3. Personal Taxation

3.3.1. Personal income tax

Personal income tax ("**PIT**") in Russia depends on the taxpayer's tax residency status.

An individual is considered a Russian tax resident if he/she is physically present in Russia for a period of 183 days or more during 12 consecutive months.

Residents are subject to PIT on worldwide income, while non-residents are liable only with regard to Russian-source income.

Generally, income received from legal entities (including employment income, dividends) is subject to withholding tax.

Residency status is determined at the time of payment by the tax agent (i.e. for 12 months prior to the payment). If at the end of a year residency status changes, the tax is re-calculated.

Tax base

Taxable income includes income received in cash, in kind, and in a form of deemed income. *Income in kind* is assessed based on the market price of the goods received or services consumed.

Deemed income results when:

- interest payments on loans from organizations and sole traders when the payments are benchmarked to a rate of 2/3 of the refinancing rate of the Bank of Russia on loans in Russian rubles, or to 9% per annum on loans in other currencies. The use of credit cards issued by non-Russian banks may also trigger deemed taxable income for the cardholder.
- favorable prices are paid by an individual for goods or services purchased from related parties.
- securities and financial instruments are acquired at a price below market level.

An RF resident's income from sale of property is not subject to PIT if the taxpayer has owned the property for 3 years or more.

PIT is not charged on income from the sale of unlisted shares and participatory interests in Russian companies, or of listed shares in Russian high-technology companies, acquired after 1 January 2011 and held for at least 5 years.

Tax deductions

The RF Tax code sets up the following types of tax deductions:

- social deductions (deduction of amounts spent on medical treatment, education, charity etc.);
- property deductions (expenses related to purchase of property is deductible when property is sold);
- professional deductions (sole traders, privately practicing individuals (e.g., notaries, attorneys), and individuals rendering services (executing works) under civil law contracts are entitled to deduct expenses incurred in obtaining the income).

Generally if individuals want to claim tax deductions they must file a PIT return.

Tax rates

The PIT rate is **13%** (for residents) and **30%** (for non-residents) for all types of income, with the following exceptions:

- dividend income is subject to **13%** PIT (for residents) and **15%** (for non-residents);
- income from securities which are recorded in a foreign holder's depository account is subject to **30%** PIT, if a tax agent does not receive information on the taxpayer;
- **35%** tax rate applies to certain types of non-employment income (e.g., deemed income resulting from favorable interest for the use of loans);
- **13%** tax rate applies to certain types of employment income of non-residents (e.g., income of highly-qualified specialists).

Elimination of double taxation

Tax paid by RF residents on income received outside the RF can only be deducted from RF tax if stipulated by double tax treaties

To obtain a tax privilege under a double tax treaty, the taxpayer must file documents proving his/her residency status, received income and payment of taxes before tax is paid or within one year after the end of the tax period in respect of which the taxpayer is seeking to obtain a tax privilege.

3.3.2. Personal property tax

Houses, apartments, garages and other buildings, premises and structures owned by individuals are subject to personal property tax.

The tax base is the inventory value of the property multiplied by the deflator coefficient. Inventory value was determined by special state authorities and generally was substantially lower than market price.

Tax rates vary depending on region and inventory value of property (the maximum rate is 2%, but for most taxpayers tax the rate does not exceed 0,1%).

Individual property tax is assessed by the tax authorities annually and should be paid by taxpayers based on a tax assessment not later than 1 November of the subsequent calendar year.

3.3.3. Transport tax and land tax

Transport vehicles and land owned by individuals are subject to transport tax and land tax respectively.

4. LABOR AND EMPLOYMENT

4.1. Labor regulations

Relations between employers and employees are primarily regulated by Labor Code of the Russian Federation (Labor Code). Such relations are also subject to other legal acts of the Russian Federation containing labor regulations (including local acts adopted by the employer), the employer's collective agreement (if any) and direct employment contracts with the employee. However Labor Code is the core legal act that is currently regulating labor relations between employees and employers and rules contained in other sources should comply with the Labor Code.

Labor Code establishes an important provision ensuring employee rights according to which employment contracts may not worsen the position of employees as compared to labor legislation.

4.2. Employment conditions

4.2.1. Employee guarantees

Employment contracts

Under the Labor Code employers are required to conclude an individual written employment contract with each employee. After the contract is signed, a respective order for the employee's admission to work should be issued by the General Director.

Main responsibilities of an employer are as follows:

- providing employee with work adequate to the labor function,
- providing for proper working conditions,
- full scale payment of salary in a timely manner.

The Labor Code provides that an employment contract should contain "essential" conditions (e.g., place of work, starting date, position, working hours, salary and benefits, other) and "additional" conditions (e.g., trial period, confidentiality, other).

There are following major types of employment contracts:

- an indefinite term contracts; and
- a fixed term contracts concluded for the period not exceeding five years.

As a general rule the employment contract is concluded for an indefinite term. The Labor Code limits application of fixed term contracts by two possible grounds.

Firstly, a fixed term contract **should be concluded** in case if the employment relationships cannot be established for an indefinite term and if the specific conditions are satisfied (seasonal operations, substitution of a temporarily absent employer, other).

Secondly, a fixed term contract **may be concluded** by mutual agreement of the employee and the employer with certain types of employees expressly specified by law (e.g., directors, deputy directors, chief accountants, employees working in companies created for a specific project, part-time workers having more than one job, other).

The grounds for termination of employment according to the Russian labor law are as follows:

- by mutual agreement between the parties;
- expiry of the term of the employment contract;
- cancellation of the employment contract at the initiative of the employer (as discussed below) or employee;
- transfer of the employer at their request or by their consent to another employer or transfer to the elective work (office);
- refusal of the employee to continue working due to a change in owner or subordination of the employer, or its reorganization;
- refusal of the employee to continue work owing to relocation of the employer;
- refusal of the employee to continue working due to change of the conditions of work agreed by parties as well as due to transfer of the employee to another job for health purposes;
- circumstances beyond the parties' control (call to military service, death of the employee or of the employer, loss of labor capacity, case of emergency, other).

In general, an employee may terminate a contract at any time by providing two weeks prior written notice to the company, unless an earlier termination is mutually agreed.

It is important to note that the employee is entitled to withdraw a notice at any time prior to expiry of the two-week term.

An employee working under an employment contract concluded for a term not exceeding two months should give at least a three days prior written notice to the company.

An employer may terminate a contract under circumstances strictly determined by law. Some of them are as follows:

- liquidation of the company or personnel reduction;
- employee's inconsistency with the office or job due to insufficient qualifications which is proved by performance review;
- an employee submitted false documents when hired;
- an employee fails to discharge work duties on a regular basis for no good cause (absent for no good cause, is inebriated at work, discloses state, commercial information or internal confidential information of the employer, steals from the

employer, fails to comply with labor protection requirements, resulting in significant damage);

- an employee commits a single violation of employment responsibilities; and
- an employee with financial responsibilities commits an act in breach of the trust of the company.

Russian law further provides that the employment contracts with pregnant women cannot be terminated at the employer's initiative (except for the case of company's liquidation).

Employment contracts with women having children under the age of three, single parents having children under the age of fourteen or disabled children under sixteen may be terminated only in a limited number of cases specified by the Labor code.

In case the employees are under 18 years of age, an employment contract may be terminated with the approval of the State Labor Inspectorate and Commission on Minors.

It may also appear difficult to terminate the employment contract on the grounds that the employee is not fully matching the position unless there are clearly stated job requirements that can demonstrate failures on the employee's side. The Russian courts generally decide to the favor of the employee when considering cases of alleged wrongful dismissal. In practice, companies seek where possible to secure the employee's voluntary resignation.

The procedure and paperwork requirements for employment contract termination are governed by the Labor code. Failure to comply with the said requirements entails a risk of employer's reinstatement in a job under a court decision due to formal grounds.

General Guarantees

Russian labor legislation provides certain guarantees for employees that can be summarized as follows:

- standard working hours are not to exceed 40 hours per week;
- overtime is permitted under specified circumstances and is not allowed for certain categories of employees. Generally it should not exceed four hours in two successive days and 120 hours per year. Overtime is payable at the following rates: 1.5 times normal salary per hour for the first two hours and, 2 times for subsequent hours and for work on weekends and non-working days. This minimum guaranteed amount of compensation may be increased by the local normative act or a contract. Employees may demand additional days-off as compensation for overtime instead of increased payment;
- an employer may not require an employee to perform functions beyond those set out in his/her employment contract unless case of emergency requires that this is done, in which case the employer has the right to transfer the employee to a position in a different line of work for a period not exceeding one month. In such situation an employee may be assigned to a job which requires lower qualifications subject to the employee's written consent;
- employees are entitled to 14 public holidays and an annual leave of at least 28 calendar days. For some categories of employees, the minimum annual leave established by legislation may exceed 28 calendar days;
- employees are entitled to sick leave allowance paid by the employer and Social Insurance Fund based on an employee's wages and vary between 60 percent to 100 percent of the wage amount, depending on the length of service but may not exceed RUB 1,633 per day of sickness (which is approximately USD25);

- wages for time spent away from work, for the performance of the functions of a trade union officer, appearing in court, going to vote, and fulfilling other state or social responsibilities;
- imperative severance pay in certain situations (e.g. in case of termination of the employment contract due to company's liquidation or personnel reduction);
- guarantees for employees sent to business trips (maintenance of office, average earnings and business trip expenses reimbursement);
- additional guarantees for employees receiving education (providing additional paid leaves);
- providing guarantees and compensations in case of accidents at work and occupational diseases; and
- a right of the employee to obtain a work record book and other documents related to work at their request.

Guarantees for Women Employees

- women are entitled to maternity leave for 70 calendar days (84 days for multiple births) prior to childbirth and 70 calendar days (86 days in the case of birth complications, and 110 calendar days for multiple births) after childbirth;
- maternity leave is granted together with social insurance benefit paid out in the amount established by statutory legislation;
- regardless of the employment period with a specific company, a woman is entitled to annual paid vacation which may be taken either before or immediately after maternity leave, as well as leave up until the child's third birthday;
- during the period of maternity leave until the child reaches one and a half years of age, the woman is paid a social insurance allowance;
- fathers, grandparents and other relatives are entitled to baby care leave under certain circumstances.

Trade Unions

Employees may organize trade unions and participate in the management of the company.

The primary trade union represents the interests of employees in dealings with the employer, ensures that the terms of the collective agreement are being complied with and participates in the resolution of labor disputes in accordance with statutory legislation.

Work book

Russian labor legislation requires that a work book shall be kept for each employee who has worked for at least five days at a company, if this work is the employee's main employment. This is the basic document in which is recorded the employment history of each individual over his/her lifetime. This book indicates the grounds for termination of employment contract and records of rewards for achievements at work, work performed by the employee, transfers to another permanent work, etc.

Every entry to the work book is attested by the signature of the authorized representative of the employer and by the employer's stamp.

Trial period for an employee

Trial periods (typically up to a maximum of three months) are permitted to assess the suitability of employees for a position. Certain categories of employees are not subject to a trial period (e.g. pregnant women, minors, transferees).

A trial period may not be established in case if an employment contract is concluded for a fixed period not exceeding two months.

In case if an employment contract is concluded for a period from two up to six months, the trial period may not exceed two weeks.

The trial period may be established for six months for directors, deputy directors, chief accountants, deputy chief accountants and directors of branches, representative offices or other divisions.

The trial period for an employee typically lasts for 3 months.

The trial period for an employee typically lasts for 3 months.

Salary

The Labor Code secures the interests of employees related to timely salary payments as follows:

- the employer should pay salaries at least twice a month on days set by the local normative act or the employment contract.
- Delays in salary payment are not permitted. In such cases, the employer must pay interest for each day of salary payment delay in the amount of not less than 1/300 of the refinancing rate established by the Bank of Russia (from September 14, 2014 the refinancing rate amounts to 8,5%);
- If salary payment is delayed by more than 15 days, the employee has the right to notify the employer and to stop working;
- administrative fines can be levied on employing organizations and their responsible officials for delayed salary payments – RUB 30,000 - 50,000 (which is approximately USD 450 - 760) and RUB 1,000 - 5,000 (which is approximately USD 15 - 75), respectively. In some cases, the employer's activities may be suspended for up to 90 calendar days. If the responsible company's official has already been penalized for delayed salary payments, then they may be prohibited from holding the executive positions for 1 to 3 years.
- if salary payments are delayed for more than three months, the criminal liability may also apply. Under the Criminal Code, if it is proved that the delay was due to the General Director's unethical actions or other vested interest of the General Director, the General Director can be liable to pay a fine in the amount of up to RUB 120,000 (USD 1,820), or in an amount equal to his/her wages or income from another source for a period of up to one year. In addition, the General Director may be deprived of the right to occupy certain positions or to be engaged in a certain activity for a period of up to five years; or the imprisonment for a term of up to two years could be imposed; and
- if the full amounts of salary payments are delayed for more than two months or salary paid is below federal minimum statutory monthly wage (RUB 5 554) during that period, the Criminal Code provides for a fine in the amount of RUB 100,000 - 500,000 (approximately USD 1,515 - 7,575) or in the amount equal to the salary or wages or earnings from another source of income of the convicted person for a period of one to three years. In addition, the right to occupy certain positions or to be engaged in a

certain activities could be relinquished for a period of up to three years with or without imprisonment for a term of three to seven years.

Minimum statutory monthly wage

Minimum statutory monthly wage is used to regulate wages, compensation and other payments made under labor legislation.

As of 1 January 2015, the federal minimum statutory monthly wage amounts to RUB 5,965 (approximately USD 90). This minimum statutory monthly wage in the amount stated above is used to calculate labor remuneration and allowances for temporary inability to work.

Different minimum monthly wages may be established by subjects of Russia, but no lower than RUB 5,965. Minimum wage for Moscow is established at the level RUB 16,500 as of 1 June 2015 (approximately USD 250).

Currency of salary payment

In Russia salaries are normally paid in monetary form in rubles. Direct salary payment to employees in Russia in foreign currency is prohibited.

In accordance with collective agreements or employment contracts upon an employee's written request, labor may be remunerated in other forms as long as they do not contradict Russian legislation or international treaties to which Russia is party. The percentage of remuneration made in non-monetary form may not exceed 20 percent of an employee's total salary.

Severance payments

The Labor Code requires severance pay equal to at least two week's average earnings where an employment contract is terminated due to:

- drafting or enlisting of an employee into military or alternative civil service;
- refusal of an employee to be transferred to work in another location together with the enterprise, institution or organization upon its relocation;
- inability to work under the medical certificate issued in accordance with the legislation;
- refusal to continue work due to a unilateral change of the labor agreement conditions made by the employer (such change is only possible in exceptional cases);
- reinstatement of an employee who previously performed the work;
- refusal of an employee to change work as prescribed by relevant medical authorities or if the employer is not able to offer relevant work.

In the event of the dissolution of an enterprise, institution, or organization, or staffing cuts, a one-off payment of monthly average earnings is required. Additional payments are required if the dismissed employee is unable to find work but no more than two months of payments (three months subject to specific conditions).

Other grounds for severance payment as well as increased amount of it may be provided for under the employment contract.

4.2.2. Collective bargaining agreement

The Labor code provides for an opportunity of employer and employees to enter into a collective bargaining agreement. The law does not require a collective bargaining agreement if neither party requests it.

The Labor code provides for a procedure of entering into the collective bargaining agreement and requirements to its content though such agreements are not widespread in Russia nowadays.

4.3. Specifics of employment of the foreign nationals

4.3.1. Work permits for foreign nationals

Requirements to labor activity of foreign nationals are specified by Federal law No 115-FZ "On legal status of foreign nationals in the Russian Federation" dated 25 July 2002.

As a general rule, foreign nationals working on the territory of Russia are required to have a work permit. There are a few exceptions to this rule, mainly related to certain CIS nationals and other foreign nationals who possess residency permits.

The standard work permit application process is quite a lengthy and burdensome procedure consisting of several stages. Each stage involves submission of applications together with an extensive list of documents. These stages include the following:

- registration with the local employment authorities;
- submission of notification on vacancies available in the company to the Employment Service for subsequent conclusion of the authorities on the extension of the engagement of foreign nationals for such vacancies ("**Conclusion**");
- application for a corporate quota for engagement of foreign labor at the Federal Migration Service of the Russian Federation ("**FMS**") or the Department of the Federal Migration Service of the Russian Federation ("**Corporate Quota**"); and
- application to the FMS for each expatriate's individual Work Permit ("**Individual Work Permit**").

Usually the whole procedure to obtain an individual work permit may take up to four months.

The Individual Work Permit is issued for the period up to one year. Separately, based on the Individual Work Permit, a work visa must be obtained. The procedure for visa issue also includes several stages where the specified set of documents should be submitted to the immigration authorities.

Further, with respect to the regular category of work permit, each year by May 1 companies must report the number of foreign employees they anticipate engaging in the next calendar year. This procedure effectively constitutes a quota application. If the employer does not comply with this and does not receive notification of the approval of a quota, the employer will have work permit applications rejected.

Alternatively, a company that failed to file a quota application or whose application was denied or partially approved may use a list of quota-exempt positions when applying for work permit only if the application meets all the quota-exempt requirements.

4.3.2. Work permit application for highly-qualified specialists ("HQS")

Started from 1 July 2010, simplified procedure of obtaining the work permits for HQS came into force. HQS is a highly-skilled professional who is a foreign employee and has work experience and skills or achievements in a certain area and whose annual salary generally exceeds RUB 2,000,000 (about USD 30,300).

Obtaining the work permits for foreign national as for HQS has the following advantages:

- obtaining an employment permit for the Russian employer is not required;
- the quota system is not applied to HQS;
- the work permit period can be issued for the term of up to three years;
- HQS may obtain multiple work visa for the term of up to three years;
- the procedure of obtaining work permit for HQS takes about fourteen business days from the moment of submission of such application;
- reduced income tax rate of 13 percent applies to salary paid locally to HQS non-tax residents irrespective of their tax residence status; and
- extended length of business trips outside the region/regions for which the HQS work permit was obtained as compared with the standard work permit (30 calendar days in total during a calendar year or without limitation for HQS with travelling nature of work).

4.3.3. Migration registration procedure

Migration registration is the process of notifying the immigration authorities of a foreign national's whereabouts (international travel, as well as internal trips within Russia). It is the hosting party which is responsible for such registrations. The hosting party for this purpose is either the hotel or the employer (visa sponsor) or a landlord, if the foreign national is not staying in the hotel.

Upon arrival in Russia, each foreign national must be registered in Russia in his host location.

This process should be completed within seven business days of arrival every time a foreign national arrives in Russia or travels to another region (changes location) within Russia for more than seven business days.

HQS and his family members are exempt from registration procedures, if they arrive and stay in Russia for the period not exceeding 90 days and 30 days if they travel in Russia to another region. If HQS and his family members stay in Russia for more than 90 days (or 30 days traveling in another region), they are required to be registered within seven business days.

5. ANTIMONOPOLY REGULATIONS

5.1. General approach

Anti-monopoly issues in Russia are mainly governed by Federal Law No. 135-FZ "On the Protection of Competition" dated 26 July 2006 (the "**Competition Law**"), while liability for the violation of anti-monopoly regulations is established (in addition to the Competition Law) mainly by the Code on Administrative Offences and the Criminal Code.

The Federal Anti-monopoly Service (the "**FAS**"), a Russian executive authority, controls and enforces compliance with anti-monopoly legislation.

Russian anti-monopoly regulation is constantly developing. In course of recent years several sets of extensive amendments have been introduced into the Competition law. The summary below provides an outline that reflects the most important issues of the revised regulations.

5.2. Scope of application of the Competition Law

The Competition Law applies to the agreements/actions concluded or carried out in or outside Russia between Russian and/or foreign legal entities/individuals, authorities that may in any way influence competition in Russia.

Based on the above, the scope of application of the Competition Law is very broad. In practice, it may cover almost any agreement and may apply to any company directly or indirectly connected with the Russian market or Russia in general.

5.3. Anti-competitive practices and restriction of competition

The Competition Law covers the following types of anti-competitive practices and activities which may lead to a restriction of competition:

- abuse of a dominant position;
- cartel agreements and concerted actions;
- vertical agreements;
- economic coordination; and
- unfair competition.

The Competition Law also includes rules on transaction clearance. The law is also aimed at protecting competition when making contracts on tenders. Furthermore, it provides for special regulation with regard to prohibition of anticompetition actions of state bodies including Bank of Russia and extra-budgetary funds.

5.3.1. Abuse of a dominant position

The general rule is that a company is deemed dominant if it has a market share of over 50%.

However, in practice, dominance may be established in certain circumstances with a market share of less than 50%. Moreover, the Competition Law contains provisions on collective market dominance of several companies (2 – 5 companies) each of which separately does not meet dominance test.

Market dominance is, in itself, not a violation. However, abuse of the dominant position gives rise to liability. The "dominant" entities are prohibited from:

- fixing or maintaining "monopolistically" high or low prices;
- establishing different prices for the same commodity without technological or economic substantiation;
- establishing discriminatory conditions;
- withdrawal of commodities from circulation if it entails price increase;
- imposing of unfavourable or irrelevant contractual conditions on a contractor;
- decrease or termination in production with no economical or technical justification if there exists demand for such production and its cost-effective manufacturing is possible;
- refusal to enter into a contract with particular purchasers (customers) with no economical or technical justification ;
- establishing by a financial institution of unreasonably high or unreasonably low price for financial services;
- creating obstacles for access to the commodity market or exit from the commodity market for other companies;
- breach of price determination procedure provided for by laws;

- price manipulation on wholesale and (or) retail market of electric energy (power) .

5.3.2. Cartel agreements and concerted actions

In brief, the following arrangements are expressly ("*per se*") prohibited by the Competition Law in agreements (cartels) and concerted actions between competing market players:

- fixing or maintaining prices/tariffs, discounts, bonus payments or surcharges;
- increasing, reducing or maintaining prices during auctions;
- dividing markets by (i) territory; (ii) volume of sales or purchases; (iii) assortment of goods (works, services) sold; or (iv) range of sellers or purchasers/ customers;
- refusing to enter into contracts with certain sellers or buyers; and
- reducing or terminating the production of goods (works, services), main production assets (both tangible and intangible) located in Russia.

Any consent in writing or by word is deemed an agreement.

Concerted actions – actions with no consent of their parties of which every party is aware in advance due to public announcement of such actions by one of the parties. To be considered unlawful such actions should meet interests of every party and not be a consequence of objective market circumstances.

5.3.3. Vertical agreements

If the parties to an agreement are in a sale and purchase relationship, such a "vertical agreement" may not contain any provisions which lead to a restriction of competition in general and, expressly ("*per se*"), may not (i) establish resale prices for goods (works, services), except for maximum resale prices; and (ii) prohibit the purchaser from selling competing products.

5.3.4. Economic coordination

The Competition Law also prohibits any economic coordination exercised by one person or business entity (the "coordinator") over the activities of other business entities if:

- the coordinator does not belong to the same group as the entities it coordinates;
- the coordinator is not active on the market where it coordinates the business of these other business entities; and
- the coordination results in any of the prohibitions as listed in Sections 5.3.2 and 5.3.3 above.

5.3.5. General Restriction of Competition

Agreements in general may not lead to a restriction of competition on the market. In particular, they may not lead to:

- setting different prices for the same product (work, service) without economic or technological justification thereto;
- imposing unfavorable terms upon a contracting party;
- impeding other business entities' access to or withdrawal from a certain market; and
- establishing membership conditions in professional or other associations if these conditions lead or may lead to a restriction of competition.

It is important that the restrictions outlined in Sections 5.3.2 – 5.3.5 above shall not apply to the agreements or actions between business entities that are part of one group of companies when these entities are controlled by the same company/ individual or if one of them is controlled by another.

5.3.6. Unfair competition

Paris Convention for the Protection of Industrial Property dated 1883 which prohibits unfair competition is applied in Russia. Unfair competition is not permitted under Russian competition legislation as well. In particular, unfair competition includes:

- the distribution of false or incorrect information which may cause damage to a business entity or impair its reputation;
- misleading information in respect of a commodity's (i) nature; (ii) manner and place of production; (iii) consumer properties; (iv) quality and quantity; or (v) manufacturers;
- an incorrect comparison of the commodities produced by a business entity with those produced or sold by other business entities;
- the sale, exchange or other placement into circulation of a commodity in breach of third-party intellectual property rights; and
- the unlawful receipt, use and disclosure of commercial secrets, official secrets or other information protected by law.

The above restrictions are closely connected with further restrictions as set forth by Federal Law No. 38-FZ "On Advertising" dated 13 March 2006 (the "**Advertising Law**"). By the Advertising Law the FAS is also authorized to perform monitoring of compliance with the Advertising Law requirements and may hold the companies liable for violation and non-compliance with the respective rules.

5.3.7. Antimonopoly scrutiny of the transaction

Description of the transactions

Under the Competition Law agreements/actions concluded or carried out in or outside Russia, between Russian and/or foreign legal entities/individuals and which are related to main (fixed production assets), shares or participatory interests in, or control over:

- (i) Russian legal entities; or
- (ii) foreign legal entities engaged in business activities in Russia

are subject to antimonopoly control.

The wording "legal entity engaged in business activities in Russia" refers to all foreign entities that have supplied goods/works/ services to Russian market in the amount exceeding RUB 1 billion (approximately EUR 20,000,000) during calendar year preceding the date of the respective transaction.

Thereafter the following transactions may require approval from the FAS:

- establishment of a Russian company if (i) its charter capital is paid up by shares and/or tangible or intangible assets of another company; and (ii) the new company, as a result, acquires certain rights in respect to such company;
- reorganization (in the form of a merger or accession);
- acquisition of more than 25%, 50% or 75% of voting shares in a Russian joint stock company;

- acquisition of more than 1/3, 50% or 2/3 of the participatory interests in the charter capital of a Russian limited liability company;
- acquisition of control over a Russian company;
- acquisition of more than 50% of shares/participatory interests or control over a foreign "legal entity engaged in business activities in Russia"; and
- acquisition of the right to own, use or possess the main production and intangible assets of a company if the book value of the acquired assets located in Russia exceeds the following percentages of the total book value of the seller's main production and intangible assets: (i) 20% for companies operating on commodity markets; or (ii) 10% for companies operating on financial markets.

Thresholds

The transactions as specified above shall be subject to merger clearance from the FAS if the respective thresholds as established by the Competition Law are met.

When the thresholds for prior approval are met, FAS clearance must be obtained before the closing of the transaction.

The thresholds set out below only apply to companies operating on the commodity markets.

For those operating on financial markets, the requirements are different (for example, please see the Section 7 of *Banking Regulations* for information on thresholds for banks (credit organizations)).

The Competition Law provides for a special control procedure with regard to transactions made within one group of persons. Providing prior information disclosure with respect to the group of persons according to the prescribed form such transaction requires post-transaction notification to the FAS within 45 calendar days after closing only.

Only such transactions which are made between business entities that are part of one group of companies when these entities are controlled by the same company/ individual or if one of them is controlled by another are completely exempted from control.

5.4. Liability

5.4.1. General liability

Individuals and legal entities may be subject to administrative and criminal liability for noncompliance with anti-monopoly legislation. Forms of liability may include:

- mandatory directions issued by the FAS to cease a violation and/or transfer to the state budget of all revenue received as a result of the violation of anti-monopoly legislation (under the Competition Law);
- fines calculated on the basis of revenue (up to 15% of the revenue gained during the calendar year preceding the date of the violation of anti-monopoly legislation) and/or disqualification of company officials (under the Code on Administrative Offences); and
- fines, disqualification of company officials and, for the more serious anti-monopoly violations, up to seven years' imprisonment of company officials (under the Criminal Code).

Persons whose rights and interests are violated as a result of antimonopoly laws violation are entitled to file suits with courts, including suits on restoration of violated rights, reimbursement of damages including loss of profit, on reimbursement of damage to property.

5.4.2. Specific forms of liability

Prohibited agreements and leniency

As mentioned above, cartels and concerted actions which violate anti-monopoly regulations are strictly prohibited and may lead to severe sanctions being imposed. The Code on Administrative Offences provides a limited opportunity for companies which have participated in illegal cartels or actions to avoid penalties – the "Leniency Program".

To obtain total immunity under the Leniency Program, a cartel Participant must (i) be the first to inform the FAS of the cartel's existence; (ii) submit sufficient information and/or documents to the FAS to allow an administrative violation to be identified; (iii) fully co-operate with the FAS throughout its investigation; and (iv) cease any involvement in the cartel or other infringement immediately.

It is only possible to benefit from the Leniency Program if the FAS is not aware of the reported infringement. Collective applications for the Leniency Program are not accepted.

6. REAL ESTATE AND CONSTRUCTION

6.1. General approach

This section relates to real estate and construction matters in Russia, which are governed by a complex body of laws and regulations. Key legislation in this respect includes:

- Civil Code of the Russian Federation: Part I dated 30 November 1994; Part II dated 26;
- January 1996; Part III dated 26 November 2001; Part IV dated 18 December 2006 (the "**Civil Code**");
- Land Code dated 25 October 2001 (the "**Land Code**");
- Town Planning Code dated 29 December 2004 (the "**Town Planning Code**");
- Forest Code dated 4 December 2006;
- Water Code dated 3 June 2006;
- Federal Law No. 102-FZ on Mortgage (Pledge of Immovable Property) dated 16 July 1998 (the "**Law on Mortgages**");
- Federal Law No. 122-FZ on the State Registration of Rights to Immovable Property and Transactions dated 21 July 1997 (the "**Law on State Registration**"); and
- Federal Law № 221-FZ on the State Cadaster of Real Estate of 24.07.2007.

6.2. Rights to real estate

The Land Code provides for two basic types of land right to (a) land plots; and (b) buildings, structures and premises: (i), ownership right (freehold); and (ii) lease right (leasehold). Besides, the Land Code provides for (iii) easement in respect of land plots for limited use thereof or the use of publicly owned land plots subject to (iv) a permit without the provision of an easement.

Real estate (including land plots) in the Russian Federation may be owned publicly or privately. In relation to land, we would like to outline a number of local particulars.

Public land ownership

Publicly owned land means that the land is owned by the State (i.e. the Russian Federation or a region) or a municipality. Substantial areas of land in Russia (particularly in the City of Moscow, which has regional rather than municipal status) have always been state-owned.

Until 2001 (when the Land Code was adopted), there were several legal acts governing the delineation of state-owned and municipal land plots. The process of delineation was complicated and, at times, confusing. It has been clarified by the Land Code and further clarification is ongoing. Pending completion of this process, and to ensure that land is still marketable, public land may be disposed of by municipal authorities. They are authorized to act as landlords in lease agreements, allocate land plots for construction and act as seller during the privatization of public land.

Public land plots may be privatized, subject to a number of statutory restrictions. For example, land plots falling within specially protected areas (such as national parks) or areas required for defense (such as military airports) may only be state-owned.

Private land ownership

Any legal entity or individual may own private land in the Russian Federation, subject to certain restrictions that relate to the legal status of the land plot. Generally speaking, foreign nationals and legal entities now enjoy the same rights to land plots as Russian individuals and legal entities.

However, certain restrictions apply. In respect of the ownership of land, foreign investors may not, in particular (i) own land in border territories or other territories, specifically designated in the Land Code; and (ii) own agricultural land. This rule also applies to Russian companies with foreign participation in their charter capital of 50% or more.

Foreign investors (as broadly defined above) are only entitled to lease agricultural land, which complicates greenfield projects on this category of land.

Other rights to or affecting land plots

Russian land legislation that pre-dated the Land Code also provided for other types of land rights, such as, among others, the right of permanent perpetual use of the land plot, or hereditary tenancy.

The right of permanent perpetual use of a land plot was only granted to state, municipal or other public enterprises or to municipal authorities. Legal entities must convert the right of permanent perpetual use into leasehold or freehold rights by 1 July 2012.

Starting from 1 January 2013, legal entities will be penalized if they fail to convert their right of permanent perpetual use. As in other countries, an easement (or servitude) may be established in respect of a land plot that is owned by a third party as well as in respect of publicly owned land plots. This grants the easement holder a variety of rights (including the right to survey work, placement of linear facilities, etc.).

The easement may be public or private, depending on the persons who are interested in it. If the easement is required by a particular person or legal entity, then only a private easement may be established in respect of the relevant land; if the general public is interested in the easement, then a public easement may be established.

The use of a publicly owned land plot without providing or establishing an easement is a new institution of law and an easier way to involve the publicly owned land into business. The law provides for two groups of cases when such a use is permitted:

- Engineering survey, linear facilities repairs, geological study of subsurface (these cases do not imply the construction and reconstruction of real-estate assets);
- Placement of 3 types of assets:
 - site of non-stationary retail outlets;
 - advertising structures;
 - underground linear facilities as well as their surface parts and constructions technologically required for their use and a number of other facilities requiring a permit for construction.

6.3. Real estate transactions

6.3.1. Sale and purchase transactions

Cadastral and state registration

A publicly or privately owned land plot may be bought and sold provided that (i) it has undergone all cadastral registration formalities; and (ii) the title to the land plot has been registered, except public land in state ownership that has not been delineated.

Both procedures require the submission of certain documents to the state registration authority, i.e. the Federal Service for State Registration, Cadaster and Cartography or its regional/local departments (the "**Registrar**"). Failure to comply with this requirement may lead to any related real estate transaction being declared null and void.

Private entities can acquire public land for construction purposes exclusively at auction and on the leasehold basis.

Rights to buildings and structures located in Russia are subject to state registration. Rights to a building are not effective until they have been registered in the State Register (i.e. the building/premises legally exist only from their state registration). Moreover, state registration (as evidenced by a title certificate) is the only evidence of ownership right. Only a court decision may overrule state registration.

Buildings on land plots

A general principle of Russian law is the unity of rights to land plots and buildings. The Land Code prohibits transfers of land without the buildings and structures standing on it. Ownership rights to a building can only be transferred together with rights to the underlying land plot, provided the building seller also owns the land plot. In exceptional cases, title to parts of a building may be transferred separately from the land if it is not possible to separate the respective part of the land plot, or if there is a restriction on the acquisition of this land plot. In such cases, the Purchaser (the new owner of a part of the building) must formalize rights to the underlying land plot jointly with the owner of the other part of the building by concluding a land plot lease agreement with multiple parties as tenant.

Owners of buildings located on a land plot they do not own generally enjoy a preemptive right to purchase the land plot, or a preferential right to lease it. If a land plot is in state or municipal ownership, the owners of buildings generally have exclusive rights to privatize the land plot.

Privatization

Since 30 October 2001, it has no longer been possible to privatize buildings, structures or industrial facilities without simultaneously privatizing the underlying land.

A building owner has exclusive rights to obtain freehold or leasehold rights to a publicly owned land plot on which the building stands. The building owner is free to choose whether to acquire leasehold or freehold rights to the land plot. During privatization, the building owner must pay a purchase price for the land to the state or municipal authorities. The general rule is that the purchase price of the land plot is equal to its purchase price. Many regions establish discounts for certain categories of persons, including property owners, and a purchase price set as a percentage of cadastral value (usually 10% to 30%).

Sale and purchase contract

Certain conditions of a real estate sale-purchase transaction are deemed material and must be clearly determined in the sale and purchase agreement, such as the subject matter (i.e. the land plot or building/premises) and the price. In addition, the parties to the agreement are entitled to set out their own list of supplemental contractual provisions that they consider to be material to the transaction.

If the sale and purchase agreement does not meet the above requirements, it is deemed not to have been concluded. This means that the plot or property must be vacated and returned to its owner in its original state, and the sale price must be returned to the purchaser.

These consequences arise only if a competent court declares the sale and purchase agreement invalid or the transaction void.

Registration of transfer of title

The transfer of ownership rights to real estate must be registered in the Consolidated State Register of Real Estate Rights and Transactions (the "**State Register**"), whereas the sale and purchase contract itself does not have to be registered. Registration involves filing the sale and purchase contract and other related documents with the Registrar, as evidence of the transfer of ownership rights.

Title is evidenced by an extract from the State Register issued by Rosreestr. This means that a record of title to a land plot in the State Registrar is prima facie evidence: i.e. it is believed to be true and overrules any other evidence, unless a court decision proves otherwise. However, rights to property that arose before the Law on State Registration came into force (January 1998) are valid even if they are not registered.

Any member of the public may request general information about real estate (owner, registered encumbrances, etc.) in the form of an extract from the State Register. However, certain information relating to the number of plots and/or properties owned by a certain person or legal entity, may only be requested by the owner of the relevant plot or property. Certain types of encumbrance (buffer zones of hazardous facilities, protective zones of cable lines and gas transmission lines, etc.) must be recorded in the State Real Estate Cadaster.

As the recording of such encumbrances in the State Real Estate Cadaster has begun only recently, we recommend site inspections and legal due diligence of the land plot and any properties located on it in order to discover such encumbrances.

Real estate acquisition and antimonopoly control

As a general rule, real estate acquisitions (land and/or buildings) are not subject to antimonopoly control.

However, antimonopoly control will apply if the net value of the land or property that is the subject matter of a real estate transaction (or a series of related transactions) exceeds 20% of the seller's net asset value.

Depending on whether certain asset value or revenue thresholds are exceeded, either prior consent of, or a post-transaction notification to, the Federal Anti-monopoly Service will be required (please see Section 5 above).

Furthermore, under Federal Law No. 381- FZ on State Regulation of Trade Activities in the Russian Federation dated 28 December 2009, food retailers with a market share in a given area exceeding 25% are prohibited from acquiring or leasing additional outlets in that location.

6.3.2. Leases

Land leases

A lease agreement in respect of a privately owned land plot may include any provisions not contrary to any mandatory Russian requirements. Material lease conditions, such as the subject matter (i.e. the land plot itself) and the rent, must be clearly determined in the lease agreement. In addition, the parties may set out their own list of supplemental contractual provisions that are material to the transaction.

If a lease agreement does not meet the above requirements, it is deemed not to have been concluded. In this case, the land plot must be vacated and returned to its owner

Term

Russian legislation places no general limit on the lease term in respect of a privately owned land plot. However, there are certain limits on leases of publicly owned land plots whose lease term depends on specific types of land plot use. . For example, the term for a lease of agricultural land is 3-49 years, for construction – 3-10 years.

Thus, the impact of the lease term should be assessed before any material investments are made.

Any lease agreement concluded for a term of at least one year is subject to registration in the State Register. If the lease agreement does not meet these requirements, then it is deemed not to have been concluded. The legal effect of this is that the lease is treated as if it was not concluded at all. In such cases the land plot must be vacated and returned to its owner.

The Civil Code provides that where a lease agreement does not specify a term, it is deemed concluded for an indefinite term. In such cases, a lease may be terminated simply by either party serving a termination notice on the other party at least three months in advance of the intended date of termination.

Assignment

It is generally permitted (subject to certain restrictions) to sublet, assign, mortgage or contribute leasehold rights to a land plot to the charter capital of a company. Unless otherwise provided for in the lease agreement, sublease, assignment and mortgage agreements may be

entered into without the consent of the landlord (but subject to subsequent notification by the tenant).

In any event, there are a number of circumstances when the tenant's right to sublease or mortgage the plot, or assign lease rights, may not be waived or restricted (such as in the case of leases of public land for more than five years).

Termination

The Civil Code grants both landlords and tenants the right to terminate an agreement unilaterally, either in the limited number of circumstances stipulated by the Civil Code (via court procedure) or under the lease agreement itself. In the latter case, both in-court and out-of-court procedures may be used.

The Land Code stipulates additional circumstances in which a landlord may terminate a lease. These include, among others, use of the land in a manner inconsistent with its land category and permitted use, and appropriation by the state.

In relation to state or municipal land, the Land Code also grants landlords a specific ground for early termination of a lease that has been concluded for a term of more than five years. If a tenant commits a material breach of the terms and conditions of such a lease agreement, the landlord may apply for a court order enabling it to unilaterally terminate the lease.

Commercial leases of buildings, structures and premises

Commercial leases have been developing rapidly over the past few years. The market is generally dominated by the private sector, which means that legal relationships are heavily influenced by commercial needs, return on investment and the level of yield.

Therefore, the following legal structure has been developed:

- Preliminary Lease Agreement (the "**Preliminary Agreement**");
- Short Term Lease Agreement (the "**STL**");

and

- Long Term Lease Agreement (the "**LTL**").

This lease structure is also favorable for investment acquisitions since it becomes much easier to calculate the sale value of the property in accordance with international valuation standards.

Preliminary lease

When a building, or any other property, is under construction, and a potential tenant wishes to "mark out" the building, as well as particular premises within the building, and set the rent, it enters into a Preliminary Agreement with the prospective owner to govern their preregistration relationship.

Until registration of the owner's title to the building, as well as the building itself, in the State Register, no lease agreements may be entered into in respect of the building or premises within the building. The Preliminary Agreement, therefore, contains various obligations (such as the time period for construction, the tenant's requirements for works and fit out of the building and/or premises, etc.).

In order to be legally valid, the Preliminary Agreement must clearly determine its subject matter, sufficiently describe the property to which it relates, and establish all the material terms and conditions of the main lease agreement to be entered into (the "**Main Agreement**").

The parties to a Preliminary Agreement should determine a time period within which the parties must enter into the Main Agreement. If no time period is specified, the parties should enter into the Main Agreement within one year of the conclusion of the Preliminary Agreement. If the parties fail to enter into the Main Agreement within this time period, the Preliminary Agreement will terminate.

However, if the failure to enter into the Main Agreement was caused by one of the contracting parties, the courts may force the defaulting party to enter into the Main Agreement.

6.3.3. Mortgages

Creating a mortgage

Both freehold and leasehold rights to land and buildings may be mortgaged; there are no restrictions against this in either the Land Code or the Civil Code. Rights to buildings and parts of buildings, including residential buildings and flats, may also be mortgaged.

The terms and conditions of mortgages are governed by the Law on Mortgages, which requires mortgages over the completed buildings and the underlying land plot to be granted simultaneously.

A security interest over a land plot or other property is generally created by the parties entering into an express mortgage agreement. However, a mortgage may arise by operation of law (for example, if the seller sells a property with payment in installments over 10 years. In this case, unless otherwise provided by the sale-purchase agreement, the seller will become the pledgee for the said property by force of law, until the purchaser pays in full. A mortgage by virtue of law is registered in the Consolidated State Register of Real Estate Rights and Transactions).

A mortgage agreement must be drafted as a single contract, signed by both parties, who may choose to do so before a notary, and then registered by the Registrar.

Notably, when a building is mortgaged, the underlying land plot or lease rights must also be leased.

The mortgage comes into effect only upon registration in the State Register.

The parties have two registration options: (i) submit a joint application and a set of necessary documents to the Registrar; or (ii) appoint a notary to submit a notarized application.

The Law on Mortgages sets out the time period within which the Registrar must complete the registration formalities.

For a mortgage of (i) residential property; or (ii) a land plot and non-residential property under a notarized agreement, the time period is five working days. For mortgages of land plots and non-residential property under a simple agreement, the time period is 15 working days.

Enforcing a mortgage

Upon a material breach of a secured obligation, the mortgagee may enforce the mortgage. There are two methods of enforcement: (i) through the courts, resulting in the secured property being sold at a public auction; or (ii) under a notarized out-of-court enforcement agreement between the mortgagee and the mortgagor.

The Law on Mortgages provides for the following options when the mortgagee is using the out-of-court enforcement procedure:

- assumption of the mortgaged property by the mortgagee; or
- sale at an auction.

In a number of cases, the use of the out-of-court enforcement procedure is prohibited (for instance: if the first and second ranking mortgages provide for different types of enforcement procedures; and where out-of-court enforcement is prohibited only court enforcement is possible).

The Law on Mortgages also sets out a procedure for the distribution of the proceeds received as a result of the enforcement of the mortgage. For example, in both the out-of-court and court enforcement procedures, the sale proceeds are distributed according to the seniority of claims among (i) all mortgagees that filed their claims; (ii) other creditors; and (iii) the mortgagor. Seniority is determined on the basis of the entries in the State Register.

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