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Russia

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Introduction

The first wave of joint ventures with foreign investors in the former Union of Soviet Socialist Republics (the "USSR", of which Russia was then a part) began in 1987 with the adoption of two Joint Venture Decrees by the USSR Council of Ministers.[1] Under these Decrees, joint ventures were treated as a special form of legal entity.

Initially, the potential for involving foreign investors was limited. Their stake in the joint venture's charter capital could not exceed 49 per cent, and foreign citizens could not be appointed as the chairman of the management board or the general director of a joint venture. Although these restrictions were soon abolished or loosened, still the establishment by a foreign investor of a wholly owned subsidiary in the USSR was not possible until late 1990.[2]

Since that time, in general, there have been no special requirements for foreign investors to have a local partner in Russia or to deal through a local partner. Hence, as there was no special need for a joint venture with a local partner, many foreign investors preferred to have wholly owned subsidiaries in Russia. In addition, the general legislative trend shifted from the treatment of a joint venture as a special and distinct form of a legal entity to a more generic approach to different forms of legal entities, each of which could, where appropriate, be used as a joint venture or a wholly owned subsidiary.

There has been a second wave of joint ventures in Russia since the early 2000s, due to the more pragmatic and protectionist economic policy of the Russian government. In many cases, foreign investors are not admitted to the promising

1 Decrees of the Union of Soviet Socialist Republics (USSR) Council of Ministers on the Establishment in the Territory of the USSR and Operations of Joint Ventures, International Amalgamations and Organizations from the USSR and Other COMECON Member States, Number 48, as well as on the Establishment in the Territory of the USSR and Operations of Joint Ventures with the Participation of Soviet Organizations and Firms from Capitalist and Developing Countries, Number 49, of 13 January 1987.

2 Paragraph 2 of Decree of the President of the USSR on Foreign Investments in the USSR, Number UP-942, of 26 October 1990 allowed foreign investors to have wholly owned subsidiaries in the USSR.

natural resources reserves or sales markets in Russia unless they create a joint venture with a Russian partner and either provide new equipment, technologies, and know-how to the joint venture, localize production in Russia, and/or share the risks of a joint venture project with a Russian partner. Sometimes, a stake in a Russian joint venture is given to a foreign investor as the result of an asset swap.

Today, joint ventures with foreign investors are most popular in large-scale projects involving Russian blue chip or state-owned companies that require the transfer of technologies or know-how and risk sharing. Joint ventures are a common feature in particular industry sectors such as energy, automotive, financial services, telecoms and information technology, distribution of goods, media, pharmaceuticals, and new technologies.[3] The sanctions imposed on

3 One of the first and most remarkable recent joint ventures was TNK-BP, a 50-50 joint venture established in 2003 between the Russian-controlled AAR and BP. In 2013, 100 per cent of the shares of TNK-BP were acquired by the Russian state-owned oil major OAO NK Rosneft for almost US $55-billion. BP received in exchange for its shares in TNK-BP 19.25 per cent of shares of Rosneft and became its biggest private shareholder. Other joint ventures established or announced include a 67.13-32.87 per cent joint venture between Renault-Nissan Alliance and the Russian stated-owned company Russian Technologies to own and control a majority stake in the largest Russian car producer AVTOVAZ; a 50-50 joint venture between SIBUR and Solvay Novecare to produce surfactants and oil field process chemicals; a 51-49 per cent joint venture between Alstom Grid and Soyuz Holding to manufacture and commercialize high voltage switchgear; a 65-35 per cent joint venture in Russia between Siemens AG and Russian OAO Power Machines to manufacture and service gas turbines; a 51-49 per cent joint venture between Russian-based Alliance Oil Company Ltd and Repsol Exploración, SA for exploration and production growth in Russia; a joint venture between Mazda Motor Corporation and Russian OAO Sollers to operate a production facility in Vladivostok in the Russian Far East to supply several Mazda nameplates for the Russian market; an exclusive cooperation agreement between Saipem S.p.A. and Russian OAO OSK (United Shipbuilding Corporation) on establishment of a 50-50 joint venture for the project management, engineering, procurement, and construction activities relevant to oil and gas projects in Russia and in other countries; a 50-50 joint venture between Ford Motor Company and Russian OAO Sollers to produce and distribute Ford vehicles in Russia; a 51-49 per cent joint venture between UTH Russia and Walt Disney to launch an ad-supported free-to-air Disney Channel in Russia (recently, UTH Russia increased its share in the JV to 80 per cent due to changes in Russian mass media laws); two 66.7-33.3 per cent joint ventures between Russian OAO NK Rosneft and ExxonMobil to exploit continental shelf blocks in the Kara and Black Seas in Russia; a joint venture between Terex and the Russian GAZ Group to manufacture and distribute construction and road building equipment in Russia and on export markets; a 50-50 joint venture between Tognum and Transmashholding for the development and production of high-performance diesel engines; a 50-50 joint venture between Pirelli and the Russian state-owned company Russian Technologies to produce winter tires in Russia with the option for Pirelli to increase its stake to 75 per cent over a three-year period; a 50-50 joint venture between General Electric and the Russian stated-owned company Russian Technologies to manufacture, assemble, sell, and service a wide range of high-tech medical diagnostic equipment; a joint venture

Russian companies (especially those of the banking and energy sectors) during the Ukrainian crisis, the resulting political situation, and the economic crisis in Russia also had some impact on joint ventures in Russia. Some of them were dissolved or put on hold. Nevertheless, new joint ventures were established too.[4]

Russian law does not limit the sectors where joint ventures can be established. However, some industries are subject to special legal regulation, which can restrict or even prohibit foreign investment. Unfortunately, there is no unified set of legal provisions concerning joint ventures with foreign investors. These provisions are spread broadly throughout Russian laws and regulations. Therefore, the significant legal framework as well as the prospective operations of the joint venture must be reviewed and analyzed before the final decision may be made.

Legal Forms in Structuring Joint Ventures

In General

There is no legal definition of a joint venture under Russian law. In general, a joint venture may be defined as a joint undertaking by two or more partners,

between General Electric (50 per cent) and two Russian companies, OAO INTER RAO UES (25 per cent) and UEC (25 per cent), to manufacture, assemble, sell, and service energy-efficient heavy-duty gas-fired power generation turbines; acquisition by TOTAL of 17.4 per cent in OAO NOVATEK from its major shareholders, with the intent to increase the share to 19.4 per cent within three years (the current share is 18.24 per cent), as well as acquisition by TOTAL from OAO NOVATEK (as major shareholder) of 20 per cent in OAO Yamal LNG to construct production, storage, and loading facilities for liquefied natural gas, based on the subsoil use rights of OAO Yamal LNG; acquisition by CNPC of other 20 per cent and Chinese Silk Road Fund of 9.9 per cent in OAO Yamal LNG; a 50.1-49.9 per cent joint venture between Thomas Cook Group plc and Russian VAO Intourist in the travel business, in which Thomas Cook recently increased its share to 75 per cent; a cooperation agreement between the Russian state-owned RusHydro and China Three Gorges Corp. on establishment of a 51-49 per cent joint venture for the financing, construction, and management of flood-protected HPPs on the Amur River; a 51-49 per cent joint venture between the Russian state-owned oil major OAO NK Rosneft and Petrocas Energy Ltd. to establish a new logistics infrastructure in the Trans-Caucasian Region, and a 51-49 per cent joint venture between the Russian truck manufacturer KAMAZ and Palfinger AG to establish two production facilities producing truck loader cranes and their supplements.

4 A 50-50 per cent joint venture between PAO KAMAZ and HAWTAI Motor Group Co to produce light and heavy vehicles; acquisition by Sinopec of 10 per cent and by the Chinese Silk Road International Development Fund of further 10 per cent in PAO SIBUR; acquisition by ONGC Videsh Limited of 15 per cent in AO Vankorneft; a 51-49 per cent joint venture between PAO Rosseti and State Grid Corporation of China to invest in the reconstruction of electric grid infrastructure and new power capacity in Russia, and potentially abroad; a 50-50 per cent joint venture between Siemens and AO Termotron-Zavod to develop, implement, and produce signaling systems and components for 1520 mm gauge railways; and a 50-50 per cent joint venture between Russian GAZ Group and Magnetto Wheels S.p.A. to manufacture steel stamped wheel disks.

pursuing a common goal. In an international joint venture, at least one of the partners is foreign.

Contractual Joint Ventures

Joint ventures in Russia may be of a merely contractual nature, i.e., without the establishment of a legal entity by the joint venture partners. Under Russian law, such agreements (cooperation, consortium, joint operations) may fall under the definition of a simple partnership (joint activity) agreement under article 1041(1) of the Civil Code of the Russian Federation (the "Civil Code"), where two or more persons (the partners) undertake the duty to join their contributions and act jointly without the establishment of a legal entity to acquire profit or achieve another purpose not contrary to the statutes. However, the rules governing a simple partnership agreement have some peculiarities that in many instances are mandatory and cannot be contracted out by the parties.

For example, if the simple partnership agreement is connected with the performance of entrepreneurial activity by its participants, under article 1047(2) of the Civil Code, the partners are jointly and severally liable for all common obligations, regardless of their origin. If the simple partnership agreement is made for an indefinite period of time, under article 1051 of the Civil Code, a partner may withdraw from the agreement with three months' notice. If the agreement is made for a defined period of time or until the occurrence of a specific circumstance, a partner under article 1052 of the Civil Code still may withdraw due to a material reason. In part for these reasons, mere contractual joint venture agreements (simple partnership or joint activity agreements) are not very popular in Russia.

The Federal Law on Investment Partnership, Number 335-FZ, of 28 November 2011 (the "Investment Partnership Law") was aimed at introducing the investment partnership agreement in Russian law as a distinct new type of simple partnership (joint venture) agreement, for the purpose of joint investment activity without establishing a legal entity. Although the investment partnership remains a merely contractual joint venture, it tries to combine the advantages of a contractual obligation with those of a legal entity. In contrast to a simple partnership (joint activity) agreement, there are two categories of partners in an investment partnership: managing (or general) and ordinary (or limited) partners. Their combined number may not exceed 50. In addition to the obligation to make a contribution to the investment partnership, the managing partner conducts common affairs (alone or jointly with other managing partners). A special partner committee (investment committee) also may be created by the investment partnership agreement to manage common affairs.

Besides money, managing partners may contribute other property, professional and other knowledge, skills and abilities, and their business reputation and business connections. Generally, ordinary partners may contribute only money, unless provided otherwise by the investment partnership agreement. The liability of ordinary partners under the contractual obligations connected with joint

investment activity is limited to their contribution. In cases of non-contractual obligations (excluding tax obligations), the liability of ordinary partners is joint and several and unlimited. However, the liability of ordinary partners in this case is fault-based. The liability of managing partners is unlimited. The investment partnership is limited in its existence to a specific period of time or pending the occurrence of a specific circumstance, but may not exceed 15 years.

A managing partner may only withdraw with the written consent of all partners, unless the investment partnership agreement provides other terms or procedure as well as another number of partners required to give such a consent. Ordinary partners may withdraw if this is provided for in the investment partnership agreement. However, withdrawal may be demanded due to a material breach of the investment partnership agreement. The investment partnership agreement and any amendments thereto must be notarized. However, to date, the Investment Partnership Law has not found wide application during the structuring of joint ventures.[5]

Corporate Joint Ventures

Corporate joint ventures are the form most commonly used in Russia. Russian law does not provide for a special or distinct legal form of a corporate joint venture. In general, a corporate joint venture can be established as any of the forms of legal entities existing in Russia.

Russian law considers a legal entity to be an organization that has separate assets and is liable for its obligations with such assets, which may in its own name acquire and exercise civil rights, bear obligations, and be a plaintiff or a defendant in court. Legal entities are divided into commercial and non-profit. Commercial legal entities pursue profit as the basic purpose of their activity and distribute profits generated between the participants. Conversely, non-profit legal entities do not pursue such objectives, although they may conduct entrepreneurial activity. Accordingly, corporate joint ventures are established in the form of commercial legal entities. Among commercial legal entities, various forms may be utilized to establish a corporate joint venture.

The full (unlimited) partnership is one whose participants, in accordance with the agreement between them, conduct entrepreneurial activity in the name of the partnership and bear liability for its obligations with the property belonging to them. Thus, the participants of a full partnership jointly and severally bear subsidiary liability with their property for the obligations of the partnership. For this reason, a person may be a participant in only one full partnership. Nevertheless, the full partnership is a legal entity under Russian law and is not transparent for tax purposes. Therefore, the profit of a full partnership is taxed once at the level of the partnership itself, and then again at the level of its participants.

5 According to the data of the Russian Federal Notary Chamber, as of 15 June 2017 only 35 investment partnership agreements had been notarized in Russia. See https://notariat.ru/ru-ru/help/dogovory-investicionnogo-tovarishestva/.

The limited partnership is the form in which, in addition to the participants conducting entrepreneurial activity in the name of the partnership and bearing liability for its obligations with their property (full partners), there are one or more contributor-participants (limited partners) who bear the risk of losses connected with the partnership's activity within the limits of their contributions and do not take part in the conduct of entrepreneurial activity by the partnership. Again, for liability reasons, a person may be a full partner in only one limited partnership. As a legal entity, the limited partnership is subject to taxes at the level of the partnership itself, and its partners are again exposed to taxation at their level.

The limited-liability company (LLC) has a charter capital that is divided into participation interests. The participants of the LLC are not liable for its obligations and generally bear the risk of losses connected with the activity of the LLC within the limits of their participation interests (actually with their contributions to the charter capital of the LLC). As a rule, the participants of an LLC have a preemptive right to acquire any participation interest offered for sale by a participant to a third party. Such sale also may be prohibited or be made conditional on the consent of other participants or the LLC itself in its charter.

Thus, to a certain extent, the participants can control the transfer of participation interests to third parties. The Federal Law on Limited-Liability Companies, Number 14-FZ, of 8 February 1998 (the "LLC Law") and the Civil Code contain many dispositive provisions that may be contracted out or amended in the charter of an LLC. For example, the participants of the LLC may agree on voting rights and profit distribution deviating from their stakes in the charter capital of an LLC, may agree on a predetermined purchase price for the exercise of a preemptive right, and may choose the appropriate management bodies and distribute among them the matters to be resolved. Although the number of participants in an LLC is limited to 50, this generally does not affect the popularity of LLCs as a form of legal entities in Russia.

The joint-stock company (JSC) has its charter capital divided into a specific number of shares, and its participants (shareholders) are not liable for the obligations of the JSC and bear the risk of losses connected with the activity of the JSC only up to the value of their shares (actually with their contributions to the charter capital of the JSC). Currently, there are two types of JSC, public and non-public.[6] In a public JSC, shares or other securities convertible into shares

6 Before 1 September 2014, the Civil Code differentiated between open and closed JSCs. In an open JSC (OJSC), shares could be offered through public subscription and shareholders were not vested with preemptive rights to acquire the shares of other shareholders in case of their sale to third parties. In closed JSCs (CJSCs), the shares could only be distributed among the founders or other persons determined in advance; the shareholders of CJSCs had a preemptive right to acquire the shares of another shareholder in case of their sale to third parties. In addition, the number of shareholders in a CJSC was limited to 50. Although the new rules are effective from 1 September 2014, the old provisions on CJSCs are still applicable until the first

are publicly placed (through open subscription) or traded, as set forth by the securities laws. The rules on public JSCs are also applicable to a JSC, if its charter or its firm name includes an indication that the JSC is a public one. Otherwise, a JSC is considered as a non-public one and should enjoy a more flexible legal environment. The Federal Law on Joint Stock Companies, Number 208-FZ, of 26 December 1995 (the "JSC Law") contains a large number of mandatory rules that make the legal environment for JSCs (especially for public JSCs) more rigid in comparison with LLCs.

The economic partnership is a form of legal entity introduced by the Federal Law on Economic Partnerships, Number 380-FZ, of 3 December 2011. This legal form is aimed mainly at the innovation and new technology venture sector, although there are no explicit restrictions on using it for other businesses (except for bans on acquiring stakes in other companies or advertising its activities). Economic partnerships must provide their partners with more flexibility than LLCs and JSCs. There is no requirement of a minimum charter capital. Other mandatory requirements with respect to economic partnerships are reduced to a minimum. In addition to the charter with a minimum content required, a management agreement must be entered into by the partners of an economic partnership to regulate their rights and obligations, their management procedures, and their profit distribution. The management agreement and any amendments thereto must be notarized and kept by the notary. However, there is no requirement for any state registration or filing. The economic partnership itself may be a party to the management agreement. The transfer of shares in an economic partnership has very much in common with the transfer of participation interests in an LLC.

As the disadvantage of unlimited liability in full and limited partnerships is not compensated by any tax advantages, these forms of legal entities are rarely encountered in practice in Russia. The most common forms of commercial legal entities that also may be used for corporate joint ventures are LLCs, non-public JSCs and, to a lesser extent, public JSCs.[7]

The use of offshore or two-tier corporate joint ventures has recently become increasingly popular, especially for 50-50 joint ventures or joint ventures in which the foreign investor holds a minority stake, although this form also is widely used in relations between Russian investors alone. In contrast to the

amendment is made to the charter of a respective CJSC. There is no prescribed timeframe for introducing such an amendment to the charter.

7 According to the Statistical Data of the Russian Federal Tax Service, which is responsible for the registration of legal entities in Russia, as of 1 June 2017 approximately 3,85-million commercial legal entities had been registered in Russia. Approximately 3.7-million of the legal entities were LLCs; 95,982 JSCs had been registered (18,288 OJSCs and 77,018 CJSCs — the statistics are based on the outdated classification of JSCs). Only 410 limited and 207 full partnerships have been registered and are still active. See https://www.nalog.ru/rn77/related_activities/statistics_and_analytics/forms/6427754/. Only 41 economic partnerships have been registered and are still active.

onshore or one-tier joint ventures, where the foreign and Russian investors hold stakes in a Russian legal entity, the concept of an offshore or two-tier joint venture involves the establishment of a corporate joint venture outside of Russia with the participation of a foreign investor and the direct or indirect participation (through a further non-Russian company) of a Russian investor. Such an offshore joint venture then establishes a wholly owned operating subsidiary in Russia. Offshore joint ventures pursue the following goals:

- Choice of more suitable, flexible, and predictable foreign law to govern the rights and obligations of the joint venture partners under the joint venture agreement;
- Better tax planning and tax optimizing during the life of the joint venture and in case either of the partners exits the joint venture;[8]
- Better corporate governance with respect to the joint venture and its resolutions as the participant of the Russian operating subsidiary; and
- Higher confidentiality of the provisions of the joint venture agreement under foreign law.

However, the Russian partner may be reluctant to establish an offshore joint venture due to political concerns, especially if the Russian partner is a blue chip or state-owned company. Moreover, the actual assets of the joint venture are likely to be located in the operating subsidiary in Russia anyway and thus, currently, the chief executive officer of the Russian operational subsidiary, who generally holds sole authority to enter into the transactions on behalf of the Russian operating subsidiary and dispose of its assets, may still be the key person for the whole joint venture structure and operations.[9]

Before establishing a contractual or corporate (onshore or offshore) joint venture with a Russian partner, a foreign investor should always check the possibility of operating in Russia through a wholly owned subsidiary, which can enter into certain agreements with the Russian partner (labor, service, license) and thus remunerate the Russian partner for its time and efforts to develop the foreign investor's Russian business. In certain cases, such a structure may be much more efficient than an actual joint venture and escape the risks usually associated with the use of joint ventures.

Choice of Legal Form

There are numerous aspects influencing the choice of legal form for the joint venture, such as political, economic, legal, and tax. The choice of an appropriate

8 However, one must take into account the Russian rules on the taxation of controlled foreign companies effective from 2015.

9 Under the reform of Russian corporate law, effective since 1 September 2014, several chief executive officers may act jointly or severally on behalf of a legal entity. This represents a fundamental shift in the Russian legal mindset, which had earlier only acknowledged the possibility of one chief executive officer.

legal form will depend upon many factors, and the decision is likely to be made for a mixture of reasons and not purely for legal or tax reasons alone.

First, political aspects must be taken into account. If the joint venture agreement is made with a Russian blue-chip or state-owned company for operations in Russia, it is highly likely that the Russian partners will insist on a Russian corporate joint venture rather than on a merely contractual joint venture agreement or an offshore or two-tier joint venture. If a Russian corporate joint venture is established, the capital, new technologies, and know-how will be attracted to Russia and additional jobs will be created in Russia. In the case of small and medium-size companies, the political aspects are less important and the joint venture partners may concentrate more on other issues.

Mere contractual joint ventures are not very common in Russia. Therefore, Russian joint venture partners may be not very well acquainted with this legal form. Although a mere contractual joint venture is easier to establish and terminate, and is flexible to operate, the structuring and drafting of a mere joint venture agreement may nevertheless be much more complicated and time-consuming, as such a joint venture requires more finely detailed regulation. In addition, the partners of a mere contractual joint venture are usually jointly and severally liable for its obligations.

Therefore, certain pre-structuring measures (e.g., establishment of a special purpose vehicle to serve as a joint venture partner) may be required. Usually, the partners enter into a mere contractual joint venture during the initial stage or for a short or defined term of cooperation. If more long-term cooperation is anticipated, the establishment of a corporate joint venture may be the preferred option. Customers inside and outside of Russia also may more readily deal with a permanent structure, thus preferring a corporate joint venture over a merely contractual one. A mere contractual joint venture may be prohibited from performing certain business activities in Russia. This may be the case if the planned operations explicitly require incorporation or licensing in Russia, or impose other restrictions on the business activities to be performed in Russia.

As a rule, incentives, especially tax or customs duties benefits, are given only to companies incorporated in Russia. Therefore, a merely contractual joint venture will not be entitled to such incentives or tax benefits. A mere contractual joint venture may face problems with the importation/exportation and customs clearance of goods into/out of Russia. Russian customers dealing with a mere contractual joint venture may face problems with taxes paid through it (e.g., value-added tax, VAT) or with the settlement of payments with it due to the peculiarities of Russian tax and currency laws and regulations.

According to articles 174.1(1) and 278(2) of the Tax Code of the Russian Federation (the “Tax Code”), if at least one of the partners in the simple partnership agreement is a Russian organization or an individual who is Russian tax resident, the accounting of the partnership’s income and expenses for tax purposes should be kept by the Russian partner, regardless of which party is charged with managing the partnership’s affairs under the simple partnership agreement.

This could mean an additional burden for a Russian joint venture partner and may not be satisfactory for the foreign joint venture partner. In certain cases, the activities of a foreign joint venture partner in Russia through a merely contractual joint venture may create a permanent establishment of the foreign joint venture partner in Russia; this can make it subject to corporate profit tax in Russia, and hence to the double taxation of its profits. Generally, a mere contractual joint venture may encounter problems employing Russian and especially foreign employees for its Russian operations. For these reasons, partners usually opt for a corporate joint venture either in the form of a Russian corporate joint venture or of an offshore or two-tier joint venture with a wholly owned operating subsidiary in Russia. However, in any given case, a mere contractual joint venture may still be the appropriate legal form for a joint venture in or for Russia.

Governing Law and Language

Contractual Joint Ventures

If a joint venture is of a merely contractual nature, the rule of *lex voluntatis* applies under the general principles of the Russian conflict of laws rules and, under article 1210(1) of the Civil Code, the parties to the joint venture agreement may choose by mutual agreement the law that is applicable to their rights and duties under the joint venture agreement, either at the time of conclusion of the agreement or subsequently. Such choice of law must be either directly expressed or definitively follow from the terms of the joint venture agreement or the totality of the circumstances of the case (article 1210(2) of the Civil Code).

However, according to article 1210(5) of the Civil Code if, at the time of the choice of applicable law by the parties to the joint venture agreement, all circumstances related to the essence of the parties' relationships are connected only with one country, the choice by the parties of the law of another country may not affect the exercise of the mandatory rules of the country with which all circumstances related to the essence of the parties' relationships are connected. In the absence of an agreement of the parties on applicable law, under article 1211(1) of the Civil Code, the law of the country where the place of residence or the principal place of activity of the party that conducts the activity having decisive significance for the content of the contract is located is applicable to the contract.

There also is a special rule for agreements that may fall within the category of simple partnership (joint activity) agreements under Russian law. In this case, the law of the country where the partnership's activity is mainly performed is applicable (article 1211(4) of the Civil Code). If the joint venture agreement contains elements of various contracts, under article 1211(10) of the Civil Code, unless otherwise established by a statute, the terms or the nature of the contract, or the totality of the circumstances of the case, the applicable law is the law of the country with which the joint venture agreement, considered as a whole, is most closely connected (*lex causae*). However, neither *lex voluntatis* nor characteristic performance law applies if the joint venture agreement is made in respect of land plots, subsoil blocks, and other immovable property located on

Russian territory. Article 1213(2) of the Civil Code stipulates that Russian law applies on a mandatory basis to contracts with respect to such property.

There are no requirements under Russian law as to the language of a joint venture agreement in respect of a contractual joint venture. However, for Russian tax and accounting reasons, it would be advisable to draft this agreement in both Russian and a foreign language. In this case it might be reasonable to specify in the agreement which text, the Russian or foreign language, prevails in the event of discrepancies.

If the partners contribute assets to their contractual joint venture which entail a qualified form of a transaction (e.g., transfer of a participation interest in a Russian LLC) or state registration in Russia (e.g., transfer of immovable property), it might be necessary to have the joint venture agreement written in Russian, or bilingually in Russian and a foreign language, with the Russian language having the only legal effect or prevailing in the event of discrepancies.

Corporate Joint Ventures

According to article 1214(1) of the Civil Code, the parties are generally free to choose the law applicable to the contract on the establishment of a legal entity or to the contract related to the exercise of the rights of participants of a legal entity (i.e., shareholders' agreement). However, such a choice of law does not affect the operation of the mandatory rules of the law of place of incorporation of the legal entity regarding the issues stipulated in article 1202(2) of the Civil Code. In the absence of an agreement of the parties on applicable law, under article 1214(2) of the Civil Code, the law of place of incorporation of the legal entity shall apply.[10]

10 This represents a fundamental shift in the Russian conflict of laws rules effective since 1 November 2013. In the past, Russian law stipulated that, when a Russian LLC or JSC was established, the founders had to conclude a foundation agreement, regulating the joint activity of the founders on the establishment of the company, the size of the charter capital, and the terms and methods for payments to the charter capital, as well as the other rights and duties of the founders in the company being established. Accordingly, such a foundation agreement was governed by Russian law on a mandatory basis. It was always a matter of dispute under Russian law whether an agreement in respect of a Russian joint venture, which went beyond the scope of a mere foundation agreement, as formally required under Russian law, i.e., a joint venture agreement or shareholders' agreement, might be governed by foreign law. Some court decisions (e.g., Ruling of the Federal Arbitrazh Court for the Volga District of 25 May 2011 in the *AGRO* Case, Number A57-7487/2010; Ruling of the Federal Arbitrazh Court for the West-Siberian District, of 31 March 2006 in the *MegaFon* Case, Numbers F04-2109/2005 (14105-A75-11), F04-2109/2005 (15210-A75-11), F04-2109/2005 (15015-A75-11), F04-2109/2005 (14744-A75-11), and F04-2109/2005 (14785-A75-11); Decision of the Moscow Arbitrazh Court, of 26 December 2006 in the *Russian Standard* Case, Number A40-62048/06-81-343), denied this possibility and applied Russian law to shareholders' agreements between the Russian and foreign partners of a joint venture, concluding in the end that the provisions of the shareholders' agreements in question contravened the mandatory rules of Russian law. This was one of the reasons why joint ventures in

Pursuant to article 1202(2) of the Civil Code, the status of an organization as a legal entity; its legal form; the requirements on its name, issues of its creation, reorganization and liquidation, including legal succession; the content of its legal capacity; the procedure for it to acquire civil rights and take on civil duties; and the internal relations, including relations of a legal entity with its stakeholders, its capacity to incur liability for its obligations, as well as the liability of founders or the participants of the legal entity must be governed by the *lex personalis* of a legal entity. Under article 1202(1) of the Civil Code, the law of the country where the legal entity was established is generally considered to be this law.[11] Hence, the charter of a Russian joint venture must be governed by Russian law.

As the charter of a corporate joint venture, as a Russian legal entity, is to be filed with and registered by the Russian authorities, it must be in Russian. Usually, the charter can be written bilingually in Russian and a foreign language, with the Russian language text having the sole legal effect or prevailing in the event of discrepancies. However, it might be advisable to check whether the local registration authority in Russia will accept such a charter. The same applies to the foundation agreement, formally required under Russian law, as well as to the minutes of the foundation meeting taking resolutions in connection with the establishment of a corporate joint venture in Russia.

Russian Rules of Immediate Application (Super-Mandatory Rules)

Irrespective of whether foreign law applies to a joint venture or shareholders' agreement by virtue of an agreement between the parties or by virtue of conflict of laws rules, it may still be subject to certain rules of Russian law of particular significance.

Under article 1192(1) of the Civil Code, Russian conflict of laws rules do not affect the operation of those mandatory rules of Russian law which, in view of an indication in the mandatory rules themselves or in view of their special significance, including for securing the rights and legally protected interests of those participating in civil commerce, regulate the relations in question regardless of the applicable law.

There is neither a prescribed set of Russian super-mandatory rules nor clear criteria to distinguish these rules from ordinary mandatory rules. Therefore, Russian mandatory rules may apply to the form of a joint venture or shareholders' agreement, to the corporate status of and corporate approvals by the Russian joint venture partner, and to the permissible subject matter of the joint venture or

Russia were and continue to be structured through offshore or two-tier joint venture vehicles.

11 An exception is provided for the legal entities located on the territory of Crimea, which acceded to Russia in 2014 (now the Republic of Crimea and the federal city of Sevastopol as constituent subjects of Russia). If these legal entities were entered in the Russian Unified State Register of Legal Entities by 1 March 2015, Russian law is to be considered as their *lex personalis*, despite the fact that initially they had been established on the territory of Ukraine.

shareholders' agreement and its compliance with Russian antitrust and competition, currency control, import and export, foreign investment, and other laws and regulations.

Form of Joint Venture Agreement

Generally, under Russian conflict of laws rules, the form of a transaction should be governed by the law applicable to the transaction itself (article 1209(1)1 of the Civil Code).

However, a transaction may not be found invalid if the form requirements of the place where it was executed (*lex loci contractus*) are observed. In addition, a transaction concluded abroad, in which at least one of the parties is a person whose lex personalis is Russian law, might not be found invalid if the form requirements of Russian law are observed.

Generally, under article 161(1)1 of the Civil Code, transactions between legal entities or between a legal entity and an individual must be made in writing, unless further requirements are set forth. A written form of the transaction envisages the compilation of a document expressing its content and signed by the parties thereto or persons duly authorized by them according to article 160(1)1 of the Civil Code.

Under article 434(2) of the Civil Code, an agreement in writing also may be concluded through an exchange of documents by mail, telegraph, teletype, and telefax, and of other documents electronic documents transmitted via communication channels that allow the passage of documents from one party to another party to be reliably established.

In certain cases, Russian law may expressly require that the joint venture agreement comply with certain form prescriptions. Under article 1209(4) of the Civil Code, the form of a transaction with respect to immovable property is subject to the law of the country where this property is located, while the form of a transaction with respect to immovable property that is entered into a state register in Russia is subject to Russian law. This also applies in general if a transaction or rights arising therefrom are subject to state registration in Russia (article 1209(3) of the Civil Code).

Pursuant to article 1209(2) of the Civil Code, if the law of the country of incorporation of the legal entity provides for specific form requirements on the contract on the establishment of a legal entity or on the contract related to the exercise of the rights of the participants of a legal entity, the form of such agreements or transactions should be governed by the law of the country of incorporation. Thus, if a joint venture agreement may be considered to be a shareholders' agreement[12] under Russian law, additional form requirements must be taken into account.

12 Under article 67.2(3) of the Civil Code effective from 1 September 2014, such an agreement is referred to as a "corporate agreement".

According to article 67.2(3) of the Civil Code, article 8(3) of the LLC Law, and article 32.1(1)2 of the JSC Law, the shareholders' agreement[13] of a Russian LLC or JSC is to be made in writing through the execution of a single document signed by the parties thereto. In addition, a legal entity must be notified by the parties to the shareholders' agreement about its conclusion and, in the case of a public JSC, certain information about a shareholders' agreement must be publicly disclosed.

However, as Russian law does not expressly provide for any consequences for failing to observe these requirements, the general rule of article 162(1) of the Civil Code applies, under which the non-observance of the simple written form of a transaction deprives the parties of the right, in the event of a dispute, to rely on confirmation of the transaction and its terms upon the testimony of witnesses, but does not deprive them of the right to adduce written and other evidence.

In certain cases, a notarization of a shareholders' agreement of a Russian LLC may be required or advisable if the agreement envisages the transfer of a participation interest. Such an obligation to transfer the participation interest in the future may be construed as a preliminary agreement and, under article 429(2) of the Civil Code, it must comply with the form requirements established for the main agreement; otherwise, such a preliminary agreement is null and void.[14] Since, according to article 21(11)1 of the LLC Law, any transaction aimed at the disposal of a participation interest or a part thereof is subject to notarization, the preliminary agreement providing for entering into such a transaction in the future also must be notarized.

Under article 429.2(5) of the Civil Code, the same applies to option agreements with regard to the participation interests of a Russian LLC. An option in this case also may be structured through a separate irrevocable offer and separate acceptance, each of which subsequently requires notarization in accordance with article 21(11)4 of the LLC Law.

Corporate Status of and Corporate Approvals by Russian Joint Venture Partner

As mentioned above, under article 1202(1) of the Civil Code, the law of the country where the legal entity was established is considered to be *lex personalis*

13 An agreement on the exercise of the participants' or shareholders' rights as LLC participants or JSC shareholders, whereby they undertake to exercise and/or to refrain from exercising their rights in a certain manner to vote at the LLC's general participants' meetings or the JSC's general shareholders' meetings in a certain manner, to agree upon voting options with other participants or shareholders, to sell their participation interests or shares or parts thereof at a certain price and/or when certain circumstances occur as provided for in the agreement, or to refrain from disposing of their participation interests or shares or parts thereof until certain circumstances occur, and to take other concerted actions associated with the management, establishment, operation, reorganization, and liquidation of the LLC or JSC.

14 Thalso is seems to be generally applicable to an option agreement, the Civil Code provisions on which are effective since 1 June 2015.

of the legal entity. According to article 1202(2)5, 6, and 8 of the Civil Code, this law determines the content of its legal capacity, the procedure for it to acquire civil rights and take on civil duties, as well as its capacity to incur liability for its obligations. Therefore, if the Russian joint venture partner is a Russian legal entity, the relevant rules of Russian law must apply and such rules are considered to be super-mandatory.[15]

For example, under article 69(2)3 of the JSC Law and article 40(3)1 of the LLC Law, generally only the individual executive body of a Russian JSC or LLC (usually referred to as general director or president) is entitled to act on behalf of a Russian JSC or LLC without a power of attorney, to represent the company's interests and to execute its transactions.[16] All other persons may act on behalf of a Russian JSC or LLC only based on a power of attorney duly issued by the individual executive body or by a person empowered by another power of attorney that must be notarized in that case. Transactions (joint venture agreements) made by another person on behalf of a Russian joint venture partner that is a legal entity may be held to be non-binding on the Russian joint venture partner.

In addition, very often, the powers of an individual executive body of a Russian JSC or LLC are not alone sufficient to bind them, and corporate approvals by further management bodies of a Russian JSC or LLC may be required. Such requirement may be provided for directly by Russian law or by the charter of a Russian JSC or LLC.

Under article 65(1)17.1 of the JSC Law, the decision on the JSC's participation and on termination of the JSC's participation in other organizations (except for financial-industrial groups, associations, and other amalgamations of commercial organizations) falls within the scope of responsibility of its board of directors (supervisory board), if it has not been assigned under the JSC's charter to the scope of authority of the JSC's executive bodies. Therefore, a joint venture agreement providing for the establishment of a corporate joint venture with a Russian joint venture partner that is a Russian JSC may require the decision of its board of directors. If such a decision is missing, the joint venture agreement may be voidable under articles 168 and 173.1 of the Civil Code and may be deemed invalid by the court. Therefore, determining whether the Russian joint venture partner that is a JSC has complied with the requirement to obtain the approval of its board of directors for the participation in a corporate joint venture is strongly recommended.

Participation in a contractual or corporate joint venture may constitute a so-called large-scale and/or interested-party transaction for the Russian joint venture partner. According to article 78(1)1 of the JSC Law and article 46(1) of

15 Ruling of the Federal Arbitrazh Court of Moscow District, Number KG-A40/12086-07, of 27 November 2007.

16 Under the reform of the Russian corporate law, effective from 1 September 2014, it is now possible to have several persons performing jointly or severally the functions of the individual executive body (chief executive officer) of a legal entity.

the LLC Law, a large-scale transaction is a transaction or several related transactions, that goes beyond a normal business activity and either involves the acquisition, disposal, or possible disposal (including a loan, credit, pledge, suretyship, acquisition of such number of stocks or other issuable securities convertible into stocks of a public JSC which result in an obligation of the company to forward a mandatory offer in accordance with the JSC Law), directly or indirectly, of assets the price or value of which equals or exceeds 25 per cent of the carrying value of the JSC's or LLC's assets as determined according to their financial statements for the latest reporting period, or provides for the obligation of a JSC or LLC to transfer the assets into a temporary possession and (or) use or to grant to a third party the right to use intellectual activity results or individualization means on the terms and conditions of a license agreement, the value of which equals or exceeds 25 per cent of the carrying value of the JSC's or LLC's assets as determined according to their financial statements for the latest reporting period.

Under article 81(1) of the JSC Law and article 45(1) of the LLC Law, an interested-party transaction is a transaction in which a member of the board of directors (supervisory board) of a JSC or LLC, their individual executive bodies (or persons performing their functions), a controlling person, as well as a person entitled to issue binding instructions on a JSC or LLC, have an interest. These persons are deemed interested in the transaction when they themselves, their spouses, parents, children, siblings and half brothers and sisters, foster parents, adopted children, and/or persons (companies) under their control:

- Are a party, beneficiary, mediator, or representative in the transaction;
- Are a controlling person of the legal entity which is a party, beneficiary, mediator, or representative in the transaction;
- Hold positions in the management bodies of a legal entity which is a party, beneficiary, intermediary, or representative in the transaction and positions in the management bodies of the management company of such a legal entity.

A controlling person is a person which has a right directly or indirectly (through controlled persons) by virtue of shareholding in the controlled entity and (or) on the basis of a trust, and (or) simple partnership, and (or) agency, and (or) shareholders' agreements and (or) another agreement, the subject-matter of which is the exercise of rights certified by shares (participation interests) of a controlled entity, to dispose of more than 50 per cent of votes in the supreme corporate body of the controlled entity or to appoint (elect) a chief executive officer and (or) more than 50 per cent of a collective executive body. A controlled entity is a legal entity directly or indirectly controlled by a controlling person.[17]

17 In case of some strategic JSCs, JSCs with a shareholding of the Russian state exceeding 50 per cent or JSCs where the Russian state has a "golden share", the right to dispose of more than 20 per cent of votes in the supreme corporate body or to

With some exceptions, a large-scale transaction requires approval by the board of directors or general shareholders'/participants' meeting of a JSC or LLC. An interested-party transaction, with some exceptions, requires notification of the members of board of directors and collective executive body of a JSC or LLC as well as its shareholders or participants. These persons (shareholders or participants with a shareholding of at least one per cent) may require an approval by the board of directors or general shareholders'/participants' meeting of a JSC or LLC.

If such an approval has not been given, a large-scale or interested-party transaction is voidable and may be held invalid by the court on the basis of a claim by the JSC or LLC itself, members of their board of directors or their shareholders/participants with a shareholding of at least one per cent, if certain requirements set forth for holding such transactions invalid are met. The rules of Russian law on interested-party transactions have been held by Russian courts to be super-mandatory.[18] Therefore, it is highly likely that rules on large-scale transactions also will be held to be super-mandatory.

If the powers of the individual executive body of a Russian joint venture partner are limited by its charter or further documents regulating the activities of that body, pursuant to article 174(1) of the Civil Code, the transactions made by it beyond the scope of its powers are voidable and may be deemed invalid by the court on the basis of a claim by the Russian joint venture partner, if it is proved that the other party to the transaction (e.g., a foreign joint venture partner) knew or clearly should have known of these limitations.

Subject Matter of Joint Venture Agreement

The subject matter of the joint venture agreement (the agreed mode of conduct or the rights and obligations of the parties) may contradict Russian antitrust and competition, currency control, import and export, foreign investment, and other laws and regulations.

Particularly, the Russian Supreme Arbitrazh Court has held the rules of the Federal Law on the Procedure of Foreign Investment in Companies Having Strategic Significance for the Preservation of National Defense and State Security, Number 57-FZ of 29 April 2008 (the "Strategic Investment Law"), which restricts foreign investments in certain sectors of the Russian economy, to be super-mandatory.[19]

appoint (elect) more than 20 per cent of a collective executive body is sufficient to qualify as an interested party.

18 Ruling of the Federal Arbitrazh Court of the Far East District in Case Number F03-A80/06-1/3, of 25 April 2006; Ruling of the Federal Arbitrazh Court of Moscow District in Case Number KG-A40/7182-04, of 26 August 2004.

19 Supreme Arbitrazh Court, Ruling Number VAS-5611/11, of 22 June 2011; Information Letter of the Presidium of the Supreme Arbitrazh Court Number 156, of 26 February 2013, paragraph 8.

Scope of Business Activities

Contractual Joint Ventures

Generally, the scope of the business activities of a contractual joint venture is not limited in Russia. However, certain business activities may either require a special permit (license) from the Russian state or membership in or a special certificate from one of so-called self-regulating organizations (SROs) in Russia or be reserved to Russian persons in general, Russian companies controlled by Russian persons, or to specifically indicated Russian companies. In addition, the exploitation of certain natural resources in Russia also may require a special permit (license) from the Russian authorities.

Under article 9(2) and article 18 of the Federal Law on Licensing Certain Types of Activity, Number 99-FZ, of 4 May 2011 (the "Licensing Law"), business activity requiring a license can be performed only by the person who obtained the license, and the license may be transferred to its legal successor only in certain cases of corporate reorganization. Therefore, it is not clear whether a license to perform a business activity may be transferred to a contractual joint venture or used by it or the joint venture partner not having the license.

The wording of the previous licensing law[20] was more definite, stating that only the person who received the license may perform the business activity indicated in it. The impossibility of transferring the license also was confirmed by the Russian Constitutional Court, which held that the right to perform a particular type of activity conferred by a license is conditional on the personalized nature of the license, meaning that the activity being licensed should always be performed only by the licensee. Otherwise, specifically if the right to perform a specific type of activity that arises by virtue of the license is transferred to another party, the sense of licensing is lost.[21]

Recently, a trend to replace licenses with other regulatory measures not associated with licensing (e.g., SRO membership or certification and mandatory insurance of civil liability) can be seen. The idea behind the SROs is to make access to business activities conditional not on a permit from the Russian state but on the professional community, which also will bear the responsibility for the quality of goods, works, or services. However, it is not clear whether the SRO membership or certificate of a partner in a contractual joint venture will allow the contractual joint venture or its other partners to perform the business activity that requires such membership or certificate. As this membership or certificate also is personalized, it may be impossible to transfer it to the contractual joint venture or other persons, or to allow them to use it.

Certain business activities may be reserved to Russian persons in general. For example, under article 186 of the Customs Code of the Customs Union of Russia,

20 Federal Law on Licensing Certain Types of Activity, Number 128-FZ, of 8 August 2001, article 7(1).

21 Ruling Number 441-O, of 4 October 2006, paragraph 2.1.

Belarus, Kazakhstan, Kyrgyzstan, and Armenia, generally only persons of member states of the Customs Union may deal with the customs authorities while clearing the goods to be imported or exported.[22] Pursuant to article 6(1) of the Law of the Russian Federation on Organization of Insurance Business in the Russian Federation, Number 4015-1, of 27 November 1992 (the "Insurance Law"), only Russian legal entities may engage in insurance activities in Russia.

Under article 8(7) of the Insurance Law, the activities of the foreign insurance brokers in Russia are not allowed, other than intermediary activities as a reinsurance broker and cases stipulated by Russian law. Although Russia had committed to allowing foreign insurance companies to establish branches in Russia during the accession to the World Trade Organization (WTO) in 2012, this must happen only nine years after Russia's accession.

Under article 16(3) and (4) of the Federal Law on Fishing and Preservation of Water Biological Resources, Number 166-FZ, of 20 December 2004, only persons registered in Russia as legal entities or individual entrepreneurs may perform fishing as an entrepreneurial activity, and fishing on vessels belonging to foreign persons also is prohibited. As regards licenses for the exploitation of certain natural resources (e.g., subsoil use licenses), generally article 9(1) of the Law of the Russian Federation on Subsoil, Number 2395-1, of 21 February 1992 (the "Subsoil Law") establishes that they may be issued to a contractual joint venture. However, there are no detailed provisions in this respect.

The exploitation of certain subsoil blocks is reserved to Russian legal entities only. According to article 9(2) of the Subsoil Law, subsoil blocks of federal importance[23] may only be exploited by Russian legal entities, and the Russian Government is entitled to introduce additional restrictions on Russian legal entities with the participation of foreign investors. Under article 9(6) of the Subsoil Law, only Russian legal entities may exploit subsoil blocks to extract radioactive materials and to store radioactive, or classes I to V hazardous, wastes, provided in addition that they have the necessary licenses for this business activity.

22 The same wording is contained in article 83 of the Customs Code of the Eurasian Economic Union which as anticipated shall replace the Customs Code of the Customs Union on 1 January 2018.

23 Under article 2.1(3) of the Subsoil Law, subsoil blocks of federal importance include subsoil blocks: (1) containing deposits of uranium, extra-pure quartz, yttrium rare-earth elements, nickel, cobalt, tantalum, niobium, beryllium, lithium, primary deposits of diamonds or primary (ore) deposits of platinum metals with reserves, according to the State Balance of Mineral Reserves beginning from 1 January 2006; (2) located within Russian territory deposits, containing, according to the State Balance of Mineral Reserves beginning from 1 January 2006, recoverable oil reserves in excess of 70-million tons, natural gas reserves in excess of 50-billion cubic meters, lode gold reserves in excess of 50 tons, and copper reserves in excess of 500,000 tons; (3) located in Russian inland or territorial sea waters and on its continental shelf; or (4) requiring the use of land plots classified under Russian land laws within the category of defense or security land plots. The list of the subsoil blocks of federal importance is published and contains over 1,000 subsoil blocks.

Under article 9(3) of the Subsoil Law, in addition to incorporation in Russia, at least five years' experience in continental shelf exploitation and a majority stake of the Russian state or its direct or indirect control over the majority of voting shares of the Russian legal entity are required to exploit subsoil blocks of federal importance on the Russian continental shelf.[24] Accordingly, the exploitation of these subsoil blocks by contractual joint ventures involving a foreign investor may be against Russian law.

Corporate Joint Ventures

In general, the scope of the business activities of a corporate joint venture that is a commercial legal entity is not limited in Russia. Under article 49(1)2 of the Civil Code, commercial legal entities with the exceptions provided by a statute may have civil law rights and bear civil law duties necessary for performing any types of activity not forbidden by law.

However, certain business activities may again require a license from the Russian state or membership in or certificate from an SRO in Russia or be reserved to Russian persons in general, Russian companies controlled by Russian persons, or to specifically indicated Russian companies. Although the Russian Government has made some efforts to shorten the list of business activities or to replace licensing with membership in or certificates from the SROs, the mandatory insurance of civil liability, and other means not associated with licensing, the list of licensed business activities is still fairly broad.

The basic list of business activities requiring a license is contained in the Licensing Law. However, further laws regulating specific areas (e.g., credit institutions, insurance, clearing, and education) may require such a license. Moreover, the anticipated scope of the business activity of the corporate joint venture must be carefully checked, as in many cases activities not requiring a license at a first glance may nevertheless turn out to be subject to licensing.

According to article 49(3)2 of the Civil Code, the right to perform licensed activity arises from the time such a license is received or for the time period indicated therein, and terminates on the expiration of the effective term, unless otherwise established by a statute or other legal acts. This also applies to membership in or a certificate from an SRO. The latter is currently a prerequisite especially for certain geotechnical studies, architectural and construction activities, energy audit, bankruptcy receivers, audit, appraisal activities, and financial market activities (brokers, dealers, managers, depositaries, registrars, joint-stock investment funds

24 In practice, only Russian PAO Gazprom, OAO NK Rosneft, and OAO Zarubezhneft and their subsidiaries comply with these requirements on activities on the Russian continental shelf. For example, the Strategic Cooperation Agreement between OAO NK Rosneft and ExxonMobil of 30 August 2011 provides for Rosneft's participation of 66.7 per cent and ExxonMobil's participation of 33.3 per cent for both corporate joint ventures to exploit continental shelf blocks in the Kara and Black Seas in Russia (however, this cooperation ended owing to the international sanctions imposed on Russian oil and gas companies on 12 September 2014).

and management companies of investment funds, unit investment funds, specialized depositaries, private pension funds, insurance companies, insurance brokers, mutual insurance companies, microfinance institutions, credit consumer cooperatives, housing saving cooperatives, agricultural credit consumer cooperatives, and foreign exchange dealers).

In some cases, Russian law explicitly sets forth the persons entitled to perform certain business activities. Thus, only PAO Gazprom, as the owner of the Russian unified gas pipeline system, or its wholly owned subsidiaries are entitled to export natural gas in a gaseous state from Russia. However, the liquefied gas can be exported not only by PAO Gazprom, but also by other persons stipulated by law.[25]

Only Russian legal entities specifically listed by the Russian government are entitled to affine precious metals.[26] Under article 6(3)3 of the Insurance Law, only foreign organizations (not foreign citizens or stateless persons) may participate in Russian insurance companies. In addition, as mentioned above, the exploitation of certain natural resources in Russia also may require a special permit (license) from the Russian authorities. In certain cases, a license to exploit a subsoil block may be issued only to a Russian entity under the control of Russian persons. Thus, only Russian state or Russian organizations without direct or indirect participation of foreign nationals, stateless persons, or foreign legal entities may have the majority of votes in Russian legal entities extracting raw diamonds in Russia.[27]

Financing Joint Ventures

Contractual Joint Ventures

A contractual joint venture may be financed through the contributions of its partners or through loans. Under article 1042(1) of the Civil Code, the contribution of a partner under a simple partnership (joint activity) agreement is everything that it puts into the joint activity, including cash, other property, professional and other knowledge, skills and abilities, business reputation, and business connections.

The contributions of the partners are assumed to be equal in value, unless otherwise established by the simple partnership agreement or the actual circumstances. The monetary valuation of a partner's contribution is measured by agreement among the partners. Generally, the contributions by the partners of the simple partnership agreement *per se* do not require any approval of the Russian state authorities. However, in certain cases the transfer of certain property or rights may require pre-completion clearance by the Russian antimonopoly authorities (see text, below). In

25 Federal Law on Gas Exports, Number 117-FZ, of 18 July 2006, article 3(1). However, this provision does not apply to production sharing agreements concluded before its enactment.

26 Federal Law on Gemstones and Precious Metals, Number 41-FZ, of 26 March 1998 (the "Gemstones and Precious Metals Law"), article 4(4).

27 Gemstones and Precious Metals Law, article 4(2).

addition, such a transfer may require pre- or post-completion clearance by other Russian authorities or involve specific restrictions (see text, below).

Under articles 278(1), 39(3)4, and 146(2)1 of the Tax Code, the contributions by the partners to the simple partnership agreements are exempted from the Russian corporate profit tax and VAT. Partners also may grant loans to a merely contractual joint venture. Under article 1047(2) of the Civil Code, in this case, each of the partners will be jointly and severally liable to the other partner for the loan provided by it to the contractual joint venture.

Corporate Joint Ventures

There are several options to finance a Russian corporate joint venture. Generally, financing may be accomplished through a monetary or in-kind contribution to its charter capital on the establishment of the corporate joint venture or through an increase in its charter capital after its establishment, through a contribution to the assets of the corporate joint venture and through donations or through loans.

Charter Capital Contributions

According to article 66.1 of the Civil Code, article 34(2)1 of the JSC Law, and article 15(1) of the LLC Law, the charter capital of a JSC or LLC may be paid in cash or with securities, shares or participation interests, other property, exclusive rights, other intellectual property rights, or rights under licensing agreements having monetary value. However, the monetary value of an in-kind contribution must be unanimously approved by the general shareholders' or participants' meeting (by the board of directors of a JSC in the case of an increase of its charter capital). In addition, the value of such an in-kind contribution must be determined by an independent appraiser.

The monetary value of an in-kind contribution may not exceed the value determined by an independent appraiser. The charter capital in its minimum amount, as prescribed by the law, must be paid in cash. The charter capital of an LLC must be paid within four months of its state registration. At least one-half of the charter capital of a JSC must be paid in within three months following its state registration; the remainder of the charter capital must be paid in within a year following the state registration of a JSC.

The charter capital of a JSC may be increased either through an increase in the par value of the shares or through the placement of additional shares. However, an increase in the par value of the shares is only possible with the property of the JSC. Therefore, if additional financing of a JSC through a charter capital increase is contemplated, it must be accomplished through the placement of additional shares.

The resolution to increase the charter capital of a JSC through the placement of additional shares is to be taken either by unanimous decision of the board of directors, if the JSC's charter provides for such a possibility, or by a general shareholders' meeting of the JSC. Generally, a simple majority of votes of the shareholders taking part in the general shareholders' meeting is sufficient.

However, in certain cases, a qualified majority of three-fourths of the votes of the shareholders taking part in the general shareholders' meeting is required, unless the JSC's charter stipulates a higher majority. This is the case when shares are placed through a closed placement (among a previously determined group of persons) or ordinary shares or other securities convertible thereto are placed in an amount exceeding 25 per cent of previously placed ordinary shares.

Furthermore, the additional shares may be placed only in an amount not exceeding the amount of authorized shares provided for in the charter of a JSC. The amendment of a charter of a JSC for an increase in the number of authorized shares requires a qualified majority of three-fourths of the votes of the shareholders taking part in the general shareholders' meeting.

The charter capital of an LLC may be increased through additional contributions of its participants and/or, unless prohibited by its charter, of third parties newly admitted to an LLC. Generally, article 19 of the LLC Law distinguishes between a charter capital increase with the possibility for every participant to participate and a charter capital increase through contributions by some participants only or by third parties. In the first case, a resolution on the charter capital increase must be taken by the general participants' meeting by a qualified majority of two-thirds of the total number of votes of the participants. In the second case, the corresponding resolution must be taken by the unanimous decision by all the participants.

An increase in the charter capital of a JSC or LLC may be paid with claims against them. However, there are some additional requirements for such a payment. In a JSC this is only permissible during a closed placement of additional shares. In an LLC the unanimous decision of all participants is required. In general, the charter capital increase *per se* does not require any approval from the Russian state authorities (except for the registration of a charter amendment with a new charter capital amount and state registration of additional shares and the results of their placement in the case when a JSC increases its charter capital).

The share issue of a JSC, as well as any additional share issues, must be registered by the Russian state authorities. However, in certain cases an increase in the stake of one of the partners in the corporate joint venture may require pre-completion clearance by the Russian antimonopoly authorities (see text, below). Moreover, such an increase may require pre- or post-completion clearance by other Russian state authorities or involve specific restrictions (see text, below).

Cash payments, as well as in-kind contributions to the charter capital and share premiums, are exempted from Russian corporate profit tax and VAT. Certain in-kind contributions also may be exempted from import customs duties. In addition, certain technological equipment imported into Russia may be exempted from Russian import VAT (see text, below).

Contributions to Assets

Under article 32.2 of the JSC Law a shareholder of a JSC may make a contribution to its assets. Such a contribution doesn't alter the size and nominal value of the shares and doesn't increase the JSC's charter capital.

To make a contribution it is necessary to enter into a respective agreement with a JSC to be approved by its board of directors. Such an approval is not required in a non-public JSC, if its charter provides for an obligation to make contributions to the assets of the non-public JSC by a resolution of the JSC's general shareholders' meeting passed unanimously (or by 75 per cent of shareholders, if an obligation is imposed on shareholders of certain types of shares, provided, however, that all such shareholders of certain types of shares unanimously vote for the respective resolution).

The Law provides for two methods of contributing to the JSC's assets. First, an obligation of shareholders to make contributions to the assets of the JSC may be set forth in the JSC's charter. Contribution to the assets are made by the shareholders in proportion to their shareholdings in the JSC's charter capital, unless the JSC's charter sets out a different procedure for determining the amounts of contributions to the JSC's assets. Contributions to the assets are made in cash or other property which generally may be contributed to the charter capital.

Under article 27 of the LLC Law, the participants of an LLC are obliged, if provided for by the LLC charter, to make contributions to the assets of the LLC by a resolution of the LLC's general participants' meeting passed by a majority of two-thirds of the total number of votes, unless the LLC's charter requires a higher majority. A contribution to the assets is made by all participants in the LLC, in proportion to their participation interests in the LLC's charter capital, unless the LLC's charter sets out a different procedure for determining the amounts of contributions to the LLC's assets.

Contributions to the assets are made in cash, unless the LLC's charter or a resolution of the LLC's general participants' meeting provides otherwise. These contributions do not alter the sizes and nominal values of the participation interests of the participants in the LLC's charter capital. Generally, the contribution to the JSC's or LLC's assets *per se* does not require any approval from the Russian state authorities. However, in certain cases the transfer of certain property or rights may require pre-completion clearance by the Russian antimonopoly authorities (see text, below). In addition, such a transfer may require pre- or post-completion clearance by other Russian state authorities or involve specific restrictions (see text, below).

There is no special tax treatment of the contributions to the JSC's or LLC's assets. However, under the general rules of Russian law, in certain cases such contributions may be exempted from taxes in Russia. Under article 251(1)11 of the Tax Code, the property received by the Russian legal entity from another person without compensation is exempted from Russian corporate profit tax only if the transferor owns over 50 per cent of the charter capital of the transferee. An

additional requirement is the prohibition of transfer of the property by the transferee to third parties within one year (this does not apply to cash).

In addition, article 251(1)3.4 of the Tax Code stipulates an exemption from Russian corporate profit tax for the monetary value of the property, property rights, or non-property rights which have been transferred to a commercial legal entity by its shareholders to increase the entity's net assets, among others things, through the formation of additional capital and/or funds.

This rule also applies to any increase in the net assets of a commercial legal entity that occurs simultaneously with a reduction or termination of the entity's obligations to the relevant shareholders, if the increase in net assets complies with Russian law or the relevant constitutive documents or is done expressly at the will of a shareholder of the entity, or any increase from the reinstatement among retained earnings of the commercial legal entity of unclaimed dividends of the shareholders or of a portion of the distributed profits of the entity.

Thus, this provision may be construed in a way that the transferor is no longer required to have a shareholding of over 50 per cent in the charter capital of the transferee in order to be exempted from Russian corporate profit tax, if the transfer is made to increase the net assets of the transferee. According to articles 39(3)1 and 146(2)1 of the Tax Code, contributions to a JSC's or LLC's assets in cash are exempted from Russian VAT. The VAT treatment of such in-kind contributions is controversial. The Russian tax authorities generally consider them as subject to Russian VAT, although there were some court decisions holding such in-kind contributions as exempt from Russian VAT.

Donations

Generally, under article 575(1)4 of the Civil Code, commercial legal entities are not allowed to make a gift in their relations with other commercial legal entities. However, if one of the parties is a foreign investor, the donation agreement with the Russian corporate joint venture may provide for foreign law to govern it, and this choice of law must be generally respected by the Russian courts and state authorities. If this foreign law allows such a donation, it must be also respected in Russia.

In general, the donation per se does not require any approval from the Russian state authorities. However, in certain cases, the transfer of certain property or rights may require pre-completion clearance by the Russian antimonopoly authorities (see text, below). In addition, such a transfer may require pre- or post-completion clearance by other Russian state authorities or involve specific restrictions (see text, below).

Again, there is no special tax treatment of such donations, and the general rules of Russian law will apply in this case. As regards Russian corporate profit tax, the same provisions apply as in the case of contributions to an LLC's assets. Donations in cash also are exempted from Russian VAT. In-kind donations are generally subject to Russian VAT under article 146(1)1 of the Tax Code.

Loans

A Russian corporate joint venture may be financed by a foreign investor through loans. Such a loan agreement may provide for foreign law to govern it, and the choice of law must be generally respected by the Russian courts and state authorities. Generally, there are no currency control restrictions and loans may be granted by a foreign investor to a Russian corporate joint venture in both Russian and foreign currency.

Financing through a loan may be much more advantageous than financing through contributions to the charter capital, to the JSC's or LLC's assets, or donations, as these financing methods do not provide for the direct repayment of the financing made and the return of capital may occur in these cases only through dividend payments which have to be made from the profit of the Russian corporate joint venture. Loans are generally repayable, irrespective of the profits. In addition, loan interest is as a rule deductible from taxable profit, although there are certain caps on interest deductibility.[28] Furthermore, under many double-taxation agreements between Russia and other countries, interest under loan agreements is taxed at a reduced rate or fully exempted from Russian withholding tax (see text, below).

For this reason, this method of financing is often preferred by foreign and Russian investors (through their foreign financial companies). However, in this case, the specific provisions of Russian Thin Capitalization Rules have to be taken into account. article 269(2) of the Tax Code introduces a 3-to-1 (12.5-to-1 for banks and leasing companies) limit on the ratio of a Russian borrower company's assets to its outstanding debt owed to a foreign direct or indirect shareholder that is a related party of a Russian borrower company under the Russian Transfer Pricing Rules, or to a Russian entity that is a related party of such a foreign shareholder under the Russian Transfer Pricing Rules, or debt secured by such persons (the "Foreign Controlled Debt").

A Russian court also may recognize debt as Foreign Controlled Debt, if it has been proven that the aim of the financial structure in question was to transfer profits to a foreign shareholder or Russian entities related to the foreign shareholder. Debt will not be considered foreign controlled debt, if no withholding tax is withheld by the Russian borrower due to the placement of traded bonds subject to compliance with certain conditions, debt is owed to a Russian tax resident that has no comparable outstanding debt to the foreign shareholder, debt secured by the foreign shareholder or its related Russian entities is owed to a bank that is not a related party of either the Russian borrower company or the persons that provided a security for the

28 For example, under article 269(1.2)1 of the Tax Code, from 1 January 2016, the deductible interest for loans in RUB for controlled transactions (safe harbor) is from 75 to 125 per cent of the Russian Central Bank key interest rate (currently 9 per cent *per annum*). For loans in a foreign currency, there are deviating provisions depending on the specific foreign currency. In case of loans in EUR or USD, the safe harbor of EURIBOR or LIBOR, respectively, from + 4 to + 7 per cent, applies.

obligations of the Russian borrower company and such persons have not repaid the debt or respective interest to the bank since the emergence of the debt.

The ratio limits have to be recalculated at the end of each quarter. If the ratio limit is exceeded, the interest in excess under the Foreign Controlled Debt is not deductible and is considered to be a dividend payment to a foreign shareholder, subject to Russian withholding tax on dividends. Although such dividend payments may be taxed under the double-taxation agreements between Russia and the other foreign countries at a reduced Russian withholding tax rate, as a rule this is still higher than the respective withholding tax rates for interest payments.[29]

Competition Law

Contractual Joint Ventures

Under article 27(1)8 of the Federal Law on the Protection of Competition, Number 135-FZ, of 26 July 2006 (the "Competition Law"), the conclusion of an agreement between competing economic entities on joint activity in the Russian Federation (a contractual joint venture agreement also may be covered by this provision) requires *per se* pre-completion clearance by the Russian antimonopoly authorities if the aggregate value of the assets according to the most recent balance sheets of the parties to the agreement and their group of persons exceeds RUB 7-billion or the aggregate revenue in the most recent calendar year of the parties to the agreement and their group of persons exceeds RUB 10-billion.

However, even if these thresholds are not met, the content of the agreement, the rights and obligations of the parties, or the mode of conduct agreed therein may still be subject to Russian antitrust and competition laws or require pre-completion clearance by the Russian antimonopoly authorities. Generally, articles 11(4) and 11.1(3) of the Competition Law prohibit any agreements between economic entities (except for certain vertical agreements, as well as certain agreements generally held as permissible by the Russian Government) or other concerted actions of economic entities, if such agreements or concerted actions cause or may cause a restriction of competition. Joint venture agreements cleared by the Russian antimonopoly authorities are exempted from this rule under article 11(10) of the Competition Law.

According to article 12 of the Competition Law, vertical agreements (except for vertical agreement between financial organizations[30]) are permitted if they are either commercial concession (franchise) agreements, or made between economic entities, each of which has a market share of not more than 20 per cent

29 One of the recent trends of Russian tax authorities is to contest the interest exemption in cases where the recipient of the interest is not the beneficial owner, and thereby combat treaty shopping.

30 Economic entities rendering financial services, including banks and other credit institutions, insurance companies and brokers, stock and currency exchanges, leasing companies, and pension funds.

on the market of the goods, which are the subject matter of a vertical agreement, or are agreements set forth in article 11(4) of the Competition Law between economic entities which aren't holding a dominant position and which aggregate revenue in the most recent calendar year doesn't exceed RUB 400-million.

Pursuant to article 11.1(5) of the Competition Law, concerted actions of economic entities are permitted if their aggregate market share does not exceed 20 per cent and simultaneously the market share of each of them does not exceed eight per cent. In addition, agreements and concerted actions of economic entities within one group of persons are permitted if one economic entity controls the other or they are both under the control of a third person. Control means either a shareholding, exceeding 50 per cent of voting shares, or the exercise of functions of the individual executive body of a legal entity (article 11(7) and 11.1(6) of the Competition Law).

However, pursuant to article 13(1) of the Competition Law, certain agreements (including joint venture agreements between competing economic entities) may still be held as permissible if they do not make it possible for specific persons to eliminate competition in the relevant commodity market, do not impose restrictions on their participants or third parties, are not incompatible with the attainment of the aims of such agreements, and if they result or could result in improvements in the production or sales of the commodities, or stimulation of technological or economic progress, or enhancement of the competitiveness of Russian-made commodities on the world commodity market or purchasers gaining advantages (benefits) comparable to the advantages (benefits) gained by the economic entities as a result of such agreements.

Under article 35(1) of the Competition Law, economic entities intending to reach an agreement that may be held permissible may file an application with the Russian antimonopoly authorities to verify that the draft agreement complies with Russian antitrust and competition law. The verification must be made within 30 days. In certain cases, this term may be extended for another 20 days. Generally, the draft agreement may not be cleared by the Russian antimonopoly authorities except in certain cases directly provided for in the Competition Law.[31] Otherwise, the draft agreement is to be cleared and such clearance is effective for one year. The agreement must be entered into during this period. However, along with the clearance, the Russian antimonopoly authorities may issue an order aimed at ensuring competition. In this case, the parties to the agreement have to comply with the prescriptions of this order.

If, as a result of a contractual joint venture agreement, a person (group of persons) acquires the right to determine the terms on which a Russian economic entity performs its business activity or the right to exercise the functions of its individual executive body, pre-completion clearance by the Russian antimonopoly authorities may be required, depending on certain thresholds. Pre-

31 On 8 August 2013, the Clarification on the Analysis of Joint Venture Agreements was published by the Russian antimonopoly authority.

completion clearance is required in this case under article 28(1)8 of the Competition Law if:

- The aggregate value of the assets according to the most recent balance sheets of the person acquiring rights and its group of persons as well as of the target and its group of persons exceeds RUB 7-billion and the aggregate value of assets according to the most recent balance sheet of the target and its group of persons exceeds RUB 400-million; or
- The aggregate revenue in the most recent calendar year of the person acquiring rights and its group of persons as well as of the target and its group of persons exceeds RUB 10-billion and the aggregate value of assets according to the most recent balance sheet of the target and its group of persons exceeds RUB 400-million.

Corporate Joint Ventures

The establishment of a Russian corporate joint venture *per se* does not require the clearance of the Russian antimonopoly authorities. However, the conclusion of a corporate joint venture agreement between competing economic entities may again be considered as an agreement on joint activity in the Russian Federation requiring pre-completion clearance by the Russian antimonopoly authorities, if the aggregate value of the assets according to the most recent balance sheets of the parties to the agreement and their group of persons exceeds RUB 7-billion or the aggregate revenue in the most recent calendar year of the parties to the agreement and their group of persons exceeds RUB 10-billion.

In this connection it remains unclear whether a mere foundation agreement, which is still mandatory under Russian law and considered an agreement on joint activity for the establishment of a legal entity under Russian law, already requires pre-completion clearance, if no joint venture agreement has been concluded in respect of the corporate joint venture. However, even if these thresholds are not met, in certain cases, the establishment of a Russian corporate joint venture may still be subject to Russian antitrust and competition laws or require pre-completion clearance by the Russian antimonopoly authorities.

Russian antitrust and competition laws do not differentiate between corporate joint ventures among only Russian partners and joint ventures involving foreign investors. The distinction is made based on the way the legal entity is established and on assets with which the charter capital of the legal entity is paid. A corporate joint venture may be established as a legal entity in different ways, namely:

- Origination, when the joint venture partners create a new legal entity and make cash or in-kind contributions to its charter capital;
- Through the acquisition by a joint venture partner of a shareholding in an existing legal entity from the legal entity itself through an increase in its charter capital in exchange for a contribution by the new joint venture partner or from another joint venture partner (other joint venture partners) on the basis of a sale and purchase agreement; or

- Through corporate reorganization (e.g., through a merger of separate legal entities or accession by one legal entity to another legal entity, if each of the joint venture partners already has a legal entity in Russia and they decide to combine them).

A mixture of these methods also may be used. For example, the joint venture partners may agree that the Russian partner first establishes a new legal entity in Russia and transfers to it certain immovable property assets located in Russia. The foreign partner then conducts a due diligence on the new legal entity and the assets transferred and, if this is satisfactory, acquires a shareholding in the new legal entity, whereas one part of the shareholding will be acquired from the Russian partner and another part will be acquired directly from the new legal entity through an increase in its charter capital in exchange for the financing required by the new legal entity. Each of these transactions may require pre-closing clearance by the Russian antimonopoly authorities. In addition, if, as a result of a joint venture or shareholders' agreement with regard to the Russian corporate joint venture, a person (group of persons) acquires the right to determine the terms on which the Russian corporate joint venture performs its business activity or the right to exercise the functions of its individual executive body, pre-completion clearance by the Russian antimonopoly authorities may be required if the thresholds mentioned in article 28(1)8 of the Competition Law are met.

Establishment by Origination

When a Russian corporate joint venture is established by origination, such an establishment *per se* does not entail the necessity of any clearance by the Russian antimonopoly authorities.[32] However, depending on the assets contributed by the joint venture partners, pre-completion clearance may be required. Cash contributions by the joint venture partners do not require clearance.

Shares, participation interests, main production facilities, and/or intangible assets as in-kind contributions by the joint venture partners may require pre-completion clearance by the Russian antimonopoly authorities. Under article 27(1)4 of the Competition Law, this is the case if, through such an in-kind contribution, the newly established legal entity acquires either more than 25, 50, or 75 per cent of the shares in a JSC or more than one-third, 50 per cent, or two-thirds of the participation interests in an LLC, or more than 20 per cent of the main production facilities and/or intangible assets (exclusive of most types of buildings and land plots) of another company and:

- Either the aggregate value of the assets according to the most recent balance sheet of the founders (their group of persons) and the persons (group of

32 However, it remains unclear whether a mere foundation agreement, which is still mandatory under Russian law and considered an agreement on joint activity for the establishment of a legal entity under Russian law, already requires pre-completion clearance, if no joint venture agreement has been concluded in respect of the corporate joint venture.

persons), the shares (participation interests), and/or property of which are being contributed to the charter capital of the newly established legal entity exceeds RUB 7-billion; or

- The aggregate revenue in the most recent calendar year of the founders (their group of persons) and the persons (group of persons), the shares (participation interests), and/or property of which are being contributed to the charter capital of the newly established legal entity exceeds RUB 10-billion.[33]

Acquisition of Shares or Participation Interests

Acquisition of a shareholding in a Russian corporate joint venture, depending on the size of the shareholding and type of assets to be used to increase the charter capital of the Russian joint venture company or to pay the purchase price, may require pre-completion clearance.

Generally, an acquisition falls under the control of the Russian antimonopoly authorities if a person acquires more than 25, 50, or 75 per cent of the shares (in the case of a JSC) or more than one-third, 50 per cent, or two-thirds of the participation interests (in the case of a LLC) in the Russian joint venture company, regardless of whether the shares or participation interests are acquired directly from the Russian joint venture company (e.g., through an increase in its charter capital) or from another joint venture partner (other joint venture partners). Under article 28(1)1-6 of the Competition Law, pre-completion clearance is required if:

- The aggregate value of the assets according to the most recent balance sheets of the person acquiring shares or participation interests and its group of persons as well as of the target and its group of persons exceeds RUB 7-billion and the aggregate value of assets according to the most recent balance sheet of the target and its group of persons (with certain exceptions) exceeds RUB 400-million; or
- The aggregate revenue in the most recent calendar year of the person acquiring shares or participation interests and its group of persons as well as of the target and its group of persons exceeds RUB 10-billion and the aggregate value of assets according to the most recent balance sheet of the target and its group of persons exceeds RUB 400-million.[34]

If shares or participation interests of a Russian corporate joint venture, acquired directly from it or from another joint venture partner (other joint venture partners), are paid with the shares, participation interests, or assets of other Russian companies, this also may require pre-completion clearance by the Russian antimonopoly authorities. For shares and participation interests, the above-mentioned provisions apply. The transfer of title to assets requires pre-completion clearance if more than

33 For the acquisition of shares (participation interests) or assets of financial organizations, different thresholds apply, depending on the kind of financial organization.

34 For the acquisition of shares (participation interests) or assets of financial organizations, different thresholds apply, depending on the kind of financial organization.

20 per cent of the main production facilities and/or intangible assets located in Russia (exclusive of most types of buildings and land plots) of another company are acquired and the thresholds mentioned above are met.

Corporate Reorganizations

Under articles 27(1)1 and 2 of the Competition Law, merger or accession requires pre-completion clearance if either:

- The aggregate value of the assets according to the most recent balance sheet of the companies involved in the merger or accession (their group of persons) exceeds RUB 7-billion; or
- The aggregate revenue in the most recent calendar year of the companies involved in merger or accession (their group of persons) exceeds RUB 10-billion.[35]

Offshore or Two-Tier Joint Ventures

Acquisition of a shareholding in an offshore corporate joint venture with a wholly owned operating subsidiary in Russia is consistently treated by the Russian antimonopoly authorities as the acquisition of rights to determine the terms on which a Russian economic entity performs its business activity. Therefore, such an acquisition may require pre-completion clearance by the Russian antimonopoly authorities if the thresholds established for such a situation are met.

Formation Agreement

Contractual Joint Ventures

A contractual joint venture is generally formed with the execution of a joint venture agreement. If one of the partners is a foreign one, the agreement may provide for foreign law to be the governing law. However, the partners may agree on Russian law as the governing law of the joint venture agreement, or Russian law may be applicable to the joint venture agreement on the basis of Russian or foreign conflict of laws rules.

In this case, it is highly likely that provisions of Russian law on the simple partnership (joint activity) agreement will apply to the joint venture agreement. These provisions are contained in Chapter 55 (articles 1041−1054) of the Civil Code, many of which are mandatory. In addition, provisions of other Russian laws, such as the provisions of tax law, must be taken into account.

Entering into a contractual joint venture agreement *per se* does not require pre- or post-completion clearance by the Russian state authorities. However, in certain cases, such an agreement may require pre-completion clearance by the Russian antimonopoly authorities (see text, above). In addition, such agreement

35 Different thresholds apply to mergers and accessions involving financial organizations, depending on the type of financial organization.

may require pre- or post-completion clearance by other Russian state authorities or involve specific restrictions (see text, below). Therefore, it may be advisable to have the contractual joint venture agreement fully effective subject to such pre- or post-completion clearances or other circumstances.

Entering into a contractual joint venture agreement may require some (corporate or family law) approvals by the Russian joint venture partner. This must be carefully checked in order to be sure that the contractual joint venture agreement is not null and void or voidable.

If, in addition to a contractual joint venture agreement, other agreements are to be entered into between the joint venture partners or the joint venture and its partner, it may be advisable to agree on such agreements or at least their model texts and to include them as annexes to the contractual joint venture agreement. There are no model simple partnership (joint activity) agreements published or recommended by the Russian authorities. Therefore, the joint venture partners must draft the text of the joint venture agreement at their own risk and expense.

Corporate Joint Ventures

A corporate joint venture may be established by origination, through the acquisition by a joint venture partner of a shareholding in an existing legal entity from this legal entity or from another joint venture partner (other joint venture partners), or through corporate reorganization.

Although each of these alternatives has its own particular features, they also have things in common. A joint venture agreement will regulate the establishment of the corporate joint venture (either from scratch through its establishment as a legal entity, or through acquisition of a shareholding or through corporate reorganization), its operations, and termination (through exit by either of the partners). These issues may be regulated in a single or several documents (e.g., joint venture agreement, sale and purchase agreement, subscription agreement, shareholders' agreement, and charter).

If the corporate joint venture is created as an offshore or two-tier joint venture, the parties may agree on foreign law to regulate their relationships under the joint venture agreement, and the internal documents of the joint venture (charter, by-laws, memorandum, or articles of association) will be most likely first of all governed by the law of the country where the offshore joint venture is established.

If the corporate joint venture is (or will be) established in Russia, the agreement of the parties to the joint venture agreement on foreign law applicable thereto shall be generally recognized under Russian law. However, Russian mandatory rules may still apply. The internal or foundation document (charter) of a Russian corporate joint venture as well as other documents required for the establishment of the Russian corporate joint venture as a legal entity (e.g., a formal foundation agreement and founders' meeting minutes) will be mandatorily governed by Russian law, and by the Civil Code, LLC Law, JSC Law, or other laws regulating specific forms of legal entities.

Although Russian law now explicitly recognizes and regulates corporate agreements (the participants' agreements in an LLC and shareholders' agreements in a JSC), these provisions remain almost completely untested in Russian courts. In those recent cases where Russian courts reviewed such agreements, they were held to be null and void due to contravention of the mandatory rules of the LLC Law or the JSC Law.[36] Therefore, it is advisable that the joint venture agreement be reviewed by Russian lawyers before it is executed.

In the event of discrepancies between the charter of the Russian corporate joint venture and the joint venture or shareholders' agreement, there is generally no predetermined priority given to either of them. However, under article 67.2(7) of the Civil Code, the parties to a joint venture agreement or shareholders' agreement may not argue that it shall be held null and void if it contravenes the charter of the Russian corporate joint venture. In this instance a party to the joint venture agreement or shareholders' agreement may still file claims against the other party of the agreement based on the provisions thereof.[37]

Nevertheless, the provisions of the joint venture or shareholders' agreement may be held null and void if they contradict Russian mandatory rules, which are very often also reflected in the charters. Therefore, it is very advisable to protect the interests and rights not only by entering into a joint venture or shareholders' agreement but also to the extent possible through the provisions of the charter under Russian law.

The establishment of a Russian corporate joint venture *per se* does not require any clearance by the Russian antimonopoly authorities. However, the conclusion of a corporate joint venture agreement between competing economic entities may be considered an agreement on joint activity in the Russian Federation requiring pre-completion clearance by the Russian antimonopoly authorities, if certain thresholds are met (see text, above).

In addition, such agreement may require pre- or post-completion clearance by other Russian state authorities or involve specific restrictions (see text, below). Therefore, it may be advisable to have the joint venture or shareholders' agreement made fully effective subject to such pre- or post-completion clearances or other circumstances.

Entering into a joint venture or shareholders' agreement may require some (corporate or family law) approvals by the Russian joint venture partner. This must be carefully checked in order to be sure that the contractual joint venture agreement is not null and void or voidable.

36 Recently, however, there have been some cases where the Russian courts acknowledged the shareholders' agreement and their terms and conditions, e.g.: Ruling of the Arbitrazh Court of Moscow District in Case Number F05-16088/2014, of 29 January 2015.

37 Ruling of the Plenum of the Supreme Court Number 25, of 23 June 2015, paragraph 37.

If, in addition to a joint venture or shareholders' agreement, other agreements are to be entered into between the joint venture partners or the joint venture and its partner, it may be advisable to agree on such agreements or at least their model texts and to include them as annexes to the joint venture or shareholders' agreement. There are no model joint venture or shareholders' agreements published or recommended by the Russian authorities. Therefore, the partners of the Russian corporate joint venture must draft the text of the joint venture or shareholders' agreement at their own risk and expense.

Establishing Corporate Vehicle

In General

Again, a Russian corporate joint venture may be established by origination, through the acquisition by a joint venture partner of a shareholding in an existing legal entity from this legal entity or from another joint venture partner (other joint venture partners), or through corporate reorganization.

Establishment by Origination

The easiest way to establish a Russian corporate joint venture is to do it from scratch. In general, the procedure for the establishment of a Russian corporate joint venture with the participation of a foreign investor does not differ from the procedure of the establishment of a legal entity by Russian persons only.

The procedure and requirements for the state registration of legal entities are regulated by the Federal Law on the State Registration of Legal Entities and Individual Entrepreneurs, Number 129-FZ, of 8 August 2001 (the "Registration Law"). Currently, the state registration of legal entities is carried out on the basis of the "One Stop Shop" Principle by the local tax authorities, which are responsible for keeping the Russian Unified State Register of Legal Entities (USRLE) containing information on all registered legal entities in Russia. In accordance with article 12 of the Registration Law, the following documents must be prepared and submitted for the state registration of a Russian corporate joint venture:

- An application for state registration in the form established by the Russian government, executed by the executive officers of the founders before a notary, either in Russia or abroad, and legalized or apostilled and translated into Russian in the latter case;
- The minutes of the founders' meeting, containing information on the establishment of the Russian corporate joint venture, approval of its charter, execution of the foundation agreement, and designation of the management bodies;
- The charter (in addition, a foundation agreement must be executed by the founders, although this agreement usually regulates the founders' joint activity

until the state registration of the Russian corporate joint venture and is not registered);[38]

- A confirmation of the legal status of the founders (excerpt from the trade or companies register, registration certificate) legalized or apostilled and translated into Russian; and
- A confirmation of payment of the state registration fee of RUB 4,000.

Depending on the requirements of the local tax authorities, the legal form of the Russian corporate joint venture, or the chosen registration method, some additional documents may be required. For example, some local authorities require confirmation of the future registered office of the Russian corporate joint venture: a letter from the owner or lessor of the premises confirming its consent for the use of premises as the registered office of the Russian corporate joint venture, as well as a copy of the document confirming the owner's title to the premises.

The documents may be submitted to the state registration authority either in person (by the person who executed the application for state registration or another person duly authorized by a notarized power of attorney), by post, or electronically (by the notary certifying the application for state registration). If submitted in person, the registration certificate as well as other registered documents of the Russian corporate joint venture may be received in person.

If the documents are submitted by post, after state registration the registration certificate and also other registered documents will be forwarded by post to the registered office of the Russian corporate joint venture. If the documents are submitted electronically by the notary, after state registration the registration certificate and also other registered documents certified with the electronic signature of the registering authority will be forwarded electronically to the notary's email address. The notary will print out the documents and certify that they are authentic to the documents certified with the electronic signature of the registering authority. Such documents qualify as originals of the registration certificate and also other registered documents.

Again, foreign documents must be legalized or apostilled and translated into Russian. In addition, the local tax authority may at its discretion forward the registration certificate as well as other registered documents by post to the registered office of the Russian corporate joint venture, to check whether the joint venture is actually situated at this address.

In accordance with article 13(3) of the Registration Law, the state registration of legal entities is carried out within three business days from the submission of the necessary documents. The Russian corporate joint venture acquires its rights and obligations as a legal entity from the moment of its state registration. After the

38 A legal entity may act on the basis of a model charter approved by the Russian tax authorities. In this case the respective information must be indicated in the application for state registration.

state registration of the Russian corporate joint venture is completed, to become fully operational it must produce its own stamp (if the obligation to have the stamp is provided for in the charter of the Russian corporate joint venture), and open a current bank account. It usually takes one to two months from the moment the documents for the state registration of the Russian corporate joint venture start being prepared until the Russian corporate joint venture is fully operational.

Generally, the establishment of a corporate joint venture from scratch *per se* does not require any approval by the Russian state authorities or submission of any additional documents not provided for by Russian law (feasibility studies or business plans). However, in certain cases, the establishment of a legal entity from scratch may require pre-completion clearance by the Russian antimonopoly authorities (see text, above). In addition, such an establishment may require pre- or post-completion clearance by other Russian state authorities or involve specific restrictions (see text, below).

JSCs also must register their shares with the Central Bank of Russia (CBR). The corresponding application must be filed within 30 days following state registration. However, missing registration only has an impact on the circulation of shares and does not affect the operations of the JSC in general. Special registration rules exist for banks and credit institutions. Under article 12(2) of the Federal Law on Banks and Banking Activities, Number 395-1, of 2 December 1990 (the “Banking Law”), the CBR decides on their registration and communicates its decision to tax authorities, which enter a newly established bank or credit institution into the USRLE.

Articles 14 and 17 of the Banking Law set forth a broader set of documents for the state registration of banks and credit institutions. Pursuant to article 15(2) of the Banking Law, the CBR is entitled to review an application for bank registration for up to six months. There are some additional peculiarities related to the payment of the charter capital of a bank or credit institution that must be taken into account. If certain business activities require a state permit (license) or membership in or certificate from an SRO, these activities may be only performed after the relevant permits, memberships, or certificates are obtained (see text, above).[39]

Acquisition of Shares or Participation Interests

In general, there are two options to acquire shares or participation interests in an existing Russian corporate joint venture, these being from the Russian corporate joint venture itself or another joint venture partner (other joint venture partners).

39 Some draft laws also stipulate the preliminary review of the registration documents by SROs in order to check whether the company to be established will comply with the SRO requirements for certain activities requiring registration or a license from the CBR (in particular, this will apply to financial market or insurance activities). If the requirements are met, the SRO will file the registration documents with the CBR and the company will automatically become a member of the respective SRO after the registration of the company and issue of the required license.

The major difference is that, in the first case, the shares or participation interests will be acquired directly from the Russian corporate joint venture, which will be paid for shares or interests by the incoming joint venture partner.

In the second case, shares or participation interests will be acquired from another joint venture partner who will receive the purchase price for them. There also could be a mixture of both options. For example, a portion of a shareholding may be acquired directly from the Russian corporate joint venture and another one from a joint venture partner, or the joint venture partner may acquire a portion of a shareholding directly from the Russian corporate joint venture and sell it to an incoming joint venture partner. One of the issues to consider here is who must be financed by the incoming joint venture partner, i.e., the Russian corporate joint venture itself, its existing partner(s), or both and, in the latter case, how the financing must be legally split between them.

If shares or participation interests are acquired directly from the Russian corporate joint venture, it is usually done through an increase of its charter capital. There are certain rules and procedures under Russian law that must be followed when increasing the charter capital, depending on various criteria. In addition, if the Russian corporate joint venture is a JSC, the additionally issued shares must be registered with the CBR. If all these rules and procedures are not followed, the increase of the charter capital and the acquisition of shares and participation interests through such increase may be held null and void.

If shares or participation interests are acquired from another joint venture partner (other joint venture partners), it is usually done on the basis of a sale and purchase agreement. Entering into a sale and purchase agreement may require some (corporate or family law) approvals by the Russian joint venture partner. This must be carefully checked in order to be sure that the sale and purchase agreement is not null and void or voidable. In addition, other shareholders or participants of a Russian corporate joint venture established in the legal form of a non-public JSC or LLC and the Russian corporate joint venture itself may have preemptive rights to acquire the shares or participation interests to be sold, which must be complied with or waived by those holding such rights.[40]

Generally, there are no prescriptions as concerns the form or content of a sale and purchase agreement with regard to shares in a Russian JSC. Such shares are issued in non-documentary form and exist as entries in the shareholders' register kept by a licensed registrar. In addition, the shares may be kept with a depositary (usually being a bank) indicated as a nominee in the shareholders' register.

The title to the shares is transferred either in the shareholders' register or in the depositary's register. To transfer the title to the shares, the transferor must sign a transfer instruction indicating the name of the transferee. Such instructions must

40 Preemptive rights with respect to CJSCs, which are likely to be considered as non-public JSCs after the reform of the Russian corporate law effective from 1 September 2014, will exist in general until the first amendments to their charters. Preemptive rights with respect to non-public JSCs must be included in their charters.

comply with Russian laws and the internal rules and regulations of the person keeping the shareholders' register of a JSC.

Conversely, under article 21(11)1 of the LLC Law, a transaction aimed at the transfer of the title to a participation interest in a Russian LLC (e.g., sale and purchase agreement) generally requires a notarization; non-compliance with this prescription entails the invalidity of the transaction. According to article 21(12)1 of the LLC Law, the title to a participation interest is mandatorily transferred with the entry of the respective record in the USRLE. Therefore, the parties to the sale and purchase agreement for a participation interest may not agree to the transfer of the title thereto subject to certain conditions precedent.

In both cases, it highly recommended to perform due diligence on the shares or participation interests to be acquired and the powers of their sellers to confirm the eligibility of their acquisition. Generally, the establishment of a Russian corporate joint venture through a shareholding acquisition *per se* does not require any approval by the Russian state authorities or submission of any additional documents not provided for by Russian law (feasibility studies or business plans). However, in certain cases, such an acquisition may require pre-completion clearance by the Russian antimonopoly authorities (see text, above). In addition, such an acquisition may require pre- or post-completion clearance by other Russian state authorities or involve specific restrictions (see text, below).

An acquisition of a certain shareholding of a Russian corporate joint venture also may trigger some reporting requirements and application of takeover provisions. Generally, these are the same for both Russian and foreign investors. Under article 30(20) of the Federal Law on Securities Market, Number 39-FZ, of 22 April 1996, an acquisition of shares in a Russian company, which has issued securities (bonds) in respect of which a prospectus has been registered (the "Russian public company"), triggers an obligation of the acquirer to notify the Russian public company and the CBR of:

- acquisition of at least five per cent of the voting shares or participation interests; or
- An acquisition of the right to cast votes attached to at least five per cent of the voting shares or participation interests (by virtue of entering into a simple partnership and/or shareholders' agreement or otherwise) and a subsequent change in the number of the voting shares or participation interests above or below a five, 10, 15, 20, 25, 30, 50, 75, or 95 per cent threshold.

An acquirer that owns at least five per cent of shares or participation interests in a Russian public company also must provide information to the Russian public company and the CBR on the entities which control the acquirer, on acquisition and cessation of control by the relevant entities over the acquirer.

Under article 32.1(5) and (6) of the JSC Law, a person that under a shareholders' agreement acquired the right to determine cast votes at the general shareholders' meeting of a public JSC must notify it of such an acquisition within five days following the acquisition if, as a result, this person individually or together with

its affiliates acquires the right to cast votes attached to more than five, 10, 15, 20, 25, 30, 50, or 75 per cent of the voting shares of the public JSC. From the date of acquisition and until the date of notification, the acquirer and other persons to whom the acquirer may give binding instructions under the shareholders' agreement are entitled to exercise voting rights only in respect of the shares that had been held before the obligation to notify the public JSC arose; the remaining shares must be taken into account while determining the quorum at general shareholders' meetings of the public JSC.

According to article 84.2 of the JSC Law, a person that together with its affiliates becomes an owner of more than 30, 50, or 75 per cent of the voting shares of a public JSC must make an offer (the "Mandatory Offer") to purchase the remaining shares at the price to be determined under the provisions of the JSC Law. The Mandatory Offer must be accompanied by a bank guarantee to secure the obligations of the acquirer to pay the purchase price of the shares.

The mandatory offer must be reviewed by the CBR and made through the public JSC in which shares are being acquired. From the date of acquisition of more than 30, 50, or 75 per cent of shares and until the date of submission to the public JSC of the Mandatory Offer, the acquirer and its affiliates are entitled to exercise voting rights only in respect of 30, 50, or 75 per cent of such shares, and the remaining shares may not be taken into account while determining the quorum at general shareholders' meetings of the public JSC. In certain cases provided for in articles 84.7 and 84.8 of the JSC Law, a person that together with its affiliates acquires more than 95 per cent of the voting shares of a public JSC must buy out the remaining shares or is entitled to such a buyout.

Corporate Reorganization

Corporate reorganizations in Russia are time-consuming and expensive. Generally, there are two types of corporate reorganizations that may result in a direct entry of a foreign investor bringing its Russian subsidiary and in the establishment of a Russian corporate joint venture: merger and accession. The difference between them is that, in the merger, the merging legal entities cease to exist as separate legal entities and their rights and obligations are transferred to a new established legal entity.

Conversely, in an accession, the rights and obligations of one or more legal entities are absorbed by a surviving legal entity while the former legal entities cease to exist. Thus, in a merger, a new legal entity with the rights and obligations of the merging legal entities is created, while, in an accession, one of the legal entities survives and receives the rights and obligations of the other legal entities.

There are certain rules and procedures under Russian law that must be followed during such a corporate reorganization. In general, the procedure for the corporate reorganization of a Russian legal entity during which it becomes a Russian corporate joint venture with the participation of a foreign investor does not substantially differ from the procedure of the corporate reorganization of a Russian legal entity with the involvement of Russian persons only.

The establishment of a Russian corporate joint venture with the participation of a foreign investor through corporate reorganization per se does not require any approval by the Russian state authorities or submission of any additional documents not provided for by Russian law (feasibility studies or business plans). However, in certain cases, the corporate reorganization itself may require pre-completion clearance by the Russian antimonopoly authorities (see text, above). In addition, such corporate reorganization may require pre- or post-completion clearance by other Russian state authorities or involve specific restrictions (see text, below).

Preparation of Ancillary Documents

In General

It is generally advisable that the partners to a joint venture agreement simultaneously with the preparation and execution of the joint venture agreement prepare and execute the ancillary documents on the entire scope of the joint venture activities.

This may be accomplished with regard to a contractual joint venture, as this as a rule does not require any state registration for its establishment, although a contractual joint venture agreement between competing economic entities in the Russian Federation may still be subject to pre-completion clearance by the Russian antimonopoly authorities if certain thresholds are met (see text above). However, in the case of a corporate joint venture, the execution of ancillary documents simultaneously with the joint venture agreement may not be possible, as these documents must be executed with the corporate joint venture that does not yet exist.

Therefore, it may be advisable at least to agree on such ancillary documents or their model texts and to include them as annexes to the joint venture agreement. In addition, the provisions of Russian law must be taken into account when drafting such ancillary documents. The ancillary documents may be also used to control the joint venture. For example, agreements with the joint venture may provide for their expiration after a certain period or the possibility of their termination by the foreign joint venture partner in certain cases.

Distribution or Supply Agreements

The joint venture partners may supply the joint venture with some goods, works, or services required for its operations. If a distribution or supply agreement is entered into by a foreign joint venture partner and the Russian corporate joint venture, such an agreement may be governed by a foreign law.

In the case of a distribution or supply agreement between Russian joint venture partners and the Russian corporate joint venture, there will usually be no foreign element and such an agreement will be governed by Russian law.

If a foreign law is applicable, it may still be advisable to have the distribution or supply agreement reviewed for compliance with Russian laws and practices. For example, if goods are imported in Russia under the distribution or supply agreement, it might be advisable to take into account the existing Russian customs and currency control laws and regulations. In any case, Russian super-mandatory rules must be complied with (see text, above).

The entrance by the Russian corporate joint venture in such agreements *per se* does not require any approval by the Russian state authorities or submission of any additional documents (feasibility studies or business plans). However, in certain cases, such a distribution or supply agreement may require pre-completion clearance by the Russian antimonopoly authorities or be subject to Russian antitrust and competition laws (see text, above).

The entrance by the Russian corporate joint venture in such agreements may constitute an interested-party and/or large-scale transaction for the Russian corporate joint venture, requiring corporate approvals by its management bodies. In the case of an interested-party transaction, the votes of a shareholder supplying goods, performing works, or rendering services to the Russian corporate joint venture or its board of director's members shall not be counted at voting for such a transaction.

The resolution will be actually taken by the other joint venture partners or their board of director's members not falling under the definition of an interested party. The distribution or supply agreement between the Russian corporate joint venture and its joint venture partners may fall under the Russian Transfer Pricing Rules. Generally, the following transactions may be subject to Russian Transfer Pricing Rules:

- Transactions between Russian related parties, where income under a transaction exceeds RUB 1-billion for the relevant calendar year;
- Foreign economic transactions between related parties, with no minimum limit on the amount of income from the transaction;
- Foreign economic transactions with goods that are traded on exchanges worldwide (oil and petroleum products, ferrous and nonferrous metals, mineral fertilizers, precious metals, and gemstones), where income on the transaction is in excess of RUB 60-million in a calendar year; and
- Foreign economic transactions with residents of jurisdictions included on the Russian Finance Ministry's list of states and territories providing preferential taxation regimes or where the amount of income on the transaction is greater than RUB 60-million for the corresponding calendar year.

In view of the lack of any threshold amounts for foreign economic transactions between related parties (e.g., between the Russian corporate joint venture and a foreign joint venture partner), all such transactions will fall under the Russian rules for transfer pricing controls. Fairly serious liability is established for violations of transfer pricing rules. Penalties for the tax periods 2014–2016

constitute 20 per cent of the amount of unpaid tax and, for tax periods starting with 2017, the size of penalties will increase to 40 per cent.

Licensing Agreements

The Russian corporate joint venture may use some intellectual property rights of a foreign joint venture partner. In general, the Russian intellectual property law is very close to the European regulations on protection of intellectual property rights. As in Europe, the main intellectual property rights, such as patents, utility models, industrial designs, and trademarks, must be registered in Russia (or, in case of trademarks, for Russia) to enjoy legal protection in Russia.

Only intellectual property rights that have been registered in Russia can be assigned to a Russian corporate joint venture. Therefore, in first instance, it must be clarified if the patents, utility models, industrial designs, and trademarks of the joint venture partners to be assigned to the Russian corporate joint venture are registered in or for Russia and enjoy the necessary legal protection in Russia.

In certain cases, the validity of intellectual property rights may be subject to ongoing state fee payments by the right holder. Hence, it is necessary to check not only whether the registration was performed but whether it remains valid. This concerns not only the intellectual property rights of the foreign joint venture partner but also the intellectual property rights of the Russian joint venture partners that may be assigned to the Russian corporate joint venture. In certain cases, it may be advisable to perform a due diligence of intellectual property rights of the Russian joint venture partners.

Furthermore, the agreements on the licensing, transfer, or pledge of the above-mentioned intellectual property rights also are subject to the notification procedure registration with the Russian patent authority. Under the notification procedure, the parties to the contract must report brief information on the contract: information on the parties themselves, the subject of the contract, and the number of the trademark or patent. The law does not stipulate, however, the disclosure of any financial information whatsoever (payment procedure and amount of royalties). Exclusive licensing agreements between commercial legal entities for no consideration are prohibited. Consequently, it is impossible to have a situation where the joint venture partners provide the Russian joint venture with the right to use intellectual property for no consideration. Without notification, agreements on disposal of exclusive rights on trademarks and patents (designs and utility models), regardless of the law applicable to such agreements, are null and void.

The entrance by the Russian corporate joint venture in such agreements may constitute an interested-party and/or large-scale transaction for the Russian corporate joint venture requiring corporate approvals by its management bodies. In case of an interested-party transaction, the votes of a shareholder assigning the intellectual property rights to the Russian corporate joint venture or its board of directors’ members shall not be counted at voting for such a transaction. The resolution will be actually taken by the other shareholders or their board of directors’ members not falling under the definition of an interested party.

Employment Agreements

Russian labor law does not differ between employers with the participation of Russian persons only and employers with foreign investors. The application of Russian labor law is dependent on the territory where the labor activity is actually performed. Under article 11 of the Labor Code of the Russian Federation (the "Labor Code"), employment agreements between an employer and its employees with regard to any labor activity performed in Russia are mandatory governed by Russian law, regardless of the citizenship of the employees.

Therefore, the employment agreements between the Russian corporate joint venture and its employees with regard to the labor activities performed in Russia will be governed by Russian labor law, and the Russian corporate joint venture must comply with the Labor Code as well as other Russian employment laws and regulations which contain mostly mandatory rules.

The procedure for hiring an employee in Russia is highly structured, and requires the correct and timely drafting of a number of documents. A written employment agreement must be entered into between the employer and the employee. Generally, the employment agreements are entered into for an indefinite period of time; fixed-term employment agreements are possible only in cases explicitly provided for in the Labor Code (e.g., in the case of an employment agreement with a chief executive officer of a Russian corporate joint venture).

Dismissal of employees by the Russian corporate joint venture is possible only in cases provided for by the Labor Code. An employee is generally entitled to terminate the employment agreement any time with the notice of 14 days (chief executive officer with the notice of one month). The chief executive officer may be dismissed any time (except for periods of illness, vacation, and some other situations). If the chief executive officer is dismissed without being at fault, it is entitled to compensation provided for in its employment agreement that, however, may not be lower than its average salary for three months.

The Russian corporate joint venture may employ foreign employees (including generally as chief executive officer) subject to compliance with Russian migration laws. Generally, there are two procedures for hiring foreign employees which require a visa to enter Russia, i.e., general and simplified. The general procedure entails:

- Application by the employer for quotas to employ foreign employees (certain positions, e.g., chief executive officer, are exempted from this requirement);
- Receipt by the employer of a permit to hire foreign employees;
- Receipt by the employer of a work permit for the foreign employee;
- Application by the employer for an invitation for the foreign employee to enter Russia;
- Receipt by the foreign employee of a single-entry work visa for employment in Russia;

- Converting the single-entry work visa into a multiple-entry visa;
- Notification of the migration authority on the hiring of a foreign employee; and
- Submission of a certificate to the migration authority, confirming that the foreign employee passed a Russian language exam, and also exams on Russian history and the fundamentals of Russian law.

The entire process usually takes at least three months. Under the general procedure, the work permit is valid for one year and for one constituent subject of Russia. Business trips to other constituent subjects of Russia are limited to 10 calendar days per year (60 calendar days per year in case the travel-based nature of the work is established in the employment agreement).

The simplified procedure applies to so-called highly qualified specialists. A foreign employee is recognized as a highly qualified specialist if it is paid a monthly wage of at least RUB 167,000 gross under an employment agreement, or without any requirements on the amount of wages for foreign employees participating in the Skolkovo Project (see text, below). The employer is obligated to report to the Russian migration authority on the payment of wages on a quarterly basis.

In addition, the employer is required to conclude or to ensure the conclusion of a voluntary medical insurance agreement with a foreign employee and his or her accompanying family members (as long as these family members are foreign citizens) for the duration of the effective term of the employment agreement. There are no quotas for hiring foreign employees who are highly qualified specialists. Nor are they required to confirm the knowledge of the Russian language, history, and law. However, notification of the migration authority regarding the hiring of a highly qualified specialist is mandatory.

When hiring highly qualified specialists, a Russian employer is only required to apply for individual work permits for each foreign employee and the corresponding invitation for a work visa. This process usually takes one month. A work permit under the simplified procedure may be issued for three years and for several Russian regions where this foreign employee has the right to work.

Business trips to constituent subjects of Russia other than those indicated in the work permit are possible for up to 30 calendar days at a time (without limitations in case the travel-based nature of the work is established in the employment agreement). A highly qualified specialist can immediately receive a multiple-entry work visa valid for up to three years based on the corresponding invitation issued by the Russian migration authority.

The application for the work permit may be filed, however, only after the Russian corporate joint venture is registered. Therefore, a Russian citizen as provisional chief executive officer of the Russian corporate joint venture is required for the initial period from its state registration until the work permit for the foreign chief executive officer is obtained.

Sales Agreements

Sales agreements are usually entered into between the Russian corporate joint venture and Russian customers. Hence, sale agreements are agreements between Russian persons with regard to the goods, works, or services to be sold, performed, or rendered in Russia. Therefore, such agreements usually have no foreign element and must be governed by Russian law and comply with it.

Incentives Available to Foreign Joint Venture Partners

There are certain incentives available to foreign joint venture partners or the Russian corporate joint ventures with their participation. For example, under article II(3)1 of the Protocol on Unified Customs Tariff Regulation within the EAEU,[41] and paragraph 4 of the Order, approved by the Decision of the Commission of the Customs Union of the Eurasian Economic Community, Number 728, of 15 July 2011,[42] goods imported into the Customs Union (into Russia) as in-kind contributions of foreign investors to the charter capital of companies with their participation may be exempted from the payment of import customs duty. The Decree of the Russian Government, Number 883, of 23 July 1996, sets forth that such goods may only be imported free of import customs duty if they:

- Are not subject to excise tax under Russian law;
- Constitute main production assets; and
- Are imported in the time frames provided for by the foundation documents for the charter capital payment.

However, such goods are treated as conditionally cleared and, if the foreign investor ceases to be the shareholder of the Russian corporate joint venture, or the imported goods are alienated by the Russian corporate joint venture, or transferred by it to other persons for temporary use (e.g., lease) within five years following their importation, it will be required to pay import customs duties as well as serious penalties.

The recent trend is to offer incentives to investors operating in specific sectors of the Russian economy or specific Russian territories, irrespective of whether the investments are Russian or of foreign origin. A significant number of incentives are available in the sphere of innovation and information technologies. For example, pursuant to article 150(7) of the Tax Code, technological equipment (including assemblies and spare parts) which has no equivalent produced in

41 Annex 6 to the Treaty on the Eurasian Economic Union, of 29 May 2014 (the “EAEU Treaty”).

42 Under article 99(2) of the EAEU Treaty, such Decisions made before the EAEU Treaty became effective remain in force, if they do not contradict the EAEU Treaty. See also Ruling of the Constitutional Court of the Russian Federation Number 417-O, of 3 March 2015, paragraph 2.1.

Russia and is specifically listed by the Russian government is exempted from Russian import VAT, and such equipment generally also may be imported free of import customs duty.

The Federal Law on Skolkovo Innovation Center, Number 244-FZ, of 28 September 2010 (the "Skolkovo Law"), establishes the legal framework for a research and development center in the settlement of Skolkovo close to Moscow (the "Skolkovo Project") and provides for certain incentives for the participants of the Skolkovo Project in fields relating to energy and energy efficiency, space, biomedicine, nuclear science, information and computer technologies, and biotechnologies in agriculture and industry. Participants must be Russian legal entities conducting only research activities and undertaking to conduct them under the Skolkovo Law as well as to comply with the rules and regulations of the Skolkovo Project. From 1 January 2016, the chief executive officers of the participants must be located on the territory of the Skolkovo center.

The status of a participant is granted for 10 years or until annual turnover reaches RUB 1-billion, and cumulative profit since then exceeds RUB 300-million, and provides for exemptions from corporate profit tax, VAT, and property tax as well as a reduced social security contributions rate of 14 per cent. In addition, goods imported for the construction, equipping, or technical outfitting of the premises of the Skolkovo center or for research activities are exempted from customs import duty and Russian import VAT.

A simplified procedure for obtaining work permits applies to foreign employees of the Skolkovo Project participants and their family members. There are some additional incentives aimed at simplifying the operations of Skolkovo Project participants. Over 1,400 companies are participating in the Skolkovo Project.

Certain incentives are given to automobile producers and original equipment manufacturers involved in so-called industrial assembly in the automotive sector of the Russia economy. Upon execution of concessions agreements providing for certain investment and localization obligations, they are exempted from import customs duties for automobile assembly parts. In addition to the general taxation regime, there are several types of special tax regimes that may be applicable to certain activities and/or taxpayers: single agricultural tax, simplified taxation system, and single tax on imputed income from certain kinds of activities. As a rule, they provide that a single tax is to be paid by the taxpayer instead of several taxes, such as corporate profit tax and VAT. In certain cases, these special tax regimes may be relevant for joint ventures.

There are a number of special economic zones (SEZ) in Russia. The general legal framework for SEZs is set forth by the Federal Law on Special Economic Zones in the Russian Federation, Number 116-FZ, of 22 July 2005 (the "SEZ Law"). In addition, there are three special laws for the SEZs in Kaliningrad and Magadan regions as well as in the Republic of Crimea and federal city of Sevastopol, with a slightly different legal framework. There are four types of SEZs under the SEZ Law, namely:

- Industrial and production;

- Technology and innovation;
- Tourism and recreation; and
- Port zones.

SEZs are created for 49 years. Incentives vary according to the type of SEZ and are given to the companies (including Russian corporate joint ventures with foreign participation) that have been established in the SEZ and that have entered into a concession agreement with the SEZ administration. An industrial and production SEZ, for example, may provide a reduction in corporate profit tax to 15.5 per cent and exemptions from property, transportation, and land tax.

For a technology and innovation SEZ, a reduced social security contributions rate of 14 per cent until 2017 inclusive, 21 per cent in 2018, and 28 per cent in 2019 may apply. In addition, the territory of the SEZ constitutes a customs free zone, so that the goods imported into and exported from the SEZ are generally exempted from import and export customs duties and VAT[43].

Moreover, article 38 of the SEZ Law explicitly provides for a grandfather clause with regard to an exemption from unfavorable tax changes for the whole period of the concession agreement. In exchange, the companies entering into the concessions agreements with the SEZ administration undertake to pursue in the SEZ only the activity provided for in the concessions agreements and to make certain investments.

For example, for an industrial and production SEZ, the capital investment may not be less than RUB 120-million, with RUB 40-million to be invested within three years following the execution of the concession agreement. Rights and obligations under the concession agreements may not be assigned by the companies to third parties, and companies are prohibited from having branches or representative offices outside of the SEZ.

More than 350 companies are currently working in eight industrial and production SEZs in the cities of Astrakhan and Vladivostok, as well as Lipetsk, Samara, Sverdlovsk, Kaluga, Pskov, and Tatarstan regions; five technology and innovation SEZs in the cities of Moscow and St. Petersburg as well as Moscow, Tatarstan, and Tomsk regions; 14 tourist and recreation SEZs in the Altai, Krasnodar, Stavropol, and Irkutsk regions, in the republics of Adygeya, Altai, Buryatia, Chechnya, Dagestan, Kabardino-Balkaria, Karachay-Cherkessia, Ingushetia, and North Ossetia, as well as on Russkiy Island; and three port SEZs in the Khabarovsk, Murmansk, and Ulyanovsk regions.

A SEZ in the Ryazan region also is at the planning stage. In addition, a Federal Law on Territory Development Zones in the Russian Federation, Number 392-FZ, of 3 December 2011 (the “TDZ Law”), was adopted, aimed at promoting

43 Complete list of reductions and rates of taxes in the SEZ according to the Ministry of Economic Development: http://economy.gov.ru/minec/activity/sections/sez/preferences/taxconcession/.

development in certain Russian territories[44] and providing for the establishment of territory development zones (TDZs) with certain incentives for investors operating therein. The TDZs will be established for 12 years.

Incentives will be given to Russian legal entities established in the TDZs that implement approved investment projects. Such projects may not include the production of ethyl alcohol, alcoholic beverages, the manufacture of tobacco products, and other excisable goods (other than motorcycles and passenger cars); the extraction of crude oil and natural gas and the provision of services in these areas; the extract of precious metals, gemstones, semi-precious gemstones, and their production and processing; wholesale trade and retail trade; repair of vehicles, household appliances, and personal articles; financial activity; and processing of ferrous and non-ferrous metal scrap and waste.

However, the TDZ Law does not provide for the specific incentives to be given to investors in the TDZs. Such incentives will be determined by the constituent subjects of Russia and/or local authorities. Furthermore, in comparison to the SEZ Law, the TDZ Law does not contain any grandfather clauses. It is hence difficult to assess at the moment whether the TDZ Law will achieve its goal.

Certain tax preferences are provided for regional investment projects on the territory of Siberia and the Far East (Republics of Buryatia, Sakha (Yakutia), Tyva, Khakassia, Zabaykalsky, Kamchatka, Primorsky, Khabarovsk, Krasnoyarsk, Amur, Irkutsk, Magadan and Sakhalin Regions, as well as the Jewish Autonomous and Chukotka Autonomous Regions). Incentives will be given to Russian legal entities established in the territory of these constituent subjects of the Russia Federation and entered into a special register of regional investment project participants. The regional investment project shall generally aim at goods production on the territory of one (with some exceptions) of the constituent subjects of the Russia Federation. Such projects may not include the extraction or refining of crude oil, the extraction of natural gas or condensate or their transportation; production of excisable goods (other than motorcycles and passenger cars); or other activities that are subject to 0 per cent corporate profit tax.

The capital investments shall be not less than RUB 50-million over three years (in this case, the incentives with respect to corporate profit tax expire on 1 January 2027) and not more than RUB 500-million over five years. There are some other prerequisites to be fulfilled. As a result, the part of corporate profit tax to be paid to the federal budget is reduced from two to 0 per cent for 10 years following the receipt of the first income from the sale of the produced goods. The constituent subjects of Russia also may provide for the reduction in their part of corporate tax (generally, this comprises 18 per cent). This part of profit tax cannot be more than 10 per cent in the first five years following the receipt of the first income from the sale of the produced goods and less than 10

44 On 21 December 2016, the Russian Government approved the new list of 20 constituent subjects of Russia where the establishment of TDZs is possible. Most of the zones are located either in North Caucasus or in Siberia and the Far East.

per cent in the next five years. In addition, there is a reduction in the tax on the extraction of mineral deposits until the first payment of corporate profit tax to the federal budget and for the following 10 years.

The Federal Law on the Territories with Advanced Socio-Economic Development, Number 473-FZ, of 29 December 2014 (the "TAD Law"), is aimed at promoting development in certain Russian territories and providing for the establishment of territories with advanced socio-economic development (TADs) by providing certain incentives for investors operating therein. For TADs, which are to be established by the Russian Government for 70 years there is a reduced rate of social security contributions of 7.6 per cent for the first 10 years and certain other incentives.

The Russian Government can grant TADs the status of free customs zones. In the first three years, TADs can be established in the Far East or in one-company towns, included by the Russian Government in the special list. From 1 January 2016, TADs can be also established in closed administrative territorial formations (ZATOs, see text, below), after which TADs may be established on other territories of Russia.[45]

The Federal Law on Industrial Policy in the Russian Federation, Number 488-FZ, of 31 December 2014 (the "Industrial Policy Law"), is aimed at promoting industrial production in Russia. The Industrial Policy Law provides *inter alia* for a special investment agreement to be entered into between the Russian Federation and/or its constituent subjects and an investor who undertakes an obligation to develop or upgrade and/or establish production of industrial products in Russia. In its turn, the Russian Federation and/or its constituent subjects shall be obliged to grant to the investor certain incentives. Such an agreement may be entered into for a term of up to 10 years. Article 16(5–7) of the Industrial Policy Law explicitly provides for a grandfather clause with regard to an exemption from unfavorable legislative or tax changes for the entire period of the special investment agreement.[46]

The constituent subjects of the Russian Federation, the regions and republics, may provide some incentives to local taxpayers, including Russian corporate joint ventures with the participation of foreign investors, subject to meeting specific investment criteria. For example, they may reduce corporate profit tax allocated to them from 18 to 13.5 per cent ending with an overall minimum corporate profit tax of 15.5 per cent, including the federal government's share. They also may offer exemptions from property, transportation, or land taxes. Some regions, like the St. Petersburg, Kaluga, and Leningrad regions, actively use these possibilities to attract foreign investors.

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45 As of 1 July 2017, 35 TADs had been established in Russia, primarily in the Far East.

46 As of January 2017, the Ministry of Industry and Trade of the Russian Federation reported that it had signed 7 special investment agreements on the federal level for the total amount of Rub 250-billion and received 66 further requests for the conclusion of special investment agreements.

Restrictions on Activities of Foreign Joint Venture Partners

In General

Foreign investors generally enjoy national treatment in Russia. Under article 4(1) of the Federal Law on Foreign Investment in the Russian Federation, Number 160-FZ, of 9 July 1999 (the "Foreign Investment Law"), the legal framework of the activity of foreign investors and of use of profits from the investments cannot be less favorable than domestic ones, with the exceptions set forth by federal laws.

According to article 4(2)1 of the Foreign Investment Law, such exceptions restricting foreign investors may be introduced only to protect the foundations of the Russian constitutional system; the morality, health, and rights and lawful interests of third parties; or in order to ensure state defense and security.

Therefore, basically, there are neither general restrictions on the maximum or minimum share of capital a foreign joint venture partner may contribute, nor limits to the duration for which a joint venture may be formed. However, there are a number of Russian laws restricting particular foreign investors in their investment activities or restricting foreign investments in certain sectors of the economy that should be taken into account when planning a corporate joint venture in Russia.

Banking and Insurance

The banking and insurance sectors of the economy are explicitly exempted from the scope of the Foreign Investment Law under its article 1(2)1. Article 18(5) of the Banking Law sets forth a maximum quota of 50 per cent on the foreign capital present in the aggregate charter capital of credit institutions operating in Russia.[47]

If the quota is exceeded, no credit institution with foreign investments may be registered and no banking licenses may be issued to such a credit institution by the CBR, while no increases or transfers of shares or participation interests in the charter capitals of credit institutions with a banking license in favor of foreign investors may be cleared by the CBR. However, it is highly unlikely that this quota will be exceeded in the near future.[48]

However, under article 18(9) of the Banking Law, additional requirements on reporting procedures, approval of management bodies, and permitted operations of the subsidiaries of foreign banks may be introduced by the Central Bank of Russia (the "CBR"). For example, if the chief executive officer of a credit institution is a foreign citizen or stateless person, then at least 50 per cent of the collegial executive body of the credit institution must be Russian nationals. At

47 This is in line with the Protocol on Russia's Accession to the WTO of 16 December 2011.

48 According to the data provided by the CBR on 15 February 2017, as of 1 January 2017, the respective quota amounted to only 13.51 per cent (see http://www.cbr.ru/Press/Default.aspx?PrtId=event&id=905&PrintVersion=Y).

least 75 per cent of the employees of a credit institution with foreign investments must be Russian nationals.[49]

In addition, under the general rule of article 11(8) of the Banking Law, a person (group of persons) acquiring a stake in a Russian credit institution must obtain pre-completion clearance from the CBR if the shareholding acquired exceeds 10 per cent. This also applies to cases involving the acquisition of direct or indirect control over the shareholders or participants of a Russian credit institution that have a shareholding of more than 10 per cent. Post-completion clearance is necessary if the shareholding being acquired exceeds one per cent.

Pre-completion clearance also is required under article 11(9) of the Banking Law in the event of the acquisition of more than 10 (but less than 25), more than 25 (but less than 50), more than 50 (but less than 75), or more than 75 per cent of shares or more than 10 (but less than one-third), more than one-third (but less than 50), more than 50 (but less than two-thirds), or more than two-thirds per cent of participation interests.

As already mentioned, only Russian legal entities may engage in insurance activities in Russia. As in the banking sector, a quota on the foreign capital present in the aggregate charter capital of insurance companies operating in Russia is set at 50 per cent (article 6(3)4 of the Insurance Law).[50] If the quota is exceeded, no insurance licenses may be issued to Russian insurance companies in which the charter capital stake of foreign investors exceeds 49 per cent.

In addition, a Russian insurance company requires pre-completion clearance by the CBR for a charter capital increase using the funds of a foreign investor or its Russian subsidiaries, as well as for the disposition in favor of a foreign investor of a shareholding in the Russian insurance company, and the Russian shareholders of a Russian insurance company require such pre-completion clearance by the CBR for the disposition of their shareholdings in a Russian insurance company in favor of a foreign investor or its Russian subsidiaries. Generally, the CBR may not refuse to issue such a clearance to a Russian insurance company in which the stake of foreign investors already exceeds 49 per cent or will exceed 49 per cent in the result of the transaction contemplated. However, a prerequisite of this is the quota available (article 6(3)6 of the Insurance Law).

The Insurance Law imposes some additional restrictions and requirements on insurance companies with foreign investments and on their foreign investors.[51]

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49 Regulations of the CBR on Peculiarities of Registration of Credit Institutions with Foreign Investments, Number 437, of 23 April 1997, paragraphs 29 and 31.

50 The information on the current quota status is published by the CBR once a year. As of 1 January 2017, the quota was 19.77 per cent (CBR Notice of 21 February 2017, https://www.garant.ru/products/ipo/prime/doc/71516074/#review).

51 However, these restrictions and requirements are not applicable to Russian insurance companies which are subsidiaries of foreign investors or in which the foreign investor's stake in their charter capital exceeds 49 per cent, and which were established or reorganized before 22 August 2012 and are under Russian law allowed to engage in

Pursuant to article 6(4) of the Insurance Law, a Russian insurance company, which is a subsidiary of the foreign investor or in which the foreign investor's stake in its charter capital exceeds 49 per cent, may engage in insurance activities in Russia only if the foreign investor itself has been an insurance company under the laws of the respective jurisdiction for at least five years.

Under article 6(3)1 of the Insurance Law, Russian insurance companies, which are subsidiaries of foreign investors or in which the foreign investor's stake in their charter capital exceeds 49 per cent, may not engage in Russia in life, health, and property insurance of citizens financed from the state funds, in insurance related to the delivery of goods, or the performance of work for state and municipal needs and in the insurance of the property interests of state and municipal organizations.

Pursuant to article 6(3)2 of the Insurance Law, Russian insurance companies which are subsidiaries of foreign investors or in which the foreign investor's stake in their charter capital exceeds 51 per cent may not additionally engage in Russia in insurance relating to property interests connected with citizens surviving until a certain age or date, death, or other events in citizens' lives (i.e., life insurance), as well as in compulsory motor vehicle civil liability insurance.[52] Under article 6(3)8 of the Insurance Law, foreign investors may pay in their stakes in the charter capitals of Russian insurance companies only with cash contributions in Russian currency.[53]

Strategic Investment Law

Without pre- or post-completion clearance by the Russian state, foreign investors may not acquire control over Russian strategic companies or their main production assets. Under article 4(1) of the Strategic Investment Law, a transaction or other actions resulting in an acquisition of control by a foreign investor or group of persons including a foreign investor over a strategic entity (the "Strategic Entity"), as well as transactions resulting in the acquisition of the main production assets of a strategic entity worth 25 per cent or more of the balance sheet value of its assets, require pre-completion clearance by the Russian Governmental Commission for Control over Foreign Investments (the "Governmental Commission").

According to article 14 of the Strategic Investment Law, a foreign investor or group of persons including a foreign investor must notify the Russian antimonopoly authority, the Federal Antimonopoly Service (FAS), on the acquisition of a stake of five and more per cent in the charter capital of a Strategic Entity, as well as on the completion of transactions and other actions for which a pre-completion clearance

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such insurance. Generally, that exemption applied to investors situated in the member states of the European Union on the basis of the Partnership and Cooperation Agreement between Russia and the EU of 24 June 1994 (the "PCA").

52 This restriction applies until 22 August 2017.

53 Following Russia's Accession to the WTO, many of these restrictions must be loosened or abolished. However, in many cases, transition periods of five to nine years following Russia's accession to the WTO will apply.

was previously obtained. Russian companies under the control of foreign investors also are considered to be foreign investors in the meaning of the Strategic Investment Law (article 3(2) of the Strategic Investment Law).

The definition of a group of persons including a foreign investor is so wide that a group of companies that is under the control of Russian citizens but has a foreign company in the group was in the past also considered to be a foreign investor for the purposes of the Strategic Investment Law.[54] Today, organizations under the control of the Russian state or Russian citizens who are Russian tax residents (excluding Russian citizens holding multiple citizenships) no longer fall under the scope of the Strategic Investment Law pursuant to its article 2(9). There are some further exemptions.

Under article 4(4) of the Strategic Investment Law, Strategic Entities (excluding Strategic Entities with subsoil use rights over a subsoil block of federal importance) in which foreign investors or groups of persons including foreign investors or persons controlling these foreign investors already having the right to dispose directly or indirectly of more than 50 per cent of the total number of voting shares (participation interests) are excluded from the scope of its application. In respect of Strategic Entities with subsoil use rights over a subsoil block of federal importance, the Strategic Investment Law is not applicable pursuant to its article 7(1)3, if the foreign investor owns more than 75 per cent of the shares or participation interests in such a strategic entity before the respective transaction.

In addition, according to its article 2(7), the Strategic Investment Law basically does not apply to Strategic Entities with subsoil use rights over a subsoil block of federal importance, if before the respective transaction the Russian state had a stake or the right to dispose directly or indirectly of more than 50 per cent of the total number of voting shares (participation interests) and retains this stake or right after the transaction is completed.[55]

A strategic entity is a Russian company engaging in one of 45 business activities listed in article 6 of the Strategic Investment Law, including works having an active impact on hydro-meteorological or geophysical processes and events; activities related to the use of infectious agents subject to licensing under Russian law (with the exception of manufacturers of food production); various activities related to the nuclear industry and the use and storage of nuclear and radioactive materials (excluding the use of radiation in the civil economy as an ancillary activity); various activities related to encryption and licensed encryption techniques (excluding activities performed by banks in which the Russian state does not have a stake in the charter capital); activities related to the secret collection of information in premises and equipment (excluding activities

54 In the past, in several cases Russian companies or their majority shareholders used this provision to withdraw from unfavorable obligations.

55 However, the restrictions for a foreign state, international organization, or organizations under their control are still applicable in these cases.

performed for the purposes of a legal entity's own security); various activities related to weapons and military equipment, spare parts, and ammunition thereof (excluding cold weapons, non-military, and service weapons), as well as explosives for industrial purposes; various activities related to aviation equipment and security; space activities; activities related to television or radio broadcasting in the territory, where half or more of the population of a constituent subject of Russia resides; services provided by a company included in the Russian register of natural monopolies (excluding public electronic and postal communications, services for the heat and electrical energy supply through the distribution grid, and port services); port services in Russia in accordance with the list to be approved by the Russian Government; activities performed by a company included in the register of companies having more than a 35 per cent market share in a particular market and occupying a dominant position in the field of either the market of communication services in Russia (excluding provision of Internet access services) or the market of fixed telephone communication on the territory of five or more constituent subjects of Russia or Moscow and St. Petersburg; activities by a company occupying a dominant position in the field of the production and sale of special metals utilized in the production of ammunition and military equipment; geological research, exploration, and production on subsoil blocks of federal importance; procurement of water biological resources; printing activity with the capabilities to print at least 200 million page impressions a month; transport infrastructure and vehicles security activities and editorial office, founder, and/or publisher activities of periodical printed publications, if the total circulation within the year preceding the transaction or filing of the pre-completion clearance application comprised at least: in the case of print mass media that are published two or more times a week — 15 million copies of total circulation; once a week, once every two weeks, or every three weeks — 2.5 million copies; once a month or every two months — 700,000 copies; and once every three months or less frequently — 300,000 copies.

In some cases, business activity considered as strategic under the Strategic Investment Law is ancillary for the Russian company. Nevertheless, such a company may still be considered as a strategic entity. Control is defined very broadly, and means any possibility of a foreign investor or group of persons including a foreign investor to determine directly or through third parties the decisions taken by the strategic entity (article 3(1)3 of the Strategic Investment Law). Under article 7 of the Strategic Investment Law, transactions or actions requiring a pre-completion clearance include:

- Acquisition of the right to dispose directly or indirectly of more than 50 per cent of the total number of voting shares (participation interests) in the strategic entity (or 25 per cent or more for a strategic entity with subsoil use rights over a subsoil block of federal importance);
- Acquisition of the right to appoint the chief executive officer, and/or more than 50 per cent (or 25 per cent or more for a strategic entity with subsoil use rights over a subsoil block of federal importance) of the members of the

collective executive body and/or unconditional ability to elect more than 50 per cent of the members of the board of directors (supervisory board) or another collective management body (or 25 per cent or more for a strategic entity with subsoil use rights over a subsoil block of federal importance) of the Strategic Entity;

- Acquisition of a (further) stake in a strategic entity with subsoil use rights over a subsoil block of federal importance if there is already a right to dispose directly or indirectly of 25 per cent or more of the total number of voting shares (participation interests) but no more than 75 per cent;
- Acquisition of the right to perform the functions of the management company of a Strategic Entity;
- Acquisition of ownership, possession, or disposal rights (under sale and purchase, donation, swap, lease, uncompensated use, property trust management, and other agreements) with regard to the main production assets of the strategic entity worth 25 per cent or more of the balance sheet value of its assets; and
- Other actions resulting in the acquisition of control over the decisions made by the management bodies of the Strategic Entity, including those of the current business activity thereof.

In some cases, a foreign investor may find itself in a situation where it acquires control involuntarily or subject to the requirements of Russian law (e.g., buy-back or redemption of shares or participation interests, and conversion of preferred shares into ordinary shares).

Generally, the Strategic Investment Law also applies in these cases, and the acquirer is obligated to file a pre-completion application within three months following the acquisition. If clearance is not given, the acquirer must dispose of the portion of its stake in a way that the remaining part will not allow it to control the Strategic Entity.

There also are questions with respect to acquisition due to the obligation to make a mandatory offer to acquire shares of other shareholders. Under article 7(4) of the Strategic Investment Law, such an acquisition falls under its scope. However, there is no obligation to file a pre-completion application in this situation and, recently, this provision was used in many cases to free the acquirer of shares from the obligation to make a mandatory offer if it does not file the application for pre-completion clearance.

The application for pre-completion clearance must be filed with the FAS and must be considered within three months. The FAS communicates with other Russian state authorities and makes a proposal to the Governmental Commission regarding the application. In some cases, the Governmental Commission may extend the term for another three months.

In the end, the Governmental Commission may either approve the application unconditionally or on condition that the acquirer undertakes certain obligations, or refuse to approve the application. The obligations imposed on the acquirer are

formalized in an agreement between the FAS and the acquirer. The decisions of the Governmental Commission may be challenged at the Supreme Court.[56]

The Strategic Investment Law is extraterritorial and applies to transactions entered into outside of Russia (article 2(5) of the Strategic Investment Law). Therefore, it also applies in the case when control over a strategic entity is acquired indirectly, e.g., through an acquisition of a stake in a third (offshore joint venture) company. The Strategic Investment Law refers to existing Strategic Entities. It is not quite clear whether it will apply to Strategic Entities that may be established from scratch.[57] The consequences of failure to observe the Strategic Investment Law are severe. Under article 15(1) of the Strategic Investment Law, transactions contrary to it are null and void.[58] Generally, the parties to the transaction must then return

56 According to the statistical data of the FAS, as of 15 March 2017, 447 pre-completion applications were filed with the FAS from the enactment of the Strategic Investment Law. Of these, 218 were considered by the Government Commission and 205 were cleared (among which 60 were cleared with conditions) and only 13 were rejected; 175 applications were returned to the applicants since they did not require clearance, 43 applications were withdrawn by the applicants, and eleven applications were still under consideration (see http://fas.gov.ru/documents/documentdetails.html?id=14270). In addition, several hundred post-completion notifications were submitted. There were no decisions challenged in court. However, in some of the decisions, the position of the FAS on the application of the Strategic Investment Law was challenged. For example, in March 2012, the Swedish Investment AB Kinnevik filed for pre-completion clearance with the FAS under the Competition Law for the acquisition of rights in respect of the Russian company publishing periodicals under the Metro brand. Although the print run of each periodical does not exceed 1-million, the FAS held that the total print run of all periodicals had to be considered. On this basis, the FAS proposed that the applicant file for pre-completion clearance under the Strategic Investment Law. Investment AB Kinnevik disagreed with this position of the FAS and challenged it in the Arbitrazh court. The courts of the first and second instances confirmed the position of the FAS. However, the court of third instance, Federal Arbitrazh Court of the Moscow Region, in its Decision in Case Number A40-120785/12-120-1184, of 21 October 2013, pointed out that, under the Strategic Investment Law, the print run of one periodical and not several periodicals had to be exceeded and held that the decision of the FAS was invalid. This decision was upheld by the Supreme Arbitrazh Court in Ruling Number 798/14, of 4 April 2014.

57 There are only a few provisions in Russian law related to the situation when a subsoil block turns out to be of federal importance. According to the clarifications published on the FAS website, the Strategic Investment Law generally does not apply to the establishment of new legal entities from scratch. However, this exemption does not cover new legal entities established by foreign states, international organizations, and organizations under their control as well as new legal entities established through reorganization with the transfer of a license for strategic activities to the legal entity established through the reorganization (which is common for the transfer of subsoil use rights); see http://fas.gov.ru/documents/documentdetails.html?id=1050.

58 Even the interim measures ordered by Russian courts while the claim is pending may be quite severe. In 2012, the FAS filed a claim against Telenor and Weather Investments to invalidate a share sale and purchase agreement as well as an option agreement between them resulting in an increase from 25.01 to 42.95 per cent of the shareholding

to each other everything they have acquired under the transaction. If this is not possible, the court may deprive the foreign investor of its voting rights at general meetings of the Strategic Entity.[59] Moreover, pursuant to article 15(3) of the Strategic Investment Law, decisions of the management bodies and transactions of a Strategic Entity, control over which was acquired in violation of the Strategic Investment Law, may be deemed null and void by the court.[60]

Although the Strategic Investment Law regulates the acquisition of control over Strategic Entities, Russian courts deemed it to be applicable not only to the agreements directly entailing the acquisition or transfer of control, but also to the agreements anticipating the entrance into agreements on the future acquisition or transfer of control or completion of certain steps required for the future acquisition or transfer of control (e.g., joint venture or shareholders' agreements). Such agreements may be deemed void and null by the Russian

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of Telenor in Vimpelcom Ltd., the ultimate parent of the Russian strategic entity cell operator OAO Vimpelcom, without pre-completion clearance by the Governmental Commission. As interim measures, the Russian courts prohibited Telenor and Weather Investments from exercising their rights under the option agreement between them and from changing the management bodies of Vimpelcom Ltd. They also prohibited Vimpelcom Ltd. and its subsidiary Vimpelcom Holdings BV from voting at the general shareholders' meetings of OAO Vimpelcom. Simultaneously, OAO Vimpelcom was prohibited from implementing the decisions taken at the recent general shareholders' meeting of OAO Vimpelcom, as these were taken during the alleged control of Telenor. Telenor argued that the increase was already covered by an earlier clearance. After Russian-controlled Altimo, Telenor's rival partner in Vimpelcom Ltd., increased its shareholding in Vimpelcom Ltd. from 41.9 to 47.85 per cent, the FAS withdrew the claim against Telenor and Weather Investments.

59 Since 2012, the FAS has filed several such claims. In one of them, with regard to the Russian strategic entity OAO Astrakhan Port, the FAS claimed for the same interim measures as in the Vimpelcom case. In another case, the FAS filed a claim against the purchaser and the sellers of the shares of the Russian strategic entity, ZAO Vostochny Veter, a fishing company holding a quota for the procurement of water biological resources, to invalidate the sale and purchase agreement between them, and as interim measures filed for the prohibition of any operations with the shares of ZAO Vostochny Veter, the prohibition of the transfer of the monies of ZAO Vostochny Veter designated for paying out dividends abroad, and the prohibition of the transfer or any disposal by ZAO Vostochny Veter of rights to procure water biological resources. Although the court of first instance ordered these interim measures, further courts retained only the prohibition of any operations with the shares of ZAO Vostochny Veter. See the Ruling of the Federal Arbitrazh Court of Moscow District in Case Number А41-5570/14, of 25 June 2014.

60 In 2012, several decisions of the board of directors of the Russian strategic entity OAO GMK Norilsk Nickel on a US $4.5-billion buy-back of its shares through its foreign subsidiary Norilsk Nickel Investments Ltd. were held invalid by the Russian court based on a claim of its shareholder, one of the RUSAL subsidiaries, due to the fact that this buy-back would result in the acquisition of control over OAO GMK Norilsk Nickel by a foreign investor or group of persons including a foreign investor. After RUSAL and other major shareholders of OAO GMK Norilsk Nickel reached a shareholder agreement, RUSAL withdrew the claim.

courts if they are made without obtaining pre-completion clearance by the Russian state.[61]

In addition, there are some post-completion clearance obligations even in cases where no pre-completion clearance was required for the acquisition of control over a Strategic Entity. Under article 14 of the Strategic Investment Law, foreign investors or a group of persons including foreign investors must notify the Russian state of the acquisition of at least five per cent of a strategic entity within 45 days from the date of the corresponding transaction. The Russian Constitutional Court held the Strategic Investment Law to comply with the Russian Constitution.[62]

Foreign States, International Organizations, and Organizations under Their Control

Pursuant to article 2(2) of the Strategic Investment Law, foreign states, international organizations, or organizations under their control may not enter into any transactions or other actions resulting in the acquisition of control over a strategic entity or the acquisition of the main production assets of a strategic entity worth 25 per cent or more of the balance sheet value of its assets.

According to articles 2(3) and 7(1)5 of the Strategic Investment Law, a transaction by foreign states, international organizations, or organizations under their control resulting in the acquisition of the right to dispose directly or indirectly of more than 25 per cent of the total number of voting shares (participation interests) in a strategic entity (or more than five per cent for a strategic entity with subsoil use rights over a subsoil block of federal importance) or to otherwise block decisions of the management bodies of a Strategic Entity, requires pre-completion clearance by the Government Commission.

In addition, under article 6(4) of the Foreign Investment Law, a transaction by foreign states, international organizations, or organizations under their control, resulting in the acquisition of the right to dispose directly or indirectly of more than 25 per cent of the total number of voting shares (participation interests) of a Russian company, or to otherwise block decisions of the management bodies of a Russian company, requires pre-completion clearance in the manner provided

61 In another notable MegaFon case, several companies of Swedish-Finnish TeliaSonera and of the Russian-controlled Altimo made a joint venture agreement in respect of the Russian strategic entity, cell operator OAO MegaFon, agreeing to establish a new company outside of Russia and to contribute to it their shares in MegaFon and providing for the conditions and mode of contributing their shares and for the mode of exercising control by the new company over MegaFon. Another shareholder of MegaFon, OAO Telecominvest, challenged the joint venture agreement. The Russian courts held that the joint venture agreement resulting in the acquisition of control over MegaFon, which is a Strategic Entity, was null and void. The Supreme Arbitrazh Court, in its Ruling Number VAS-5611/11, of 22 June 2011, upheld the judgments.

62 Russian Constitutional Court, Rulings Number 1109-O-O and 1108-O-O, of 29 September 2011, as well as Number 924-O-O, of 5 July 2011.

by the Strategic Investment Law, irrespective of whether the Russian company is a strategic entity in the meaning of the Strategic Investment Law.[63]

Exempted from these provisions are international finance organizations founded under international treaties with the participation of the Russian Federation or having international treaties with the Russian Federation. The list of such international finance organizations was approved by the Decree of the Russian Government, Number 119-r, of 3 February 2012, and includes the International Bank for Reconstruction and Development, the International Development Association, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the European Bank for Reconstruction and Development, the Black Sea Trade and Development Bank, the Eurasian Development Bank, the Interstate Bank, the International Investment Bank, the International Bank for Economic Cooperation, the European Investment Bank, the Nordic Investment Bank, the Asian Infrastructure Investment Bank and the New Development Bank.

Closed Administrative Territorial Formations

Under article 1(1) of the Law of the Russian Federation on a Closed Administrative Territorial Formation, Number 3297-1, of 14 July 1992 (the "ZATO Law"), a closed administrative territorial formation (ZATO) is a territorial entity created for the purpose of securing the safe operations of the organizations located on its territory, engaged in the development, manufacturing, storage, and recycling of weapons of mass destruction; the processing of radioactive and other highly dangerous technogenic materials; and military; and other facilities for which the state establishes special regimes for safe functioning and protection of state secrets, including special terms for citizens' residence, for the purpose of national defense and national security.[64] Due to the special secrecy and security requirements of ZATOs, not only residence in, but also entry into, the ZATOs is strictly regulated.

Pursuant to article 3(2.1) of the ZATO Law, the establishment and activity of legal entities with foreign investments in the ZATO's territory is allowed in the procedure set forth by the Russian government, unless otherwise provided by federal laws. However, the foundation and operation of organizations whose founders are foreign citizens, stateless persons, and foreign organizations, foreign non-profit non-governmental organizations, branches of foreign non-profit non-governmental organizations, and the activity of international organizations

63 According to the clarifications of the FAS published on its website, thalso is applies to the establishment of a new legal entity by foreign states, international organizations, and organizations under their control, and such an establishment requires pre-completion clearance from the Government Commission; see http://fas.gov.ru/documents/documentdetails.html?id=1050.

64 There were 42 ZATOs with an overall population of approximately 1.5-million in Russia as of 24 May 2014 (Explanatory Note to Federal Law on Amendments to the ZATO Law, Number 454-FZ, of 23 December 2014. Available in the Russian law data bank ConsultantPlus).

(associations) are prohibited in the territory of a ZATO (article 3(2.2) of the ZATO Law).

The respective Rules were adopted by the Decree of the Russian Government Number 302, of 22 May 2006. According to the Rules, the establishment of a legal entity with foreign investments requires the approval by the Russian state (by the state authority or by the Russian state corporation Rosatom supervising a ZATO, as well as by the Russian Federal Security Service and Ministry of Internal Affairs).

There were some cases where not only the establishment of legal entities with foreign investments but also the establishment in ZATOs of branches, representative offices, or other structural units of legal entities with foreign investments already established outside of ZATO was not allowed. It is not quite clear whether a foreign investor may acquire a stake in an existing legal entity in a ZATO. There are no rules or court practice on this issue. Thus, there is a risk that such an acquisition may be held null and void.

Land Law

Certain restrictions are imposed on foreign investors or Russian legal entities with their participation by the Russian land laws. Under article 15(3) of the Land Code of the Russian Federation, Number 136-FZ, of 25 October 2001 (the "Land Code"), foreign citizens, stateless persons, and foreign legal entities may not own land plots in border areas, a list of which must be approved by the President of the Russian Federation, as well as in other specific territories of the Russian Federation pursuant to federal laws. The Russian Constitutional Court held this provision of the Land Code to be consistent with the Russian Constitution.[65]

The list of border areas was approved by the Decree of the President of the Russian Federation, Number 26, of 9 January 2011, and includes 380 municipal territories (among them Sochi, the host city for the XXII Winter Olympic Games in 2014, Kronshtadtsky District in St. Petersburg, and five districts in Leningrad Region).

In the past, there have been cases where this provision also was extended to the Russian legal entities under the control of foreign persons or entities. However, the Russian Supreme Arbitrazh Court ruled that such extension is not appropriate.[66] Therefore, corporate joint ventures established in Russia or Russian operating subsidiaries of offshore corporate joint ventures are not restricted from owning land plots in border areas.

Further restrictions are set forth for agricultural land plots. Pursuant to article 3 of the Federal Law on the Circulation of Agricultural Land, Number 101-FZ, of 24 July 2002 (the "Agricultural Land Law"), foreign citizens and legal entities,

65 Russian Constitutional Court, Ruling Number 8-P, of 23 April 2004, paragraph 2.4.
66 Supreme Arbitrazh Court, Ruling Number VAS-17508/10 in Case Number A56-70063/2009, of 10 March 2011.

stateless persons, as well as Russian legal entities in which the charter capital participation of the aforementioned entities and persons exceeds 50 per cent, may hold only lease rights to agricultural land plots.

Accordingly, their ownership or common ownership in respect of such land plots is not permitted. Although the respective transactions are not null and void, pursuant to article 5(1) of the Agricultural Land Law, the person who acquired the ownership right or share in the common ownership right to an agricultural land plot must dispose of it within a year following the acquisition. Otherwise, the court may force the owner to sell.

Mass Media, Media Research, and Audio-Visual Services

Mass media is another sector of Russian economy where foreign investments are restricted. Under article 19.1 of the Law of the Russian Federation on Mass Media, Number 2124-1, of 27 December 1991, from 1 January 2016, foreign states, international organizations, and organizations under their control, foreign legal entities, and also Russian legal entities partially owned by foreign capital, foreign individuals, stateless persons, and also those with dual citizenship, acting jointly and severally, are prohibited from being the founder or editorial office of Russian mass media, or a broadcasting organization.

In addition, foreign states, international organizations, and organizations under their control, foreign legal entities, and also Russian legal entities that are more than 20 per cent owned by foreign capital, foreign individuals, stateless persons, and also those with dual citizenship, acting jointly and severally, are prohibited from directly or indirectly owning more than 20 per cent of the shares or participation interests of the legal entity that is the founder or editorial office of Russian mass media, or a broadcasting organization. Any other form of direct or indirect management or control is also banned. Any transactions violating these provisions are null and void.

These rules concern first and foremost publishing houses and broadcasting companies;[67] at the same time, however, these rules could have implications for companies in other fields if they publish magazines for customers, press releases, corporate media (e.g., this could apply to retail chains, automobile dealers, and banks). From 4 July 2016 the same restrictions under article 24.2 of the Law on Mass Media apply to a Russian organization authorized by the Russian Federal Service for Supervision of Communications, Information Technology, and Mass Media to conduct researches of volumes of the audience of the television channels (television programs and television shows).[68]

67 As a result, many foreign investors had to restructure their Russian mass media businesses during 2015 in order to comply with these provisions of the Russian mass media law.

68 As a result, TNS Group was forced to sell its Russian subsidiary to the Russian Public Opinion Research Centre.

From 1 July 2017 under article 10.5 (7) of the Federal Law "On Information, Information Technologies, and on the Protection of Information" (the "Information Law") Number 149-FZ, of 27 July 2006 the owner of online audio-visual services (i.e. websites, software, and information systems organizing or creating the distribution of audio-visual works on the Internet) may only be a Russian legal entity or a Russian citizen without dual citizenship.

Foreign states, international organizations, and organizations under their control, foreign legal entities, and Russian legal entities that are more than 20 per cent owned by foreign capital, foreign individuals, stateless persons, and also Russian citizens with dual citizenship, as well as their affiliates, acting jointly and severally, are prohibited from directly or indirectly owning, managing or controlling more than 20 per cent of the shares or participation interests of the Russian legal entity that is the owner of an information resource distributing audio-visual works over the Internet, and which has less than 50 per cent of its audience in Russia out of the total number of users, without an approval by a special Russian government commission.

Aviation

Under article 61(2) of the Aviation Code of the Russian Federation Number 60-FZ, of 19 March 1997 (the "Aviation Code"), the establishment of an aviation company with foreign participation in Russia is only admissible if the foreign stake does not exceed 49 per cent of the charter capital of the aviation company, its chief executive officer is a Russian citizen, and foreign citizens occupy not more than one-third of the positions in its management body.

Gas Transportation and Distribution Pipeline Systems

Under article 7(5) of the Federal Law on Gas Distribution in the Russian Federation, Number 69-FZ, of 31 March 1999, on the purchase and sale of shares of the owners of regional gas-supply systems and the owners of gas-distribution systems, and on the performance of transactions or operations associated with a change in the owners of these shares, the proportion of foreign citizens or foreign organizations may not exceed 20 per cent of the total quantity of ordinary shares of the owners of these systems.

Privatization Law and Golden Share

Acquiring a stake in a Russian corporate joint venture established through privatization in the legal form of a JSC may create a situation for a foreign joint venture partner where the Russian state holding a minority stake in the Russian corporate joint venture may still veto certain resolutions due to its so-called "golden share".

According to article 38(1)1 of the Federal Law on the Privatization of State and Municipal Property, Number 178-FZ, of 21 December 2001 (the "Privatization Law"), the "golden share" is a special right of a state authority to participate in the management of the privatized JSC. In this case, State representatives are

nominated to the board of directors and auditing committee of the JSC and the State holds veto rights on some of the most important agenda issues of the general shareholders' meetings. This right remains in force until the State elects to terminate it (article 38(5)2 of the Privatization Law).

Currency Control Laws and Regulations

Since 2007, the Russian currency control laws and regulations have been significantly liberalized. The Federal Law on Currency Regulations and Currency Control, Number 173-FZ, of 10 December 2003 (the "Currency Law"), divides all persons into two categories for the purposes of currency regulations: residents and non-residents.

Legal entities incorporated in Russia (e.g., a Russian corporate joint venture) fall into the category of residents. Legal entities incorporated outside of Russia or foreign citizens (or stateless persons) without permanent place of residence in Russia (i.e., foreign partners in a Russian corporate joint venture) are deemed to be non-residents.

In general, under article 6 of the Currency Law, all currency transactions between residents and non-residents may be made without any restrictions. This means that payments between the Russian corporate joint venture and a foreign investor having a stake in it (e.g., contributions to the charter capital of the Russian corporate joint venture; dividends and interest payments; and payments under loan, supply, service, distribution, and license agreements) may be made in Russian and/or foreign currency. In contrast, transactions between residents must be performed only in Russian currency, with certain exceptions.

However, as a Russian resident, the Russian corporate joint venture is subject to certain requirements of the Currency Law, including the general requirement to return (repatriate) all proceeds under transactions with non-residents to Russia and to comply with certain formalities in connection with transactions with non-residents (e.g., to open a so-called transaction passport with the Russian bank facilitating the payments under the transaction and to provide certain documentation for these purposes).

Due to the capital flight that Russia has been facing for many years, penalties for the violation of Russian currency laws and regulations are severe and may entail civil, administrative, or criminal liability. For example, non-return or late return of proceeds to Russia or other violations of the Currency Law may be subject to a fine in the amount of the non-returned proceeds or proceeds returned late. If the amount of the non-returned proceeds exceeds RUB 30-million, a person may be imprisoned up to five years.

Labor and Migration Laws

Generally, Russian labor and migration laws do not differentiate between companies with Russian investors only and Russian corporate joint ventures

with foreign investors. However, article 14 of the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation, Number 115-FZ, of 25 July 2002, contains a non-exhaustive list of activities prohibited to foreign nationals. For example, a foreign citizen may not be a captain of a civil aircraft,[69] and there are some additional restrictions on aviation provided for in the Aviation Code.

In addition, Russian migration laws and regulations must be taken into account; these generally require work permits to employ foreign nationals and visas to enter Russia. If work permits or visas are not given or not extended, the Russian corporate joint venture may no longer employ foreign employees, and these foreign citizens may not enter into Russia for the purposes of work and in some cases must leave Russia. This may cause difficulties with the management of a Russian corporate joint venture.

Dispute Resolution

Contractual Joint Ventures

In a contractual joint venture, its parties generally possess a wide range of dispute resolution methods. To resolve disputes between them or their disputes with the contractual joint venture, they may opt for a state court, an arbitral tribunal, or another alternative dispute resolution method (e.g., mediation) inside or outside of Russia. In addition, they may agree on a mixture of these methods.

However, while determining the appropriate dispute resolution method, the parties must always take into account not only the dispute resolution itself but also the options available for the future enforcement of the judgment of the state court or arbitral tribunal, and for interim measures to secure such future enforcement. Generally, this will basically depend on the assets of the other party in the dispute that may be used for the enforcement of the judgment of the state court or arbitral tribunal. If the assets of the other party are primarily located in Russia, the judgment of the state court or arbitral tribunal must be recognized and enforced in Russia. Hence, the main problem is to understand whether the recognition and enforcement of the judgments of the foreign state court or arbitral tribunal face any legal obstacles that may preclude the use of these dispute resolution methods by a party to a contractual joint venture agreement.

Under article 6(3) of the Federal Constitutional Law on the Court System of the Russian Federation, Number 1-FKZ, of 31 December 1996, the international treaties of the Russian Federation determine whether the judgments of the courts of foreign states, international courts, and arbitral tribunals are binding in Russia. The relevant provisions also are contained in other Russian laws. For example, article 241(1) of the Arbitrazh Procedure Code of the Russian Federation (the

69 Due to lack of Russian pilots, however, Federal Law Number 73-FZ, of 20 April 2014, effective from 21 July 2014, provides for a five-year exemption from this restriction.

"Arbitrazh Procedure Code")[70] states that the judgments of the foreign state court or of the foreign arbitral tribunal in commercial disputes may be recognized and enforced by arbitrazh courts in Russia if such recognition and enforcement is provided for by an international treaty of Russia and by a federal law.

Russia has entered into several legal assistance treaties with other countries in civil law cases, providing for the recognition and enforcement of foreign state court judgments. Most of them are bilateral. As of 1 July 2017, such treaties were in force with the following countries: Albania, Algeria, Argentina, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina (under the former treaty with Yugoslavia), Bulgaria, China, Croatia (under the former treaty with Yugoslavia), Cuba, Cyprus, Czech Republic, Egypt, Estonia, Finland (however, not judgments in commercial law cases), Georgia, Greece, Hungary, India, Iran, Iraq, Italy, Kazakhstan, Korea (Democratic People's Republic), Kyrgyzstan, Latvia, Lithuania, Macedonia (under the former treaty with Yugoslavia), Moldova, Mongolia, Montenegro (under the former Yugoslavia treaty), Poland, Romania, Serbia (under the former Yugoslavia treaty), Slovakia, Slovenia (under the former treaty with Yugoslavia), Spain, Tajikistan, Tunisia, Turkmenistan, Ukraine, Uzbekistan, Vietnam, and Yemen. Therefore, generally, the state court judgments of other states will not be recognized and enforced in Russia due to the lack of international treaties in this respect.

Based on the principles of international comity and reciprocity, some foreign state court judgments have recently been recognized and enforced in Russia without the corresponding international treaty.[71] However, in this case, it may be

70 Arbitrazh courts are Russian state courts for the resolution of commercial disputes and certain disputes of legal entities and individual entrepreneurs with state authorities (e.g., tax and customs).

71 For example, judgments of the High Court of Justice of England and Wales, according to Decision of the Federal Arbitrazh Court of Moscow District, Number KG-A40/698-06-P, of 2 March 2006, regarding OAO Petroleum Company Yukos; according to Decision of the Arbitrazh Court of Bashkortostan, Number A07-16859/2013, of 17 March 2014, regarding VIS Trading Co Ltd. (upheld by the Ruling of the Supreme Court, Number 309-ES14-69, of 18 August 2014); according to Decision of Moscow Arbitrazh Court, Number A40-153603/13, of 30 May 2014, regarding Kedart Finance Limited (upheld by the Ruling of the Supreme Court, Number 305-ES14-3869, of 29 October 2014); according to Decision of Moscow Arbitrazh Court, Number A40-34719/14-69-300, of 7 May 2015, regarding Mr. Solodchenko and others (upheld by the Ruling of the Supreme Court, Number 305-ES15-18289, of 1 February 2016); and according to Decision of Arbitrazh Court of Moscow Region, Number A41-32587/14, of 22 June 2015, regarding Ansol Limited (upheld by the Ruling of the Supreme Court, Number 305-ES15-13458, of 5 November 2015); of the District Court of the City of Dordrecht, the Netherlands, according to Decision of the Arbitrazh Court of Moscow Region, Number A41-9613/09, of 8 June 2009, regarding Rentpool B.V. (upheld by the Ruling of the Supreme Arbitrazh Court, Number VAS-13688/09, of 7 December 2009); of the Patents Court of the Chancery Division of the High Court of Justice of England and Wales according to the Decision of Moscow Arbitrazh Court, Number A40-

required to prove that the judgments of Russian state courts are recognized and enforced in the state of the origin of the court judgment, in order for this judgment to be recognized and enforced in Russia.

Russia is a party to the basic multilateral international treaties on the recognition and enforcement of foreign arbitral tribunal judgments, such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 and the European Convention on International Commercial Arbitration of 21 April 1961. Therefore, generally, such arbitral tribunal judgments must be recognized and enforced in Russia. Basically, any civil law matter may be referred to arbitration unless otherwise stipulated by law. Some disputes are exempted from arbitration by law. Under article 33(3) of the Federal Law on Insolvency (Bankruptcy), Number 127-FZ, of 26 October 2002, an insolvency case may not be referred to arbitration.[72]

In some cases, Russian courts may decline to recognize and enforce the judgments of foreign state courts or arbitral tribunals. One reason for this is the exclusive jurisdiction of Russian state courts over disputes with foreign persons provided for by an international treaty of Russia or Russian law. For example, under article 248(1) of the Arbitrazh Procedure Code, Russian arbitrazh courts are exclusively competent for disputes with regard to property owned by the Russian state, including the privatization of state property and the alienation of property for state needs; for disputes regarding the immovable property or title thereto, if it is located in Russia; or for disputes connected with the establishment, liquidation, or registration of legal entities or individual entrepreneurs in Russia, or with the challenge of the resolutions of such legal entities.

119397/11-63-950, of 10 February 2012, regarding Boegli-Gravures S.A. (upheld by the Ruling of the Supreme Arbitrazh Court, Number VAS-6580/12, of 26 July 2012); of the High Court of Justice in Northern Ireland according to the Decision of the Supreme Arbitrazh Court, Number 6004/13, of 8 October 2013, regarding Quinn Group; of the Commercial Court of Zurich according to Decision of the Federal Arbitrazh Court of North-Caucasian District, Number A15-1453/2012, of 14 March 2013, regarding Biscom AG (although the judgment was obviously mistakenly recognized and enforced with the reference to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, it was upheld by the Ruling of the Supreme Arbitrazh Court, Number VAS-4689/13, of 15 April 2013); of the Wakkanai Branch of Asahikawa District court (of Japan) according to the Decision of the Arbitrazh Court of Sakhalin Region, Number A59-954/2016, of 8 June 2016, regarding Marugo Fukuyama Suisan, Co,, Ltd., (although the judgment was again obviously mistakenly recognized and enforced with the reference to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, it was upheld by the Ruling of the Supreme Court, Number 303-ES16-15807, of 30 June 2017).

72 In 2014, the Supreme Arbitrazh Court held that disputes arising out of or in connection with state or municipal procurements may not be settled by referral to arbitration (Decision of the Presidium of the Supreme Arbitrazh Court, Number 11535/13, of 28 January 2014). Hence, it is not quite clear if such disputes may be referred to international arbitration.

It is not clear whether such disputes are precluded from being tried by foreign state courts only or also by arbitral tribunals. Since 2005, the Russian Supreme Arbitrazh Court has consistently held that matters with regard to the state registration of immovable property as matters of public law or other matters falling into the exclusive jurisdiction of Russian state courts may not be referred to arbitration.[73] However, in 2011, the Russian Constitutional Court held that, in respect of immovable property, the provision of article 248(1) of the Arbitrazh Procedure Code is aimed at delimiting the competence of state courts of different states, and precludes the parties from prorogation agreements. Nevertheless, it does not preclude the parties from using alternative dispute resolution methods, in particular, arbitration.[74] Therefore, although disputes regarding which the Russian state courts have exclusive jurisdiction may not be tried by foreign state courts, they still may be referred to arbitration.

Despite the jurisdictional or arbitration clause, a claim may still be raised before the Russian courts if the legal relationship in dispute is closely connected with the Russian territory. For example, article 247(1) of the Arbitrazh Procedure Code contains a non-exhaustive list of the cases in which Russian arbitration courts are competent for disputes with foreign persons, including a dispute out of an agreement performed or to be performed in Russia.

Corporate Joint Ventures

A Russian corporate joint venture is a Russian legal entity. Therefore, certain peculiarities must be taken into account relating to the resolution of disputes between the partners of the Russian corporate joint venture as its stakeholders or parties to a joint venture or shareholders' agreement with regard to the Russian corporate joint venture, as well as between the Russian corporate joint venture and its stakeholders.

Generally, under article 225.1 of the Arbitrazh Procedure Code, corporate disputes, i.e., disputes connected with the establishment of, management of, or participation in, a commercial legal entity, including disputes between the partners of the Russian corporate joint venture as its stakeholders or between them in such capacity and the Russian corporate joint venture itself, fall under the jurisdiction of Russian arbitrazh courts at the place of the state registration of the Russian corporate joint venture. However, if the Russian partner is an individual, in certain cases, the disputes between him/her and another partner of a Russian corporate joint venture or the latter may fall under the jurisdiction of ordinary Russian state courts.

As mentioned above, under article 248(1)5 of the Arbitrazh Procedure Code, Russian *arbitrazh* courts are exclusively competent to consider disputes connected with the establishment, liquidation, or registration of legal entities in Russia, or with the challenge of the resolutions of such legal entities. Such disputes may

73 Information Letter of the Presidium of the Supreme Arbitrazh Court, Number 96, of 22 December 2005, paragraphs 27 and 28.

74 Russian Constitutional Court, Ruling Number 10-P, of 26 May 2011.

not be referred to the jurisdiction of foreign state courts. It is not clear whether other corporate disputes not falling under the exclusive competence of Russian courts may be referred to the jurisdiction of foreign state courts. Generally, there are no explicit limitations in this respect.

The same concerned the reference of corporate disputes within the exclusive competence of Russian courts as well as other corporate disputes to arbitration. In general, the same principles proclaimed by the Russian Constitutional Court in the case of immovable property disputes must be applicable to corporate disputes. However, since 2009, Russian *arbitrazh* courts have consistently construed article 225.1 of the Arbitrazh Procedure Code as giving them exclusive jurisdiction over corporate disputes and have denied the possibility of referring such disputes to arbitration. The Russian Constitutional Court supported this position of Russian *arbitrazh* courts and declined to review a case in which the award of an arbitral tribunal in Russia on a corporate dispute was dismissed by an *arbitrazh* court.[75]

Under the new Russian law on arbitral tribunals (including international commercial arbitration),[76] it is in general possible to refer corporate disputes listed in article 225.1 of the Arbitrazh Procedure Code to arbitration subject to certain limitations. The following is exempted from arbitration: disputes on convening the general meetings of shareholders or participants; disputes arising from the notarization of transactions with participation interests in LLCs; disputes over expelling a shareholder or participant from a company; and disputes related to Strategic Entities under the Strategic Investment Law (other than disputes arising from transactions with shares or participation interests in their charter capitals that do not require pre-completion clearance).

Only institutional arbitral tribunals are allowed to consider corporate disputes. Corporate disputes should in general be considered under corporate dispute arbitration rules that have been approved, deposited with the Russian Ministry of Justice, and posted on the relevant arbitration institution's website.[77] In most cases, Russia should be the seat of arbitration for corporate disputes. Corporate disputes may only be referred to arbitration provided that the company, all the shareholders or participants of the company, and other parties acting as claimants or defendants have concluded an arbitration agreement, which also may be included in the company's charter. However, arbitration agreements that refer corporate disputes to arbitration may only be executed from 1 February 2017.

75 Russian Constitutional Court, Rulings Number 1488-O, of 17 July 2012, and Number 1804-O-O, of 21 December 2011.

76 Federal Laws Number 382-FZ and Number 409-FZ, of 29 December 2015.

77 As of 1 July 2017 only three arbitration institutions have complied with these requirement: the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (see http://mkas.tpprf.ru/en/), the Arbitration Center at the Autonomous Non-Profit Organisation "Institute of Modern Arbitration" (see http://centerarbitr.ru/), and the Arbitration Center at the Russian Union of Industrialists and Entrepreneurs (see https://arbitration-rspp.ru/).

If a corresponding judgment on a corporate dispute is made by a foreign state court outside of Russia or an arbitral tribunal not complying with the above mentioned requirements, Russian courts may decline to recognize and enforce such a judgment due to the fact that it was made in contravention of the exclusive jurisdiction of Russian state courts over disputes with foreign persons provided for by an international treaty of Russia or Russian law.[78] Although such judgment of the foreign state court or arbitral tribunal may still be enforceable outside of Russia, the Russian corporate joint venture or the Russian partner must have assets abroad that may be attached.

Despite the jurisdictional or arbitration clause, a corporate dispute arising out of or in connection with a Russian corporate joint venture may still be raised before the Russian courts, as these may hold such a dispute to fall under the exclusive jurisdiction of Russian courts or to be closely connected with the Russian territory. Due also to these reasons, in many cases, foreign investors prefer offshore or two-tier corporate joint ventures.

Changes in Law Subsequent to Formation

Russian law, as well as its interpretation and application by Russian state authorities and the courts, is subject to rapid and not always consistent changes. Therefore, after starting operations in Russia, a foreign investor or a joint venture in which it participates may find itself in a situation quite different from that anticipated in the initial business plan.

As a general rule, a rule of law that has an adverse impact applies to legal relations that arose after its entry into force and does not affect previously acquired rights and obligations (no *ex post facto* effect). In contrast, a rule of law that mitigates or abolishes liability for offences or improves the status of citizens or organizations has retroactive force. These basic principles are established in the Russian Constitution. Article 54(1) of the Constitution provides that a law introducing or aggravating responsibility may not have retroactive effect. Pursuant to article 54(2)2 of the Constitution, if, after a violation is committed, the responsibility for the violation is eliminated or mitigated, the new law will be applied. Article 57(2) of the Constitution stipulates a special provision for tax laws; such laws introducing new taxes or deteriorating the position of taxpayers may not have retroactive effect. This view has consistently been upheld by the Russian Constitutional Court.[79]

78 For example, the Russian Supreme Arbitrazh Court in its Ruling, Number 7805/12, of 23 October 2012, declined to recognize and enforce the judgment of the District Court of Limassol, the Republic of Cyprus, holding invalid a sale and purchase agreement in respect of participation interests in a Russian limited liability company as well as a resolution of a Russian company in respect of the sale of the participation interests in the Russian limited liability company. The Supreme Arbitrazh Court held the judgment of the District Court of Limassol to be contrary to the Russian *ordre public* and the Russian rules on the exclusive jurisdiction of Russian courts.

79 Rulings Number 7-O, of 18 January 2005, and Number 8-P, of 24 May 2001.

Other laws contain similar provisions. For example, article 5 of the Tax Code contains provisions on when new tax laws enter into force. Under article 5(2) of the Tax Code, laws on taxes and fees which impose new taxes, fees and/or social security contributions; raise tax rates, the amounts of fees and/or social security contributions rates; impose or increase sanctions for breaches of laws on taxes and fees; or establish new obligations for, or deteriorate the situation in any other way of, taxpayers or payers of fees or payers of social security contributions or other parties to relations regulated by laws on taxes and/or fees may not be retroactive.

According to article 5(3) and (4) of the Tax Code, laws on taxes and/or fees which lift or mitigate sanctions for breaches of laws on taxes, fees and/or social security contributions or provide additional guarantees of protection of the rights of taxpayers and payers of fees or payers of social security contributions or tax agents and their representatives, have retroactive effect; and laws on taxes and fees which revoke taxes, fees, and/or payers of social security contributions, reduce tax rates, eliminate obligations of taxpayers, payers of fees, payers of social security contributions, tax agents, and their representatives, or improve their position in any other way, may be retroactive if explicitly provided for therein.

The same applies to Russian civil law. Under article 4(1) of the Civil Code, civil laws may not be retroactive and must be applied toward the relations that have arisen after they are put into force. The operation of the law may be extended toward relations that have arisen before it was put into force only in cases directly stipulated by law.

Pursuant to article 4(2) of the Civil Code with respect to relations that have arisen before the civil law is put into force, it is to be applied toward the rights and duties that have arisen after it was put into force. The relationships of the parties under an agreement signed before the civil law was put into force are regulated by article 422 of the Civil Code.

According to article 422, an agreement must correspond to the rules obligatory for the parties that have been laid down by laws and by other legal acts (the mandatory norms) operating at the moment of its conclusion. If, after the conclusion of the agreement, a law is passed laying down rules obligatory for the parties that differ from those in operation when the agreement was concluded, the provisions of the concluded agreement shall stay in force, with the exception of cases when the law decrees that its action will be extended to relationships that have arisen from agreements concluded at an earlier date. However, this does not generally safeguard an existing joint venture from changes in the legislative and tax framework that may be enacted in and for the future.

Therefore, there is no general stabilization or grandfather clause in Russian law. Nevertheless, some laws, including the Foreign Investment Law, contain such clauses. The wording of the grandfather clause in article 9 of the Foreign Investment Law is, however, both too vague and too complicated. Under article 9(1) of this Law, amendments of import customs duties (except for customs duties aimed at protecting Russian economic interests in foreign commodity trade), federal taxes

(except excise tax and VAT on goods produced in Russia), or social security contributions (except for those to Pension Funds); or amendments in law increasing the total tax exposure of a foreign investor or commercial legal entity with foreign investments implementing priority investment projects; or amendments establishing restrictions or prohibitions as compared to the start of financing of a priority investment project with foreign investment, do not apply to foreign investors and commercial legal entities with foreign investments implementing priority investment projects with foreign investment, provided that the imported goods are used to implement priority investment projects. The grandfather clause applies only to:

- Foreign investors implementing priority investment projects;
- Russian commercial legal entities with foreign investment implementing priority investment projects; or
- Russian commercial legal entities with foreign investment in which the stake of the foreign investors in its charter capital exceeds 25 per cent.

Article 2 of the Foreign Investment Law defines a priority investment project as an investment project with overall foreign investment of at least RUB 1-billion or an investment project with the minimum stake of a foreign investor in the charter capital of a commercial legal entity with foreign investments of RUB 100-million. In either case, the investment project must be also included in the list of priority investment projects of the Russian government. Pursuant to article 9(2) of the Foreign Investment Law, the grandfather clause applies until initial investments have been recouped (however, not more than seven years from the start of the financing of the project with foreign investments). In certain cases, this term may be extended by the Russian government.

According to article 9(4) of the Foreign Investment Law, the grandfather clause does not apply to amendments introduced to protect the foundations of the Russian constitutional system, the morality, health, rights, and lawful interests of third parties, or in order to ensure state defense and security. In practice, there have been only a few cases where the grandfather clause applied. Under article 12(5) of the Subsoil Law, the terms of subsoil usage stipulated by the license remain valid during the periods specified in the license, or for the entire duration of the license's validity. Changes to these terms are permissible only with the consent of the subsoil user and the authorities issuing the license, or in cases provided for by law.

The Federal Law on Production Sharing Agreements, Number 225-FZ, of 31 December 1995 (the "PSA Law"), provides for certain grandfather and stabilization provisions. Under article 17(1) of the PSA Law, the terms of the agreement remain in force during its entire effective term. Amendments to the agreement are permissible only by consent of the parties, or by demand of one of the parties in the event of a material change in circumstances in accordance with the Civil Code. Changes in the terms of the agreement made by agreement of the parties enter into force following the same procedure as the initial agreements.

Pursuant to article 17(2) of the PSA Law, if, during the effective term of the agreement, the laws of the Russian Federation, the laws of constituent subjects

of the Russian Federation, and the legal acts of local government authorities establish norms that deteriorate the commercial results of activity of the investor within the framework of the agreement, amendments will be made to the agreement ensuring that the investor obtains the same commercial results that it would have received from the application of the legislation of the Russian Federation, the legislation of constituent subjects of the Russian Federation, and the legal acts of local government authorities in effect at the time of conclusion of the agreement. The procedure for making such amendments is defined by the agreement.

This provision on the amendment of the terms of the agreement does not apply in cases where the laws of the Russian Federation amend the requirements for safe performance of work, connected with subsoil use, and protection of the subsoil, the environment, and public health as well the standardization rules in that respect, adopted in accordance with standardization legislation, including for the purposes of bringing such requirements and rules into harmony with similar requirements and rules adopted and generally recognized in international practice.

According to article 18(2) of the PSA Law, the regulatory legal acts of federal executive authorities, and the laws of the regulatory legal acts of the constituent subjects of the Russian Federation and legal acts of local self-government authorities, do not extend to the investor if these acts establish limitations on the rights of the investor acquired and exercised thereby in accordance with the agreement, with the exception of the directives of the corresponding supervisory authorities, issued in accordance with the laws of the Russian Federation for the purposes of ensuring the safe performance of work; the protection of the subsoil, environment, and public health; and for the purposes of ensuring public and state security.

The Federal Law on Concession Agreements, Number 115-FZ, of 21 July 2005 (the "Concession Law"), contains a stabilization clause with respect to the concessions agreements to be concluded by Russian state authorities or municipalities. Under article 20(1) of the Concession Law, if, during the effective term of a concession agreement the laws of the Russian Federation, the laws of the constituent subjects of the Russian Federation, or the regulatory legal acts of local government authorities establish norms that worsen the position of the concessionary in such a way that it is to a significant extent deprived of that which it had the right to rely on when concluding the concession agreement, or impose an additional tax burden on the concessionary, the concessor will be required to take measures ensuring the return on investments of the concessionary and the receipt thereby of gross revenue (income from the sale of the goods produced, performance of work, provision of services at regulated prices (tariffs)) in an amount no less than that initially determined by the concession agreement. The Concession Law provides for several measures: the concessor may increase the amount of payments due to the concessionary under the concession agreement, to prolong the term of the concession agreement with the consent of the concessionary, to provide additional state, and municipal guarantees. The procedure for implementing such measures and making the respective amendments must be determined by the concession agreement.

However, pursuant to article 20(2) of the Concession Law, this provision does not apply when amendments are made to technical regulations and other regulatory legal acts of the Russian Federation that govern relations on the protection of the subsoil, the environment, or public health. According to article 20(3) of the Concession Law, if, during the effective term of a concession agreement, in accordance with which the concessionary provides consumers with goods, work, services at regulated prices (tariffs), and/or, taking into account regulated markups on prices (tariffs), norms are established or amendments are made stipulated by article 20(2) and (3) of the Concession Law, the terms of such concession agreement should be amended at the request of the concessionary.

If, during the effective term of a concession agreement, in accordance with which the concessionary provides consumers with goods, work, or services at regulated prices (tariffs), and/or taking into account that regulated markups on prices (tariffs), regulated prices (tariffs), or price markups on prices (tariffs) are established using long-term parameters governing the activity of the concessionary, which do not comply with the parameters stipulated by the concession agreement, under article 20(4) of the Concession Law, the terms of this concession agreement should be amended at the request of the concessionary.

The SEZ Law contains a grandfather clause for companies that entered into a concession agreement with the SEZ administration with respect to unfavorable tax changes during the whole period of the concession agreement. The Industrial Policy Law provides for a grandfather clause for the entire term of a special investment agreement which, however, may not exceed 10 years.

Double-Taxation Agreements

Russia has an extensive network of double-taxation agreements. As of 1 July 2017, double-taxation agreements with the following 83 countries were in force: Albania, Algeria, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Botswana, Bulgaria, Canada, Chile, China, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Iran, Ireland, Israel, Italy, Japan, Kazakhstan, Korea (Democratic People's Republic), Korea (Republic), Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Macedonia, Malaysia, Mali, Malta, Mexico, Moldova, Mongolia, Montenegro (under the former Yugoslavia double-taxation agreement), Morocco, Namibia, The Netherlands, New Zealand, Norway, The Philippines, Poland, Portugal, Qatar, Romania, Saudi Arabia, Serbia (under the former Yugoslavia double-taxation agreement), Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syria, Tajikistan, Thailand, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan, Venezuela, and Vietnam.

There also are double-taxation agreements with the following countries that have not yet become effective for various reasons (e.g., they have not been ratified or the exchange of ratification instruments has not been completed):

Brazil, Ecuador, Estonia, Ethiopia, Georgia, Laos, and Oman. For taxation reasons, Russian tax laws distinguish the profits of a foreign legal entity derived from a so-called permanent establishment in Russia and certain other types of income derived without such a permanent establishment from other sources in Russia (e.g., dividends, interest, and royalties). Profits derived from a permanent establishment in Russia are generally taxed at the same profit tax rates applicable to Russian taxpayers. Income derived without a permanent establishment from other sources in Russia is generally subject to Russian withholding tax at source of income.

Therefore, unless there is a double-taxation agreement providing for a withholding tax reduction or exemption, under article 310(1) of the Tax Code, dividends paid by a Russian company (Russian corporate joint venture) to a foreign shareholder (foreign joint venture partner) are subject to a 15 per cent withholding tax in Russia and most other payments (interest, royalties) are subject to a 20 per cent withholding tax in Russia. The tax in such cases must be withheld by the Russian company (Russian corporate joint venture) effecting the payment.

The double-taxation agreements are generally based on the Organization for Economic Cooperation and Development (OECD) Model Tax Convention on Income and on Capital (the “OECD Model Convention”) and provide for a reduction of the Russian withholding tax rate on dividends, interest, royalties, and other income from Russian sources. Usually, under the double-taxation agreements, Russian withholding tax on dividends is reduced to 10, or even to five per cent if the foreign shareholder qualifies with certain requirements provided for in the respective double-taxation agreement (a certain stake in the Russian company in terms of percentage and/or amount of the charter capital investment).

Other income (interest, royalties) may be fully exempted by the double-taxation agreements from Russian withholding tax. To apply a reduced withholding tax rate or to fully exempt the payments, as the case may be under a particular double-taxation agreement, according to articles 310(2)4 and 312(1) of the Tax Code, the foreign legal entity (the foreign joint venture partner) must provide the Russian company (Russian corporate joint venture) effecting the payments with a document evidencing the tax residence status of the foreign legal entity in a country which has a double-taxation agreement with Russia.

Such document must be certified by the relevant tax or financial authority in the country of its origin, legalized or apostilled (certain countries are exempted from the requirement of legalization or apostille), and translated into Russian. The document must be provided before the payments are effected. Besides that, the foreign legal entity (the foreign joint venture partner) must provide the Russian company (Russian corporate joint venture) effecting the payments with documents evidencing that the foreign legal entity is actually entitled to receipt (i.e., is the beneficial owner) of such income.

One of the recent trends in international tax law is combating tax avoidance and evasion. The Roadmap for the Accession by Russia to the OECD Convention of 2007 provided that Russia must commit to some core tax principles, including

engaging in effective exchange of information between competent authorities according to the 2005 version of article 26 of the OECD Model Convention. For that reason, the Decree of the Russian Government, Number 84, of 24 February 2010, adopted a new Model Agreement on the Avoidance of Double Taxation and the Prevention of Income and Property Tax Evasion.

In addition, Russia acceded to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, offering a wide range of tools for crossborder tax cooperation, including automatic exchange of information, multilateral simultaneous tax examinations, and international assistance in the collection of tax due. Russia is one of signatories of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"). The MLI is designed to prevent the withdrawal of profits from Russia and will make it possible to coordinate efforts to implement the BEPS Plan by approving, on a multilateral basis, changes regarding the mechanism for enforcing existing agreements on avoidance of double taxation, without the need to hold separate bilateral talks on each such agreement. The MLI will apply to 66 double tax treaties concluded by Russia with foreign states. The only exception will be agreements with countries that are not members of the OECD Ad Hoc Group to develop the MLI, as well as agreements with Sweden and Japan as talks are underway to sign new agreements with these countries based on the provisions of the MLI.

Russia is reviewing the existing double-taxation agreements to bring them into compliance with the new developments in international tax law as well. The relevant Protocols to the double-taxation agreements, providing for the exchange of information, were signed with the Czech Republic and Germany in 2007, with Italy in 2009, with Cyprus in 2010 (partially in force), with Luxembourg and Switzerland in 2011, with Armenia in 2014, and with Belgium and China in 2015. Therefore, the provisions of the double-taxation agreements as well as their possible amendments have to be taken into account when structuring a joint venture in Russia.

Protection of Foreign Investors

In General

In addition to protection under Russian law, foreign investors and their investments in Russia may enjoy protection under bilateral international treaties between Russia and other countries as well as under multilateral international treaties to which Russia is a member.

Bilateral International Treaties

As of 1 July 2017, bilateral international treaties with the following 67 countries were in force: Abkhazia, Albania, Angola, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Belgium, Bulgaria, Canada, Cambodia, China, Cuba, Czech Republic, Denmark, Egypt, Equatorial Guinea, Finland, France, Germany, Greece, Hungary,

India, Indonesia, Italy, Iran, Japan, Jordan, Kazakhstan, Korea (Democratic People's Republic), Korea (Republic), Kuwait, Laos, Lebanon, Libya, Lithuania, Luxembourg, Macedonia, Moldova, Mongolia, Montenegro (under the former Yugoslavia bilateral international treaty), The Netherlands, Nicaragua, Norway, Qatar, The Philippines, Romania, Serbia (under the former Yugoslavia bilateral international treaty), Singapore, Slovakia, South Africa, South Ossetia, Spain, Sweden, Switzerland, Syria, Turkey, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, Venezuela, Vietnam, Yemen, and Zimbabwe.

There also are bilateral international treaties with the following countries which have not yet become effective for various reasons (e.g., they have not been ratified or the exchange of ratification instruments has not been completed): Algeria, Croatia, Cyprus, Ecuador, Ethiopia, Guatemala, Namibia, Nigeria, Palestine, Poland, Portugal, Slovenia, Tajikistan, Thailand, United States, and Zimbabwe. Negotiations are being held with Australia, Brunei, Hong Kong, Israel, Malaysia, Mexico, Morocco, Myanmar, Peru, and Saudi Arabia. Negotiations are being planned with Brazil, Chile, Ghana, Iceland, and Oman.

In general, bilateral international treaties contain the usual international legal standards of fair and equitable, national, or most-favored-nation treatment of foreign investments (with certain exceptions); protection against expropriation (with certain exceptions); compensation for expropriation of an investment; guarantee for monetary transfers as repatriation of profits, loans, and interest, liquidation proceeds, compensations and salaries, and other payments; rights of subrogation; as well as dispute resolutions between a foreign investor and Russia as the host state.

The bilateral international treaties with Austria, Belgium, Canada, Finland, France, Germany, Korea (Republic), Luxembourg, The Netherlands, Spain, Switzerland, and United Kingdom were concluded by the former USSR and do not always reflect the modern approach and modern international legal standards of such agreements. Under the modern bilateral international treaties, disputes between the foreign investor and Russia as the host state may be referred at the discretion of the foreign investor either to Russian courts, or to an *ad hoc* arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL),[80] or to the International Center for

80 The following proceedings are currently pending against Russia under the UNCITRAL Arbitration Rules 1976: Aeroport Belbek LLC and Mr. Igor Valerievich Kolomoisky v. The Russian Federation, PCA Case Number 2014-30; PJSC Ukrnafta v. The Russian Federation; Stabil LLC, Rubenor LLC, Rustel LLC, Novel-Estate LLC, PII Kirovograd-Nafta LLC, Crimea-Petrol LLC, Pirsan LLC, Trade-Trust LLC, Elefteria LLC, VKF Satek LLC, Stemv Group LLC v. The Russian Federation; PJSC CB PrivatBank and Finance Company Finilon LLC v. The Russian Federation, PCA Case Number 2015-21; Everest Estate LLC et al. v. The Russian Federation, PCA Case Number 2015-36; NJSC Naftogaz of Ukraine, PJSC State Joint Stock Company Chornomornaftogaz, PJSC Ukrtransgaz, Subsidiary Company Likvo, PJSC Ukrgasvydobuvannya, PJSC Ukrtransnafta, and Subsidiary Company Gaz Ukraiiny v The Russian Federation; all under the Ukraine-Russia BIT; in 2016, the former

Settlement of Investment Disputes (ICSID) established under the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965 (the “Washington Convention”).[81]

Instead of ICSID arbitration, earlier bilateral international treaties provide for arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC). Some bilateral international treaties concluded by the former USSR contain more restrictive provisions with respect to arbitration, providing for a smaller choice of arbitration alternatives and a narrower scope of arbitration (e.g., only claims relating to the amount and modality of the payment of compensation for expropriation). However, in several cases through interpretation of the provisions of the corresponding bilateral international treaties or through application of most-favored-treatment clauses in the corresponding bilateral international treaties and reference to the modern bilateral international treaties, arbitral tribunals have nevertheless recognized their jurisdiction and made awards against Russia.[82]

Multilateral Investment Treaties

Russia is member of certain regional and universal multilateral investment treaties. In the territory of the former USSR, Russia was a member of the Agreement of the Countries of the Commonwealth of Independent States on Cooperation in Investment Activity from the moment of its signing until 2002.

Russian tycoon Mr. Pugachev filed a notice of arbitration under the France-Russia BIT.

81 Although Russia is not a participant of the Washington Convention, disputes under bilateral investment treaties may be settled by the ICSID even in this case, under its Additional Facility Rules. However, at the moment, no disputes in which Russia is a party are being settled by or are pending with the ICSID.

82 *Renta 4 S.V.S.A. et. al. v. The Russian Federation*, SCC Arbitration Institute, Case Number 24-2007, Award on Preliminary Objections of 20 March 2009, paragraphs 44–67; *Sedelmayer v. The Russian Federation*, Arbitration Award of 7 July 1998, at pp. 48–84. Jurisdiction was, however, denied in *Berschader v. The Russian Federation*, SCC Arbitration Institute, Case Number 080-2004, Award of 21 April 2006, paragraphs 151–158. In some cases jurisdiction was first recognized by arbitral tribunals, only to be subsequently denied by Swedish courts during the review of arbitral awards: *RosInvest Co UK Ltd. v. The Russian Federation*, SCC Arbitration Institute, Case Number V 079-2005, Final Award of 12 September 2010, paragraphs 600 and 601, Award on Jurisdiction of October 2007, paragraphs 105–139. However, on 9 November 2011, the Stockholm District Court issued a judgment to the effect that the arbitral tribunal in *RosInvest Co UK Ltd. v. The Russian Federation* lacked jurisdiction. On 5 September 2013, the Svea Court of Appeal upheld the judgment of the Stockholm District Court: *Quasar de Valores SICAV S.A. et. al. v. The Russian Federation*, SCC Arbitration Institute, Case Number 24-2007, Award of 20 July 2012, paragraphs 26–30. The Award was upheld by the judgment of the Stockholm District Court, of 11 September 2014. However, on 18 January 2016, the Svea Court of Appeal issued a judgment to the effect that the arbitral tribunal in *Quasar de Valores SICAV S.A. et. al. v. The Russian Federation* lacked jurisdiction.

After that, it was decided to enter into bilateral international treaties with the former USSR countries. However, later, as a member of the Eurasian Economic Community (EurAsEC), Russia, together with other EurAsEC members, Belarus, Kazakhstan, Kyrgyzstan, and Tajikistan, entered into the Agreement for Promotion and Protection of Investments in the Member States of EurAsEC of 2008, which came into force in January 2016. On 25 May 2014, the EAEU Treaty was entered into by Russia, Belarus, and Kazakhstan; soon afterwards Armenia and Kyrgyzstan also acceded to this Treaty.[83] This Treaty contains as Annex 16 the Protocol on Trade in Services, Establishment, Activities and Investments.

In the area of energy, to develop the declarative European Energy Charter of 1991, the Energy Charter Treaty (the "ECT") was concluded in 1991 and entered into force in 1998. The ECT regulates such issues in the investment sector as the protection of investments based on the application of the national regime and favored treatment status, protection from non-commercial risks, and the settlement of investment disputes. Russia signed the ECT in 1994 but did not ratify it.

Pursuant to article 45 of the ECT, treaty signatories are obligated to apply its provisions on a provisional basis until ratification, to the extent that this is possible within the framework of laws existing in the country. On 20 August 2009, Russia officially gave notice that it did not intend to become a contracting party to the ECT and, under the ECT procedures, 18 October 2009 was the last day of Russia's provisional application of the ECT.[84]

In 1994, Russia and the EU entered into the Partnership and Cooperation Agreement (the "PCA"), which has been in effect since 1997. Although the PCA contains some foreign investment guarantees (national or most-favored-nation treatment, monetary transfers), it does not provide for the settlement of investment disputes. Thus, these issues must be settled under the bilateral international treaties. A replacement agreement has been under negotiation since 2008 and, following that and Russian WTO entry, a more detailed agreement will be negotiated.

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83 The EAEU Treaty has been in force from January 2015. On 10 October 2014, the Republic of Armenia acceded to the EAEU Treaty, and this accession has already become effective. On 23 December 2014, the Kyrgyz Republic acceded to the EAEU Treaty, and became a member of the EAEU on 1 May 2015.

84 During the provisional application of the ECT, three investment arbitration procedures were initiated against Russia: *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, PCA Case Number AA 226; *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, PCA Case Number AA 227; and *Veteran Petroleum Limited (Cyprus) v. The Russian Federation*, PCA Case Number AA 228, resulting in more than USD 50-billion in total damages being awarded to the claimants under the Final Awards of 18 July 2014. However, on 20 April 2016, the Hague District Court issued a judgment to the effect that the arbitral tribunal in *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, and *Veteran Petroleum Limited (Cyprus) v. The Russian Federation* lacked jurisdiction.

On 16 December 2011, after 18 years of negotiations, Russia achieved final agreement on its accession to the WTO and became a WTO member on 22 August 2012. After accession, Russia is generally obliged to comply with all WTO principles and documentation, unless a transition period is otherwise provided for. Russia is a member of the Convention Establishing the Multilateral Investment Guarantee Agency (the “MIGA Convention”), signed in 1985 and in effect since 1988, which is a universal international treaty in the area of protection of foreign investments.

It established the Multilateral Investment Guarantee Agency (the “MIGA”), which provides an investor making investments in a host country with an opportunity to insure (guarantee) against non-commercial risks (risks involving currency transfer, expropriation and similar measures, breach of contract, war and civil disturbance, and default on sovereign financial obligations). If the MIGA pays compensation to the insured investor, it is then permitted to seek reimbursement of such payments from the host country, including conciliation and arbitration procedures. To date, the MIGA has issued 43 guarantees with respect to projects in Russia.