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SWITZERLAND GLOBAL ENTERPRISE

Russia
Legal Provisions

Compiled by:

SBH Russia

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Contents

GENERAL REMARKS

Like Switzerland, the Russian Federation has three levels of government authority: the federal State, the so-called “subjects of the Federation” (republics, regions, etc.), and the municipalities (local self-government). The Russian Federation has more than 80 “subjects” (hereafter “Regions”) and more than 20,000 municipalities.

The legislation of the Russian Federation consists of the Constitution (adopted in 1993, with major amendments in 2020), federal laws and federal constitutional laws, presidential decrees, government resolutions and other regulatory acts. The Regions can enact legislation in those areas which are not within the exclusive authority of the federal State. They can also adopt regulatory acts on matters delegated by federal law. Regional legislation must comply with federal law. International treaties have precedence over national law.

At the federal level laws are adopted by the Parliament (State Duma and Federation Council), presidential decrees and government resolutions by the President, respectively the Government. Other regulatory acts can be issued by ministries, the Central Bank and various government agencies.

As a general rule laws and regulatory acts must be published. Since November 10, 2011, legislation is published (in Russian only), in particular, through the internet portal www.pravo.gov.ru and in “Rossiyskaya Gazeta” (https://rg.ru/doc). Most regulations adopted by ministries and agencies of the executive branch must be registered with the Ministry of Justice. Since July 1, 2010 most court decisions must be published on the internet and can be accessed free of charge through the official websites of the relevant courts (https://ras.arbitr.ru for the commercial courts, https://bsr.sudrf.ru for the courts of general jurisdiction).

No generally accessible systematic compilation of Russian legislation exists. Several commercial firms have compiled Russian legislative databases and offer them for subscription. These databases can be installed on computers or accessed online and are regularly updated. The most widely used are:

1. GARANT
   119234 Moscow
   Leninskie Gory, 1, Bldg. 77
   Moscow State University
   Phone / Fax: +7 495 647 62 38, +7 800 200 88 88
   www.garant.ru

   GARANT also sells English translations of legislation (see http://english.garant.ru)

2. CONSULTANT PLUS
   117 292 Moscow
   Krzhizhanovskogo Street 6 (main office)
   Phone / Fax: +7 495 956 82 83 or + 7 495 787 92 92
   E-mail: contact@consultant.ru
   http://www.consultant.ru (the site also has an English page)

It is possible to access many laws (at least the Russian language versions) free of charge through the sites of both companies. Both companies also offer regular updates on newly enacted legislation. Some Russian legislation can be downloaded from other websites, but care should be taken as the sites are not always up to date.

Substantial information can be found on the official sites of the Russian authorities, most of which can be accessed through http://www.gov.ru (central page in Russian and English, the websites themselves are mainly in Russian, but some ministries and agencies publish quite extensive information in English as well). An increasingly interesting resource is the Public Services Portal of the Russian Federation (www.gosuslugi.ru, mainly in Russian, but has English language page), which is part of the "electronic government concept". Other good sources are https://pravo.ru (private portal) or https://kodeks.ru. Draft laws can be found on the websites of the State Duma and Federation Council (accessible through http://www.gov.ru). There is also a public consultation procedure for draft laws and regulatory acts prepared by the Government and its agencies. Information on the drafts can be found on the web portal https://regulation.gov.ru.

Texts of laws in English can also be provided by the Swiss Business Hub Russia upon request and against payment of a fee.

Good sources for general information on the main legal regulations of business are:

ASSOCIATION OF EUROPEAN BUSINESSES IN THE RUSSIAN FEDERATION (AEB)
https://www.aebrus.ru

AMERICAN CHAMBER OF COMMERCE IN RUSSIA (AMCHAM)
https://www.amcham.ru

DEUTSCH-RUSSISCHE AUSLANDSHANDELSKAMMER
https://russland.ahk.de

Laws and regulations change frequently, often several times within the year. Many changes receive little publicity and are discussed mainly among experts, and most become effective upon publication or soon after publication. Keeping track of changes can be a challenge. Newsletters from big law firms can be a good source of information on changes. Russian legislation is increasingly complex and not always easy to understand and interpret even for professional lawyers.

INTERNATIONAL COOPERATION AND TRADE AGREEMENTS, SANCTIONS AND MEASURES

For a long time Russia remained the sole major economy in the world outside the World Trade Organization. Russia's membership in the WTO took effect on August 22, 2012. By end 2012 the United States in turn repealed the Jackson-Vanik Amendment to the 1974 Trade Act, thereby granting Russia Permanent Normal Trade Relations status.

Russia is a party to the General Agreement on Tariffs and Trade (GATT) and the related multilateral agreements on trade in goods, the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Russia has not joined the WTO Government Procurement Agreement (GPA), but has official observer status. Russia's specific commitments on accession are listed in the Protocol on the Accession of the Russian Federation of December 16, 2011 and its Schedules ("Accession Protocol").

Russia signed an Agreement on Partnership and Cooperation (PCA) with the European Union. The initial ten-year term of the PCA expired in 2007, but the agreement has been tacitly renewed year by year in accordance with its article 106 and remains the legal basis for EU-Russia relations. Negotiations for a new and more comprehensive framework agreement (so-called Partnership for Modernisation) have been stalled due to the Ukraine crisis, and the European Union has suspended most cooperation programs. Targeted measures have been taken against Russia, and a trade and investment ban has been imposed for Crimea and Sevastopol. Switzerland did not implement the measures taken by the European Union, but the Swiss Federal Government adopted regulations which are mandatory for Swiss businesses and intended to prevent the avoidance of the restrictions imposed by the European Union on trade with Russia through Swiss territory. Please refer to the official website of the SECO for the rules and any updates thereof (https://www.seco.admin.ch/seco/de/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-zur-vermeidung-der-umgehung-internationaler-sanktione.html).

In response to the sanctions of Western countries following Russia's involvement in Ukraine Russia decided to restrict the access of foreign products to the Russian market in the agricultural sector. The embargo is rather openly designed to favor local producers, but is not applied to goods from Swiss origin.

Starting in December 2010 the European Free Trade Association (EFTA) – Switzerland, Iceland, Norway and Liechtenstein - and the Customs Union – the Russian Federation, Kazakhstan and Belarus – held eleven negotiation rounds on a free trade agreement (the last in January 2014). These negotiations are currently suspended.

The Russian Federation further seeks full membership in the OECD (negotiations also currently on hold) and strives to enhance its role in other international forums (G20, BRICS countries, Shanghai Cooperation Organization, etc.).

On May 29, 2014 Russia, Belarus and Kazakhstan signed the Agreement on the Eurasian Economic Union (EAEU), which became effective on January 1, 2015, Armenia joined the EAEU with effect from January 2, 2015, Kyrgyzstan from August 12, 2015. The EAEU is modelled on the European Union. Strategically the Eurasian Economic Union replaces the still existent Commonwealth of Independent States (CIS), which includes all former Soviet republics except the Baltic States and Georgia, in the endeavour to reintegrate the economies of former Soviet Republics, the CIS being reduced to a more political role. Under the EAEU Agreement the Eurasian Economic Commission (EEC) has been delegated the authority to enact implementing legislation in various areas. Such legislation is published on the EEC's official websites (http://eec.eaeunion.org).

Customs regulations of the EAEU countries have undergone a harmonization process. As from January 1, 2010 the classification system used by the Russian Federation ("Nomenclature of Goods of Foreign Trade Activity" or TNVED/ТНВЭД) was substituted by the Nomenclature of Goods of Foreign Trade Activity of the Customs Union (today the Nomenclature of Goods of Foreign Trade Activity of the Eurasian Economic Union), a system using ten-digit numbers and ultimately based on the Harmonized Commodity Description and Coding System (HS) of tariff nomenclature of the World Customs Organization. Simultaneously, the Customs Union introduced a Unified Customs Tariff (revised versions of the TNVED and customs tariff were enacted by resolution of the EEC of July 16, 2012 and October 18, 2016). Customs preferences (e.g. for developing countries) and non-tariff measures (import-export licenses, quotas, etc.) have been harmonized to a considerable extent. A new Customs Code of the EAEU became effective as of January 1, 2018 and a new Federal Law "On Customs Regulation in the Russian Federation" on September 4, 2018.

The EAEU introduced the concept of "EAEU Goods" meaning that conformity with applicable technical standards and safety regulations will eventually be confirmed by procedures and documents valid for the entire EAEU (common certificate/declaration of conformity, etc.) based on the relevant harmonized safety

requirements and technical regulations of the EAEU in order to guarantee that products imported to or manufactured in the EAEU can be imported to and sold in any of the EAEU countries without restrictions. EAEU regulations on import or export restrictions, technical standards, quarantine, sanitary and veterinary measures (for explanation see sections on “On Import or Export Regulations”, “Standards, Registration, Certification and Declaration” and “Quarantine, Sanitary and Veterinary Measures”) are progressively incorporated into national law, respectively national law amended and brought into compliance with EAEU regulations, but this process occurs with some delay and inconsistencies.

IMPORT AND EXPORT REGULATIONS

Russia uses the classical instruments (licenses, quotas, exclusive import rights, export control of armaments, weapons and dual-use products, etc.) to control or restrict imports and exports. These instruments are regulated by the EAEU Agreement, in particular its Annexes 7 to 12, resolutions of the Eurasian Economic Commission and, at the national level, by federal law (in particular, Federal Law No. 164 of December 8, 2003 “On Principles of State Regulation of Foreign Trade Activity”). Import and export restrictions do normally not apply to trade between members of the EAEU, and trade restrictions (except provisional measures) should be approved and applied by all five countries jointly (normally through the Eurasian Economic Commission).

A common list of goods prohibited or restricted for import to the EAEU is attached to the Resolutions of the EEC Board No. 134 of August 16, 2012 and No. 30 of April 21, 2015. The following products are prohibited for import: certain types of products responsible for the depletion of the ozone layer, certain types of hazardous waste, of printed and audio-visual material (pornography, etc.), certain pesticides, weapons, munitions and their components, fishing equipment, furs and babies of Greenland seals and live sables.

The following products are restricted for import to or export from the EAEU:

(1) compounds responsible for the depletion of the ozone layer not prohibited for import (import and export licenses or authorizations, cf. Montreal Protocol on Substances that Deplete the Ozone Layer);
(2) pesticides not prohibited for import (product registration, import license or authorization);
(3) hazardous waste not prohibited for import (import and export license or authorization, cf. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal);
(4) mineralogical and paleontological collections (export license or authorization);
(5) wild-growing medical plants (export license or authorization);
(6) certain species of wild animals and wild-growing plants (export license or authorization);

(7) endangered species of wild fauna and flora (import and export in conformity with the Convention on International Trade in Endangered Species or CITES);
(8) endangered species of wild fauna and flora protected by national laws of Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan (export licences or authorizations);
(9) precious metals and precious stones (hallmark/assay control and identification, export licenses, etc.);
(10) minerals (export license);
(11) narcotics, psychotropic substances and their precursors (import and export licenses);
(12) toxic substances (import license or authorization);
(13) new medicines and pharmaceutical substances (registration);
(14) radio-electronic (high-frequency) equipment (import license or authorization unless the product is included in the common register of the EAEU of radio-electronic and high-frequency equipment);
(15) eavesdropping devices and covert information gathering tools (import license or authorization);
(16) encryption devices (import and export license or authorization unless the product is included in the common register of the EAEU of notifications);
(17) cultural values (export license or authorization, cf. also UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property);
(18) human organs, tissue and blood (import and export license or authorization);
(19) service and civil weapons (import and export authorization);
(20) information on subsoil resources (export license);
(21) pesticides and other persistent organic pollutants for use in laboratory research and as a reference standard (implements Stockholm Convention of May 22, 2001 on persistent organic pollutants);
(22) ferrous metals, copper, nickel, aluminium from Belarus (quantitative restrictions on imports and exports);
(23) crude and refined oil, mineral and chemical fertilizers from Belarus, raw cane sugar for import to Kazakhstan (export, respectively import authorization);
(24) natural gas from Russia; fertilizers from Belarus (exclusive export rights);
(25) alcohol products, tobacco and tobacco products, certain fish and seafood products for import to Belarus (exclusive import rights);
(26) certain types of spruce and pine timber from Russia (tariff-rate quotas).

In most cases import or export licenses are granted at the national level (in Russia most licenses are granted by the Ministry of Industry and Trade - Minpromtorg). The indications above are summary, exceptions can exist for certain types of products, import or export by individuals for non-commercial use or imports for a specific purpose (e.g. unregistered medical substances for clinical testing).

Under customs law goods, once imported to a EAEU country, can be moved to another EAEU country without restrictions. This means, for instance, that goods imported to Russia can also be sold in Belarus, Kazakhstan, Kyrgyzstan or Armenia.

CUSTOMS PROCEDURES

Customs regulations are one of the first and main concerns of companies doing business in the Russian Federation.

Goods must be declared upon import from a third country to the EAEU in accordance with the customs procedure selected (e.g. import for internal consumption, temporary admission, etc.). Goods must, as a rule, be declared to Customs by an importer domiciled in an EAEU country. Foreign companies (including their branches and representative offices) can declare goods only in a limited number of cases, but not for general trading purposes. As a rule, goods are declared by the importer or a customs broker ("customs representative"). Customs terminals are located on the boundaries of the big cities at major crossroads or near the borders. When or before the goods cross the border of the EAEU by road the carrier submits to the border authorities basic documentation (in most cases a pre-arrival declaration is required), and the goods then follow under customs control (in transit) to the customs terminal at the point of destination where they are brought to an authorised temporary storage facility and then cleared through Customs. The goods can be cleared through Customs at any terminal (including at the border).

The export and import of goods is, as a rule, subject to the payment of customs duty. The EAEU uses three types of tariffs: the ad valorem tariff (fixed percentage of the value of the goods), specific tariffs (a specific amount of money per unit) and combined tariffs. Ad valorem tariffs generally range between 5% and 20%, but there are also higher tariffs. Tariffs are set for each class of goods based on the Nomenclature of Goods of Foreign Trade Activity and are calculated based on the customs value of the goods.

Imports are further subject to VAT (0%, 10% or 20%). Certain goods such as alcoholic beverages are subject to excise tax. A customs processing fee (customs clearance, customs escort, storage) must also be paid. Customs duty, VAT, excise tax and customs processing fee are collectively referred to as customs payments. Normally customs payments are collected by Customs. However, if the import is not subject to customs control (i.e. within the EAEU), VAT is levied in accordance with Annex 18 to the EAEU Agreement (normally by the tax authority of the country of the importer), and a special VAT declaration must be filed upon the import of goods from a EAEU country.

The list of documents required for customs clearance can be impressive (see, in particular, Article 108 of the Customs Code of the EAEU) and their correct preparation requires experience. These documents should confirm the statements (data) in the customs declaration. Under the Customs Code of the EAEU it is now sufficient that the importer hold these documents for inspection by the Customs if needed, they do no longer need to be submitted automatically for the purposes of the customs clearance.

The main documents are the following:

1. Documents on the Importer:

The importer must register with Customs by submitting the documents confirming its legal status (certificate of registration, tax certificate, articles of association, etc.) when filing the first customs declaration. Registration is required only once.

2. Customs Declaration:

The customs declaration (декларация на товары or ДТ, formerly ГТД) is used to declare the goods to Customs and contains basic information on the goods (description, weight, number of units, etc.), the customs procedure selected, the importer, consignor and consignee, the class (as per the nomenclature of goods) and the customs value of the goods, their country of origin and the carrier. Since January 1, 2011 the same format is used in all EAEU countries. The declaration is normally filed electronically.

3. Declaration of Customs Value:

The declaration of the customs value (ДТС) is integral part of the customs declaration and confirms the value of the goods, which serves as basis for the calculation of customs payments. There exist various methods to calculate the customs value (including for the case where the exporter and importer are associated entities), and Customs can request additional documentation depending on the method used. The customs value includes the cost of transport and other costs related to the import.

The same format is used within the Customs Union since January 1, 2011, and the Customs Code of the EAEU, Resolution of the EEC Board of October 16, 2018 No. 160, Federal Law “On Customs Regulation in the Russian Federation”, etc. define how the customs value must be calculated by the importer and in which cases the value can be adjusted by Customs.

4. Transport Documents:

These depend on the type of transport (road, rail, air, sea): bill of lading, FIATA bill of lading (combined transport bill of lading), railway bill, airway bill, truck waybill (CMR).

5. Commercial Documents:

The commercial documents (contract, commercial invoice, pro forma invoice, insurance certificate, etc.) are important for the calculation of the customs value. The contract (foreign trade transaction) also confirms the importer’s title to the goods.

6. Certificate of Origin:

A certificate or declaration of origin is required to benefit from preferential customs tariffs or in other cases where the origin of the goods has significance for the calculation of customs payments, the application of non-tariff measures or measures to protect the domestic market, technical regulations, sanitary, veterinary or phytosanitary measures or otherwise. Certificates of origin are issued by special institutions in the country of the manufacturer.

7. Certificate/Declaration of Conformity, Import License, etc.:

In many cases the importer needs documents confirming that the goods are admitted for import into the territory of the EAEU, respectively the Russian Federation (see, in particular, Resolution of the EEC Board No. 294 of December 25, 2012 “On the Regulation on Import Procedures to the Customs Union Customs Territory of Products (Goods) Subject to Compulsory Requirements Within the Frame of the Customs Union” for confirmation of conformity to technical standards). For further information see sections on “Import and Export Regulations”, “Standards, Registration, Certification and Declaration” and “Quarantine, Sanitary and Veterinary Measures”.

8. Deal (Transaction) Passport:

The deal or transaction passport was a document issued by the Russian bank of the importer and required under Russian exchange control regulations to monitor cross-border payments. Transaction passports have been abolished as of March 1, 2018, but importers are still required to report foreign exchange transactions and payments abroad to their bank (for details see CBR Instruction of August 16, 2017 No. 181-I). Contracts must, inter alia, define the time period for the performance of the delivery and payment obligations.

9. Sales Contract:

Until 2013, foreign trade contracts (contracts for the cross border delivery of goods or services) were considered void unless in writing. The written form is still required for contracts with Russian companies although failure to respect the written form no longer causes the contract to be null. In practice, a written contract will in most cases be used. It is common usage to use two-column bilingual versions. If there is no Russian language version authorities normally require a translation.

Certain goods (e.g. goods subject to excise tax, goods containing precious metals or precious stones) can be cleared only through specific Customs terminals. This is, in particular, the case for goods imported based on ATA Carnets. Russia is a party to the 1961 Customs Convention on the ATA Carnet for the

temporary admission of goods (ATA Convention) and of the 1990 Istanbul Convention on Temporary Admission. ATA Carnets can be used for the goods listed in Annexes B.1, B.2, B.3, B.5 and with some reserves B.6 to the Istanbul Convention (goods for display or use at exhibitions, fairs, meetings or similar events; professional equipment; containers, pallets, packing, samples or other goods imported in connection with a commercial operation; goods imported for educational, scientific or cultural purposes, goods for sport events). The ATA Carnet must comply with the provisions of Annex A to the Istanbul Convention. Temporary admission of the goods is granted with full conditional relief from import duties and taxes, but subject to restrictions and prohibitions on imports. The Customs terminals habilitated to accept ATA Carnets are currently listed in an Annex to Order of the Ministry of Finance No. 223n of December 11, 2019. There are such Customs terminals, in particular, at the main Moscow airports (Sheremetyevo, Domodedovo and Vnukovo). The ATA Carnet takes the place of the customs declaration. It must be drafted in the English, French or Russian language, and Customs can require the general list of goods to be translated into Russian. Further details can be found in the "Methodological Recommendations" approved by Order of the Federal Customs Service No. 2675 of December 28, 2012. Persons using ATA Carnets should have experience in doing so.

Substantial information can be found on the official site of the Federal Customs Service of the Russian Federation (www.customs.ru), which contains a quite extensive section in English.

QUARANTINE, SANITARY AND VETERINARY MEASURES

Quarantine measures are regulated by Annex 12 of the EAEU Agreement and the Decision of the Customs Union Commission No. 318 of June 18, 2010. The latter contains a list of products subject to quarantine measures and defines the applicable procedures. The safety of products representing a high phytosanitary risk must be confirmed by a phytosanitary certificate issued in conformity with the International Plant Protection Convention of the Food and Agriculture Organization of the United Nations.

Sanitary measures are regulated by Annex 12 to the EAEU Agreement, applicable technical regulations and the Decision of the Customs Union Commission No. 299 of May 28, 2010. The latter defines the list of products subject to sanitary control ("controlled products"), common sanitary-epidemiological and hygienic requirements for these products, the form of the certificates confirming product safety (the certificate is regulated, as of June 1, 2019, by Decision of the EEC Board No. 80 of June 30, 2017) and regulates the sanitary control of persons and vehicles at the borders and within the EAEU. The controlled products include foodstuffs, goods for children, perfumery and cosmetic products, household chemicals, products in contact with the skin (clothes, shoes, etc.), tobacco products, pesticides, etc. (the controlled products are defined by reference to the Nomenclature of Goods of Foreign Trade Activity).

Veterinary measures are regulated by Annex 12 of the EAEU Agreement, technical regulations and the Decision of the Customs Union Commission No. 317 of June 18, 2010. The latter defines the list of products subject to veterinary control ("controlled products"), common veterinary requirements for these products, the form of the veterinary certificates confirming product safety and regulates the veterinary control of persons and vehicles at the borders and within the EAEU. The controlled products include live animals, meat, fish, seafood, milk and milk products (cheese, etc.), eggs, honey and other products of animal origin. Imports are authorized on the basis of an import authorization and of a veterinary certificate of the country of origin. Import authorizations are delivered to suppliers included in the register of companies from third countries. These registers can be accessed through http://eec.eaeunion.org/en/Pages/default.aspx or the website of the competent Russian authority, Rosselkhoznadzor, the Federal Service for Veterinary and Phytosanitary Surveillance (https://www.fsvps.ru). Suppliers are included in the register following an inspection of their production site by representatives of Rosselkhoznadzor. The products are further subject to a veterinary inspection at the Russian border. The website of Rosselkhoznadzor contains detailed per country information on the import-export situation (for Switzerland https://www.fsvps.ru/fsvps/importExport/switzerland/index.html?_language=en).

STANDARDS, REGISTRATION, CERTIFICATION AND DECLARATION

Foreign goods enjoy national treatment, which means that they are subject to the same safety requirements (pharmacological, sanitary, phytosanitary, veterinary, ecological and other) and technical standards as those which apply to analogous goods of Russian origin.

Safety requirements and technical regulations still represent a major barrier for trade with Russia. While it is the declared political intention to bring national standards into line with international standards Russian national standards and verification procedures in many cases still diverge from other national, regional or international standards (e.g. ISO standards) and, as a rule, foreign (EU, U.S., etc.) certificates are not accepted in Russia although they can facilitate the national approval of the product (officially over 70% of Russian standards are said to be in line with international practice). It is therefore important to ensure that products are properly approved before selling to the Russian Federation. The absence of the necessary approval can lead to delivery delays and contractual liability of the exporter. Product conformity to compulsory standards and other mandatory requirements is controlled by Customs upon import, but also within Russian territory when the product is sold or used, for instance in construction.

The Federal Law No. 184 of December 27, 2002 "On Technical Regulation" was meant to streamline and overhaul national standards and to ensure the passage from a mandatory certification system to a modern system based on self-declaration. Russia is currently harmonizing the safety requirements and technical standards at the supranational level (EAEU). Ultimately all standards, product certification requirements and verification procedures should be set forth in technical regulations enacted at the EAEU level or, where no such regulations have been enacted, in technical regulations enacted at the national level under Federal Law No. 184. GOST R standards and other national standards enacted before Federal Law No. 184 became effective remain mandatory until replaced by technical standards if in compliance with the purposes defined by the law (protection of life, health and property and of the environment, energy and resource efficiency and consumer protection). Technical regulations, international, supranational and national standards are published on https://www.rst.gov.ru/portal/gost.

In numerous cases compliance with standards or, after their enactment, technical regulations must be confirmed. Russian law and EAEU regulations distinguish between:

- registration of a product (admission to a state register confirmed by a certificate of registration), the strictest type for products causing potentially the biggest harm;
- mandatory confirmation of conformity (product certification) in the form of a certificate of conformity (for products causing potentially medium harm), or a declaration of conformity (causing potentially modest harm);
- voluntary confirmation of conformity (conformity with non-mandatory standards).

Product tests conducted by certification bodies or laboratories accredited in one of the EAEU States are recognized throughout the EAEU. In the absence of technical regulations or other mandatory requirements at the EAEU level, national technical regulations and other safety requirements continue to apply. Information on mandatory (mainly GOST R system) and voluntary certification systems can be found on https://www.rst.gov.ru/portal/gost.

The following types of **registrations** exist:

Sanitary product registration means that a specific product must be registered before it can be imported to or manufactured in Russia, respectively the EAEU (the common register of registration certificates of the EAEU can be accessed through http://eec.eaeunion.org/ru/act/texnreg/Pages/default.aspx, Section “Department for Sanitary, Phytosanitary and Veterinary Measures”). Registration is **required for new or modified products** (only upon first import). Registration includes product testing. Product registration is a sanitary measure required under the law (see article 43 Federal Law “On the Sanitary and Epidemiological Well-Being of the Population” of March 30, 1999 No. 52 as concerns **chemical and biological**

substances and products manufactures on their basis and other types of products potentially dangerous for humans) and/or applicable technical regulations. As of May 1 ,2020 the registration of food products is regulated by the EAEU Technical Regulation “On the Safety of Food Products”.

Registration of medicines: Only registered medicines can be imported and sold. Since January 1, 2012 no import license is required. In Russia certificates of registration have been issued under Federal Law No. 61 of April 12, 2010 “On the Circulation of Medicines” by the Ministry of Healthcare. Today the trade of medicines is regulated by an international agreement of the EAEU as of February 12, 2016; the Resolution of the EEC Council No. 78 of November 3, 2016 provides for the registration of medicines at the EAEU level, which will become mandatory after January 1, 2021. National certificates of registration issued prior to January 1, 2021 will remain valid until December 31, 2025. The common register of registered medicines of the EAEU can be accessed through http://eec.eaeunion.org/ru/act/texnreg/Pages/default.aspx, Section “Department for Technical Regulation and Accreditation”, the national register through https://grls.rosminzdrav.ru/Default.aspx.

Registration of medical products: Only registered medical devices can be imported and sold. In Russia certificates of registration have been issued under article 38 Federal Law “On the Sanitary and Epidemiological Well-Being of the Population” of March 30, 1999 No. 52 and the Decree of the Government of the Russian Federation No. 1416 “On Approval of the Rules for State Registration of Medical Devices” dated December 27, 2012. The institution responsible for the regulation of medical devices in Russia is the Federal Service for Surveillance in Healthcare (Roszdravnadzor), which uses the same risk-based classification model as countries belonging to the European Union: medical devices are categorized into the following classes: Class I, Class IIa, Class IIb, and Class III. Class I medical devices are associated with the lowest risk and Class III devices are associated with the highest risk. Today the trade of medical devices is regulated by an international agreement of the EAEU of December 23, 2014; the Resolution of the EEC Council No. 46 of February 12, 2016 provides for the registration of medical devices at the EAEU level, which will become mandatory after December 31, 2021. National certificates of registration will remain valid until the same date. The common register of medical devices registered within the EAEU framework can be accessed through http://eec.eaeunion.org/ru/act/texnreg/Pages/default.aspx, Section “Department for Technical Regulation and Accreditation”, the national register through https://roszdravnadzor.gov.ru/services/misearch.

Mandatory **product certification** in many cases still takes the form of a **certificate of conformity**. Certificates of conformity are delivered by an accredited certification body based on a test evaluation of the product.

For some products a **declaration of conformity** can be used instead of a certificate of conformity. The declaration of conformity is issued by the manufacturer or importer and confirms that the product meets applicable technical and safety standards. A declaration of conformity can be based on the manufacturer's own test results or tests made by an accredited certification body or test laboratory. It must be issued according to the enacted template and registered with an accredited certification body. Ultimately declarations of conformity should replace certificates of conformity in the majority of cases and make redundant testing a thing of the past.

Both certificate and declaration of conformity show that the product comply with the relevant technical regulations or standards.

The following **technical regulations** have been **approved at the EAEU level** (based on national, regional and/or international standards):

- lifts (in force as from February 15, 2013);
- machinery and equipment (in force as from February 15, 2013);
- wheeled vehicles (in force as from January 1, 2015);
- production of light industry (in force as from July 1, 2012);
- furniture (in force as from July 1, 2014);
- food (in force as from July 1, 2013);
- food labelling (in force as from July 1, 2013);
- packaging safety (in force as from July 1, 2012);
- fruit and vegetable juices (in force as from July 1, 2013);
- grain (in force as from July 1, 2013);
- products for children and teenagers (in force as from July 1, 2012);
- toys (in force as from July 1, 2012);
- perfumes and cosmetics (in force as from July 1, 2012);
- butter and fats (in force as from July 1, 2013);
- specialized food including clinical and dietary (in force as from July 1, 2013);
- food additives, flavourings and technological aids (in force as from July 1, 2013);
- milk and diary products (in force as from May 1, 2014);
- meat and meat products (in force as from May 1, 2014);
- small vessels (in force as from February 1, 2014);
- railway cars (in force as from August 2, 2014);
- high speed trains (in force as from August 2, 2014);
- railway infrastructure (in force as from August 2, 2014);
- automobile roads (in force as from February 15, 2015);
- fuel (in force as from December 31, 2012);

- lubricants (in force as from March 1, 2014);
- pyrotechnical products (in force as from February 15, 2012);
- explosives (in force as from July 1, 2014);
- equipment for work in explosive environments (in force as from February 15, 2013);
- devices working on gas-like fuel (in force as from February 15, 2013);
- personal protective equipment (in force as from June 1, 2012);
- electromagnetic compatibility of technical appliances (in force as from February 15, 2013);
- low voltage equipment (in force as from February 15, 2013);
- equipment working under excessive pressure (in force as from February 1, 2014);
- agricultural and forestry tractors (in force as from February 15, 2015);
- tobacco products (in force as from May 15, 2016);
- liquefied hydrocarbonic gases for their use as fuel (in force as from January 1, 2018);
- dangerous substances in electro- and radio-technical devices (in force as from March 1, 2018);
- amusement rides (in force as from April 18, 2018);
- mineral fertilizers (not yet in force);
- fish and fish products (in force as from 1 September 2017);
- equipment for children's playgrounds (in force as from November 17, 2018);
- chemical products (will enter into force on June 2, 2021);
- fire safety equipment and fire extinguishers (in force as from January 1, 2020);
- packaged drinking water including natural mineral water (in force as from January 1, 2019);
- oil prepared for transportation and/or use (in force as from July 1, 2019),
- safety of the natural combustible gas prepared for transportation and (or) use (will enter into force on January 1, 2022),
- safety of alcohol products (will enter into force on January 9, 2021);
- energy efficiency of power consuming devices (will enter into force at the earliest on September 1, 2021).

Other important technical regulations of the EAEU (poultry, animal fodder, household cleaning products, paint, coatings and solvents, buildings and building material, coal, products in contact with food, products for emergency situations and civil defense, pipelines for hydrocarbons, high voltage equipment, metro cars, tramways and others) exist in draft form and/or are in preparation. Technical regulations of the EAEU are approved by resolution of the Eurasian Economic Commission based on drafts prepared by a designated member country. All technical regulations and drafts are published on http://eec.eaeunion.org, Section "Department for Technical Regulation and Accreditation".

As per mid-2020 the following **technical regulations** (published on https://www.rst.gov.ru/portal/gost) are effective **at the national level (Russian Federation)**:

- buildings and constructions;

- gas distribution and consumer networks;
- maritime transport;
- river and lake transport;
- fish and fish products (definitively replaced by EAEU Technical Regulations as of January 1, 2021),
- pesticides, animal fodder, household cleaning products, paint, coatings and solvents (see Government Resolution No. 132 of March 9, 2010 on the partial application of technical regulations enacted by Kazakhstan).

Where technical regulations exist at EAEU level product conformity is confirmed by a certificate, respectively declaration of conformity to the relevant technical regulations issued in the EAEU format (list approved by Decision of the Commission of the Customs Union No. 620 of April 7, 2011). These are valid throughout the entire EAEU. For other products a certificate, respectively declaration of conformity in the national format is required. Finally, there exists a common list of products (Decision of the Commission of the Customs Union No. 526 of January 28, 2011) for which mandatory requirements can be established at the EAEU or national level. In those areas where requirements have been harmonized within the EAEU, but no supranational instruments have been enacted national certificates are recognized throughout the EAEU. Technical regulations provide for transitory periods.

Products requiring a certificate of conformity, respectively a declaration of conformity are further listed in attachments to Resolution No. 982 of the Russian Government of December 1, 2009. More detailed lists can be found on https://www.rst.gov.ru/portal/gost/home/activity/compliance/requiredcompliance. In all other cases certification of conformity is voluntary. The registers of certificates and declarations of conformity can be accessed through https://www.fsa.gov.ru (Russian register) and http://eec.eaeunion.org (registers at EAEU level). At the level of the EAEU the EAC Sign or Mark of Conformity is used to confirm compliance with EAEU technical regulations, at the national level the GOST R Sign or Mark of Conformity within the GOST R certification system and a slightly different Sign or Mark of Conformity for conformity with approved technical regulations. Voluntary certification systems can register their own mark of conformity (there is, for instance, a GOST R Mark or Sign of Conformity for voluntary certification).

Special standards exist in the building industry (formerly called SNiPs, cf. Federal Law No. 384 of December 30, 2009 “Technical Regulation on the Safety of Buildings and Constructions”) and some other areas. There are also other product requirements which must be taken into account (e.g. **approval for telecom equipment and devices** by Rossvyaz pursuant to article 41 Federal Law No. 126 of July 7, 2003 “On Communication”; **Pattern Approval Certificate for Measuring Instruments** cf. Federal Law No. 102 of June 26, 2008 “On Ensuring Uniformity of Measurements”, see https://fgis.gost.ru/fundmetrology/registry). **Sanitary and hygienic standards** (called SanPINs) are administered by the Federal Service on Consumer Rights Protection and Human Wellbeing

(Rospotrednadzor) under Federal Law No. 52 of March 30, 1999 “On the Sanitary and Epidemiological Wellbeing of the Population”.

Federal Law of July 31, 2020 No. 247 “On Mandatory Requirements in the Russian Federation” (effective as of November 1, 2020) will regulate most mandatory requirements for commercial activity other than compliance with technical standards. The law introduces a so-called “regulatory guillotine”, pursuant to which all regulatory acts on mandatory requirements issued prior to January 1, 2020 will automatically lose legal force unless they will have been included in a list of requirements to be approved by the Government under the new law. Federal Law of July 31, 2020 No. 248 “On Government Control (Surveillance) and Municipal Control” will regulate how compliance with mandatory requirements will be controlled by government and municipal agencies (the law will enter into force as of July 1, 2021).

The Federal Agency on Technical Regulation and Metrology (Rosstandart, https://rst.gov.ru/portal/gost, formerly Gosstandart), an agency of the Ministry of Industry and Trade, manages the national certification system, which comprises certification bodies and test laboratories (the registers of certification bodies and test laboratories accredited to issue national (GOST R) and/or EAEU certificates can be accessed at the national level through www.fsa.gov.ru and at the EAEU level through http://www.eurasiancommission.org (Section “Department for Technical Regulation and Accreditation”).

Russia participates through Rosstandart in the following international certification systems (among others):

- International Organization for Standardization (ISO, http:/(www.iso.org)
- Certification of electrical and electronic equipment (IEC or International Electrotechnical Commission, www.iec.ch);
- OIML Certificate System for Measuring Instruments (www.oiml.org);
- Certification of passenger cars, trucks, buses and other transport vehicles (1958 Agreement of the United Nations Economic Commission for Europe concerning the adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be fitted and/or used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions, www.unece.org);
- Testing of hand guns and ammunition (1969 Brussels Convention for the reciprocal recognition of proof marks on small arms).

Sales contracts with Russian importers should deal with the issue of registration and certification and clearly define which party bears the related cost and responsibility. It is generally easier to certify products locally than from abroad, and the Russian importer may be better qualified to deal with certification issues.

However, certificates obtained in the name of a local distributor are valid only for use by such local distributor. Therefore, if the foreign manufacturer wishes to control Russian distribution channels it may be worthwhile obtaining the certificate though a local certification agent (foreign companies can normally not apply directly for certificates). The local agent is then responsible for product compliance. Declarations of conformity can be issued only by a local entity and not by the foreign manufacturer. Specialist advice should be sought to identify the optimal solution.

Care should be taken to select a professional provider of certification services.

Useful links:

SGS (www.sgs.ru), Sercons (https://serconsrus.com), Zentrum | Certification (www.certification-russia.ru), etc. (numerous other service providers can be found through the internet)

Sources of information :

Rosstandart https://www.rst.gov.ru/portal/gost
ROSTEST www.rostest.ru
Research Institute for Certification www.vniis.ru
Standardinform www.standards.ru

PRODUCT LIABILITY AND CONSUMER PROTECTION

Under Russian private international law the person having suffered damage can choose, when filing a legal action, between (i) the law of the domicile of the manufacturer or seller of the goods; (ii) the law of his own domicile or place of business; (iii) the law of the country where the goods or services were delivered unless (for ii. and iii.) the manufacturer proves that he did and could not foresee that the goods would be delivered to such country. Russian courts have jurisdiction whenever the damage occurred in Russia. Foreign exporters must therefore assume that product liability claims governed by Russian law can be filed against them with a Russian court.

The provisions of the Civil Code on product liability apply mainly if the goods or services were purchased for an individual's personal use, i.e. for consumer and not for commercial purposes. Product liability covers damage to life, health or property caused by defects of the goods or services or inaccurate or insufficient product information. The person suffering the damage can sue either the seller or the manufacturer. Claims must be submitted within the shelf life or operating life (life-span) of the product if the manufacturer or seller defined the period during which the product can be consumed or used; in all other cases the limitation period is ten years from the manufacturing date. No limitation period applies if the life-span of the product

was not defined in breach of applicable regulations or if the manufacturer, respectively seller did not provide the consumer with correct and complete information about the product, in particular did not warn the consumer how to dispose of the product upon expiry of its life-span. The manufacturer and seller are not liable if they can prove that the damage is due to circumstances of force majeure or to the fact that the consumer did not respect the rules for the use and storage of the product.

The Law “On the Protection of Consumers’ Rights” grants the consumer additional rights. Under said law product liability and warranty claims can be filed by consumers (individuals) against the retail seller, the importer, the manufacturer or the agent appointed by the manufacturer or importer (distributor) to deal with such claims. Consumers can demand, in particular, replacement of the defective product, a reduction of the price, the elimination of defects, compensation of their expenses to have defects eliminated and/or damages. They can also return the product and demand reimbursement of the price. Under the law manufacturers or sellers define the shelf life (perishable goods such as food, cosmetics, etc.) or a warranty period (other goods). If the warranty period is less than two years, claims can still be submitted if the consumer proves that the defect existed upon delivery. Even after the expiry of two years the consumer can demand the elimination of essential defects if he proves that they existed upon delivery. The law sets rather severe deadlines for dealing with consumer claims. If such deadlines are not complied with, the consumer can demand payment of a fine equal to 1% of the product price per day of delay.

Similar rules are set by the provisions of the Civil Code on retail sales contracts with consumers (individuals). Most of these provisions are mandatory, i.e. apply even if the parties agreed otherwise in their contract. However, unlike the consumer protection law the provisions on the retail sale contract apply only between the contractual parties (consumer and retail seller).

PRODUCT DOCUMENTATION AND LABELLING REGULATIONS

Products imported to Russia, in particular consumer products, must be accompanied by specific documentation (e.g. user and warranty manuals, technical passports, safety warnings, etc.), marked and labelled in accordance with local regulations. As a rule, all documentation and labels must be in the Russian language. The Law No. 2300-I of February 7, 1992 “On the Protection of the Rights of Consumers” defines extensive information rights for consumers. Product information must include, in particular:

- the applicable technical regulation or standards and a reference to the confirmation of conformity with such regulation or standard including the issuer, number and validity of the certificate or declaration of conformity (where applicable);

- the main consumer characteristics (for food products ingredients, additives, GMOs, nutritional value, conditions of use and storage, weight, manufacturing place and date, etc.);
- the price in RUB and other purchase conditions;
- the warranty period or shelf-life (where applicable);
- information on energy efficiency (where applicable);
- the name and address of the manufacturer or importer.

Documentation and labelling requirements are further specified in the applicable technical standards, technical regulations and other documents (including, for instance, Decision of the Customs Union Commission No. 299 of May 28, 2010 on sanitary measures). Products subject to compulsory confirmation of conformity (product certification) must be marked by the relevant Sign or Mark of Conformity.

Following changes to Federal Law No. 381 of December 28, 2009 “On the Principles of the State Regulation of Trade Activity in the Russian Federation” in 2017-2018 (effective as of January 1, 2019) the Government has been authorized to introduce mandatory labelling of goods in machine readable format (special bar code identification and similar) in order to protect human life and health, public morals and order, environment, animals and plants, cultural values, to perform international obligations and(or) to procure for the defense and safety of the country. The relevant lists of goods have been approved by Government Order No. 792-r of April 28, 2018 and include tobacco products, perfume and cologne, tires, certain items of clothing, shoes, linen/textiles for beds, tables, kitchen and bathroom, photo cameras and flashes, milk products. The labelling rules, defined by the Government, are effective for all these products except milk products (rules for milk products will become compulsory in the course of 2021). The new system is purportedly intended to restrict the trade in counterfeit products and is managed by an entity (operator of the government monitoring system) appointed by the Government (Center for Research in Perspective Technologies, https://crpt.ru).

COMMERCIAL LAW

Contracts:

Russia acknowledges the freedom of contracts, i.e. as a rule parties are free to enter into contracts and to define their content and terms. The law of contracts is set out in Part I and Part II of the Civil Code. Part I contains the general principles of contract law, Part II regulates specific types of contracts such as sales, lease, service, loan agreements, etc. The system is similar to the Swiss Code of Obligations. There is a distinction between mandatory provisions and non-mandatory provisions of contract law. Mandatory provisions apply to contracts regardless of what the parties agree, non-mandatory provisions can be

replaced by the rules agreed between the parties in their contract (they apply unless the parties agree otherwise). Rules of Russian contract law tend to be mandatory more frequently (or at least people tend to consider that they are mandatory more frequently) than is the case under Swiss law. Pursuant to a Decision of the Supreme Commercial Court of March 14, 2014 “On the liberty of the contract and its limits” a legal provision should be considered mandatory only if the law explicitly states so. In all other cases the mandatory character of the provision should not be assumed.

The Russian Civil Code defines a number of contracts which are not specifically regulated by the Swiss Code of Obligations (e.g. bank account agreement, franchise agreement), while certain contracts known to the Code of Obligations (e.g. brokerage agreement) are not specifically regulated by the Russian Civil Code. Contracts can also be regulated by other federal laws (e.g. concession contracts cf. Federal Law No. 115 of July 21, 2005 “On Concession Contracts”) or by both the Civil Code and a federal law (e.g. financial leasing cf. articles 665-670 Civil Code and Federal Law No. 164 of October 29, 1998). The fact that a contract is not specifically regulated can lead to legal uncertainties (e.g. cooperation agreements). However, there are clearly established practices in many areas, and well-tested templates are available and used for most transactions (sales, leases, etc.).

Parties to international contracts can normally choose the law governing their relationship. Conflict of law rules are set forth in Section 6 of Part III of the Civil Code on private international law.

Employment agreements are not regulated by the Civil Code, which means that most general principles of contract law do not apply to employment.

Tax law has a big impact on practice, and it happens rather frequently that certain wordings or provisions are rejected or added by the parties for reasons related to tax or tax reporting. Agency and service agreements, in particular, can be rather sensitive from a tax perspective. Care should also be taken to obtain a minimum of information / documentation on contractual parties; tax liability can arise, for instance, if the contractual party does not fulfil its own tax obligations (so-called one-day firms or in general bad-faith taxpayers). It is therefore standard for Russian contracts to clearly identify the parties, complete with tax identification number, address and bank account references. Recently, it has also become more and more frequent to include representations/warranties on tax compliance in contracts.

The Civil Code has been undergoing a major revision in several stages during the past years.

Distribution agreements:

Distribution agreements are the classical instrument to enter the market without establishing a local subsidiary. Distributors can have quite extensive functions including, for instance, warranty and after-sales

service. Distribution agreements are not specifically defined by the Civil Code, but are used very frequently and do not normally give rise to particular problems. They can be governed by Russian or foreign law as the parties choose. The parties are free to agree on contract duration and termination. Distribution agreements can be for a definite or indefinite term, exclusive or non-exclusive. Russian law does not prescribe a specific notice period for termination, nor provide for an indemnity payment at the end of the contract.

Distribution agreements are so-called vertical agreements and should be reviewed for their compliance with antitrust (competition) law. As a rule, vertical agreements are permitted provided that none of the parties holds more than 20% of the market share for the relevant product in the market covered by the agreement. Above the 20% level restrictive covenants are prohibited if they can or do lead to less competition. The latter is assumed for specific covenants (so-called hard-core restrictions), in particular pricing agreements or restrictions to sell to competitors.

Provisions on the licensing of IP rights may need to be registered in order to be valid under Russian law (see below Section on Intellectual Property). Registration is also required for franchising agreements. However, not all distribution agreements termed “franchise agreements” do qualify as such under Russian law. Under a Russian law franchise agreement the franchisor transfers to the franchisee a set of IP rights (trademark, know how, etc.). The Russian Civil Code contains precise rules on franchise agreements including their termination.

Antitrust law:

Antitrust law is regulated by Federal Law No. 135 of July 26, 2006 “On the Protection of Competition”. Compliance with antitrust law is monitored by the Federal Antimonopoly Service (www.fas.gov.ru) and its territorial bodies. Antitrust law severely restricts agreements between competing undertakings (“horizontal agreements”) and in some cases between companies at different levels of the distribution chain (“vertical agreements”), regulates undertakings with a dominant market position and monopolies, and contains rules against unfair competition.

Certain transactions, in particular mergers and acquisitions, can require antitrust approval. This normally depends on the transaction value (e.g. combined balance sheet, respectively turnover of the acquiring group and the target company in acquisitions). Many Russian M&A transactions are structured off shore (typically through the sale/purchase of a holding company registered in a foreign jurisdiction). Russian antitrust approval is required for all M&A transactions affecting the Russian market, e.g. (above certain thresholds) if the company acquired or one of its subsidiaries owns assets in Russia or sells products to Russia.

Competition at the EAEU level is monitored by the Eurasian Economic Commission under EAEU rules (Annex 19 to the EAEU Agreement). The EAEU competition law is very similar to Russian competition law.

CURRENCY REGULATIONS

The basic principles are defined in Federal Law No. 173 of December 10, 2003 “On Currency Regulation and Exchange Control” (last amendments July 31, 2020). Legal tender is the Russian ruble (RUB).

Today practically all restrictions on cross-border transactions and payments (transactions/payments between non-residents and residents) have been abolished. Restrictions on payment terms of export or import contracts (maximum period of time between payment and customs clearance of goods) have disappeared. The mandatory sale of foreign currency proceeds from the export of goods, services and intellectual property was abolished in May 2006. Today Russian corporations and individuals can maintain accounts in banks outside of Russia.

It is the declared intention of the Russian authorities to achieve full ruble convertibility. To date it is already possible to open ruble accounts with banks outside of Russia, and it is legally possible to trade the ruble abroad.

Currency regulations have been reduced essentially to provisions permitting the authorities to monitor and control cross-border transfers of money (reporting obligations). However, these regulations are still important, represent an administrative burden and tend to make international payments slower than in Switzerland. In general banking procedures (including eBanking) tend to be more complicated (e.g. no IBAN codes, etc.). The same applies with respect to the practical implementation of the legislation against money laundering and terrorist financing. Banks sometimes refuse or complicate transfers on very formal grounds (e.g. request amendments to contractual documentation).

As a general rule, Russian legal entities are still required to repatriate their proceeds from the export of goods and services to their Russian bank accounts, respectively to procure that goods and services paid for are effectively imported to Russia. Contracts should define the timeframe for the payment in the case of exports, respectively delivery in the case of imports. Failure to comply with such requirements can entail significant fines and criminal liability.

The use of foreign currency is restricted in transactions between residents - individuals resident in Russia and/or companies incorporated in Russia (except banks authorized for currency operations). Most domestic payments must be made in rubles. It is, however, possible to set prices in foreign currency or so-called

conventional units provided payment is made in rubles. Since July 1, 2007 prices in advertising must be indicated in rubles (the price in foreign currency may still be mentioned alongside the ruble price). Consumer protection law contains the same requirement. In cases where the exchange rate is not contractually defined as well as for tax and accounting records the exchange rate is defined by reference to the rates quoted by the Central Bank on a daily basis (see www.cbr.ru).

Both Russian and foreign citizens can take an unlimited amount of money (cash or traveller cheques in foreign currency and/or rubles) into or out of Russia, respectively the EAEU. However, if the amount exceeds 10,000 USD (or the equivalent thereof in other currencies including rubles, in Russia as per the rate quoted by the Central Bank of Russia), it must be declared to Customs (red channel). The customs declaration (format approved by Resolution of the EEC Board of July 23, 2019 No. 124) includes information on the origin, ownership and intended use of the cash if cash is taken from or to Russia in excess of 10,000 USD. Instruments other than traveller cheques (bank cheques, securities, etc.) must be declared regardless of the amount.

Travellers are advised to take these restrictions seriously as sanctions are rather severe.

TAXES

Today all taxes are regulated by the Tax Code of the Russian Federation. While the tax system as a whole has been rather stable over the past decade, amendments to the Tax Code are quite frequent. The most important amendments during the last years introduced CFC rules and rules on transfer pricing and on country-by-country reports under BEPS rules, in particular (but not only) for transactions between associated businesses. Under the transfer pricing rules taxpayers have the obligation, inter alia, to document and report so-called “controlled transactions” (transactions with associated parties and certain other transactions defined by the Tax Code). Under the CFC rules resident taxpayers must announce holdings in foreign companies and structures and pay tax on undistributed profits of controlled foreign companies.

Russia has an extensive network of double taxation treaties including with Switzerland. Most double tax treaties are based on the OECD Model. A Protocol to the double tax treaty between Switzerland and Russia providing, in particular, for information exchange in tax matters (including VAT) is effective from January 1, 2013.

Russia has ratified the OECD Convention on Mutual Administrative Assistance in Tax Matters and signed the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information

(CRS MCAA). The relevant mechanisms for an automatic exchange of tax information with other countries are in place, and the automatic exchange with Switzerland started in autumn 2019 (covering financial information from January 1, 2018 onwards). On January 26, 2017 Russia further adhered to the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA), which has been implemented at the end of 2017 by amendments to the Tax Code. In mid-2017 Russia also ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS), which will become effective with regard to the Russian-Swiss double tax treaty at the earliest as of January 1, 2021 after Russia and Switzerland will have exchanged notices that they have completed all necessary internal procedures. In this context Russia started a renegotiation of the Swiss-Russia double tax treaty (Government Decision of February 12, 2020 No. 261-r). In addition, President Putin announced in spring 2020 a general intention to renegotiate treaty withholding rates for dividends and interest. As per end of August 2020, treaty rates have already been renegotiated with Cyprus, Malta and Luxemburg (new rates 15% for both dividends and interest instead of previously 5%, respectively 10% for dividends and 0% for interest; lower rates will remain available only for a very limited number of businesses such as insurance companies or publicly listed companies).

Extensive information on the Russian tax system can be found on the site of the Federal Tax Service of the Russian Federation (www.nalog.ru). It is further possible to access the Russian equivalent of the Company Register (Commercial Register) through the same site (in Russian only).

The fiscal year in the Russian Federation for direct taxes is the calendar year. However, tax returns must be filed quarterly, and advance payments (on a monthly or quarterly basis depending on the category of taxpayer) must be made based on such quarterly returns. VAT is assessed quarterly and paid in three monthly instalments. In many cases VAT or profit tax due by foreign companies which do not hold a Russian tax registration must be withheld by the Russian company (or the permanent establishment of the foreign company) paying the revenue. Since January 1, 2017 foreign companies selling digital services to Russian individuals (and from January 1, 2019 also to Russian businesses) must register with the Russian tax service, report and pay VAT even if they have no business establishment in Russia.

The most important taxes are the following:

Federal Taxes

• Corporate Profit Tax	20%	over net profit (revenues minus expenditures) (the rate comprises 3% federal and 17% regional tax; tax incentives can be granted by federal or regional law to special economic zones, etc.)

- Personal Income Tax

residents	13%	over world-wide income (will increase as of 2021 to 15% for higher incomes)
non-residents	30%	over Russian-source income (the 13%, respectively 15% rate further applies to salaries of foreign citizens qualifying as highly qualified specialists under migration law regardless of whether they are resident or non-resident)

An individual is considered resident if he/she resides in Russia over 183 days (the 183 day period is calculated based on twelve consecutive months and not the calendar year; however, in practice tax residency is determined for each fiscal year, at least for revenue not taxed at the source of payment).

- Corporate Profit Tax on Dividends etc.

13%	over dividends paid by Russian or foreign companies to Russian companies (a 0% tax exists, in particular, subject to certain conditions for dividends paid by subsidiaries in Russia or abroad, but the investment must be at least 50% of the equity of the company paying the dividends)
15%	over dividends paid by Russian companies to foreign companies (the tax is withheld at the source of payment, but can be reduced if the applicable double tax treaty provides for a lower rate; the Russian Government has declared its intention to renegotiate treaties providing for rates lower than 15%)

- Personal Income Tax on Dividends

13%	over dividends paid by Russian or foreign companies to resident individuals (will increase as of 2021 to 15% for higher incomes)

	15%	over dividends paid to non-resident individuals (can be reduced if a double tax treaty applies)
	30%	for other payments to non-residents subject to tax (including interest on Russian securities held abroad through nominees unless the shareholder entitled to the dividend is duly disclosed)
• VAT	20%	general rate
	10%	some food, children's products, press, medical devices, etc.
	0 %	exports

Regional Taxes

• Corporate Asset Tax	max. 2.2%	over fixed assets (real estate only) of corporations (based on book value)
	up to 2%	over offices, shops, restaurants, etc. based on cadastral value (introduced in 2014, with rates progressively increasing, general rate in 2020 in Moscow 1.7%); this rate applies to any real estate owned by foreign companies without permanent establishment in Russia

Municipal Taxes

• Property Tax for Individuals	Russia taxes individuals on real estate. As of January 1, 2015, the tax will normally be calculated based on the cadastral value, which is meant to represent the market value (before the tax was calculated based on the inventory value, which was basically a historical value). For apartments, the tax is normally 0.1% (depending on the value, in Moscow up to 0.3%). 20 square meters can be deducted (proportional reduction). For commercial property, the tax rate is maximum 2% (in Moscow maximum 2% depending on the value of the property).

While the Russian tax rates are highly competitive, the tax administration and accounting system can represent a considerable burden and significant risk for businesses.

Payroll Taxes (Social Welfare Contributions):

As from January 1, 2010 (Federal Law No 212 of July 24, 2009) the Unified Social Tax was replaced by contributions to the RF Pension Fund, the RF Social Insurance Fund (inability to work and maternity) and the RF Compulsory Medical Insurance Fund (payments to the regional medical insurance funds have been abolished as from January 1, 2012). Contributions are paid by the employer on salaries, other payments for services or work performed by individuals not registered as businesses (independent contractors) and royalties paid to individuals for the use of intellectual property rights. The following rates apply: 22% Pension Fund, 2.9% Social Insurance Fund, 5.1% Federal Medical Insurance.

Payments to the Pension Fund are calculated only on the first 1,292,000 RUB paid by the taxpayer company (employer) to each individual during a calendar year, payments to the Social Insurance Fund only on the first 912,000 RUB (these are the caps for 2020, the cap being increased each year based on the increase of the average annual salary). Insurance benefits are similarly limited. During inability to work, for instance, the employee's per diem entitlement is limited to a maximum of 1/730 of 1,680,000 RUB (after January 1, 2020) even if his salary is higher (1,680,000 RUB is the sum of 865,000 RUB – cap in 2019 - and 815,000 RUB – cap in 2018). The employer must pay the difference only if stipulated by the employment contract.

Since 2012 a so-called solidarity contribution to the Pension Fund is additionally levied at the rate of 10% on the salary amount exceeding the cap indicated in the preceding paragraph (1,292,000 RUB in 2020). As from January 1, 2015 payments to the Medical Fund are no longer capped.

To summarize: social welfare contributions are currently taxed at the rate of 30% up to an annual salary of 912,000 RUB, at the rate of 27.1% for an annual salary between 912,000 and 1,292,000 RUB and at the rate of 15.1% for an annual salary above 1,292.000 RUB.

Since January 1, 2015 salaries paid to foreigners (except salaries paid to qualified specialists and certain expatriate employees with the relevant permit) are subject to social welfare contributions. Foreigners should also not forget that they can not deduct social welfare and insurance payments made in their home countries from Russian income tax. Highly qualified specialists are exempt from social welfare contributions (except insurance of professional accidents and illness).

Employers must further pay for the insurance of their employees against accidents and professional illnesses. Payments differ depending on the risks in the relevant sector of the economy (between 0.2 and 8.5% of the salary).

Non-Tax Payments

Although the Tax Code was probably conceived to cover all payments to the State treasury non-tax legislation still imposes numerous payments which are not treated as taxes or duties within the meaning of the Tax Code. Such “non-tax” payments are currently not regulated by the Tax Code and therefore do not benefit from the respective guarantees. Laws instituting non-tax payments often delegate considerable regulatory authority to the Government. Russia’s total tax burden is assessed in the range of 30-31% of GDP (official data of Ministry of Finance, for 2017 31.08%), but this does not include non-tax payments, the total burden of which is difficult to assess (according to an estimate of the Russian Chamber of Commerce and Industry up to 1% of GDP; according to the Ministry of Finance 0.79% in 2017). In 2017 the Government declared a moratorium on new non-tax payments until their regulation in a law. It was further decided in 2016 to create an inventory (register) of non-tax payments and to systematize how they are regulated. Respective legislation is still under review. Pursuant to a currently proposed draft law only selected non-tax payments would be included in the Tax Code (e.g. ecological fee).

One of the major non-tax payments is the ecological fee. Important amendments were made on December 29, 2014 to the Federal Law No. 89 of June 24, 1998 “On Industrial and Consumer Waste”. The fee is raised from all importers or manufacturers of consumer goods subject to recycling (utilization) unless they procure for the recycling (utilization) of the goods they put into circulation in Russia.

PROCEDURES FOR COLLECTING PAYMENT

As a rule contracts must be enforced through the courts. When the court ruling becomes effective the winning party can obtain a writ of enforcement, which must be submitted to the enforcement authority (Federal Service of Court Bailiffs, www.fssprus.ru). In some cases the writ of enforcement can be submitted directly to a third party (e.g. the bank for the seizure of bankable assets, to the employer for the seizure of the salary). The enforcement authority will seize the debtor’s assets, in the first place bank accounts. Upon receipt of the relevant collecting order the bank must transfer available funds to the enforcement authority. However, if the available funds are not sufficient salary, tax, social welfare and some other payments have priority over the collecting order. The website www.fssprus.ru allows checking whether enforcement proceedings have been initiated against specific companies or individuals.

Insolvency proceedings against companies, individual businesses and individuals can be initiated by creditors if they hold claims in excess of 300,000 RUB (respectively 500,000 RUB for individual businesses and individuals) overdue three months. The claims must normally be confirmed by an enforceable judicial decision. Once insolvency proceedings have been initiated all creditors can file their claims with the court

dealing with the bankruptcy. Insolvencies are published, inter alia, on https://fedresurs.ru and on https://ras.arbitr.ru.

Companies must file for bankruptcy if they are insolvent (suspension of payments, inability to meet payment obligations) or have insufficient assets (negative net asset value). If the director of the company or other controlling persons fail to do so they can incur liability for the company's debts if the company is eventually declared bankrupt and assets are insufficient to pay the creditors.

Although legal proceedings still tend to be faster and less expensive in Russia than in Switzerland (a ruling at first instance can generally be obtained within six months), it is preferable to avoid debt collection by obtaining prepayment (or at least partial prepayment) or security (bank guarantees, letters of credit, pledges, etc.).

The importance of companies specialized in debt collection has grown in parallel with the growth of the consumer credit business. Today there approximately 350 collection agencies, whereof around 50 are key players on the market. Most clients of debt collectors are banks, telecommunication companies, financial organizations, construction firms and utilities providers. The financial crisis has led to an increase of the customer portfolio of debt collection agencies. The deterioration in the economy and the rapid growth of debts in the corporate sector is causing agencies to work with corporate as well as individual debts. However, debt collection agencies tend to focus on situations where the number of cases allows them to standardize procedures.

Debts are outsourced to collection agencies in two ways. Either the debt collection agency simply assists the client with debt collection (negotiates with the debtor, etc.) or the debt collection agency purchases the debt from the client under an assignment agreement. Not all agencies acquire debts. The client has the advantage of paying the collection fee (mostly a percentage of the debt) only if the debt is actually collected whereas most law firms no longer work on a pure contingency basis.

Debt collection agencies are represented by the National Association of Professional Collecting Agencies (NAPKA, www.napca.ru) and by the Association for the Development of the Debt Collection Business (ARKB, www.arkb.ru). Both are trying to organise and lobby the business. The industry was not regulated prior to January 1, 2017, when Federal Law No. 230 of July 3, 2016 "On the Protection of the Rights and Interests of Individuals in Relation to the Conduct of Business for the Collection of Overdue Indebtedness" came into force. Debt collection agencies must now be included in an official register (see http://fssprus.ru/gosreestr_jurlic/). The law is expected to consolidate the industry. A law on consumer loans became effective on July 1, 2014 and regulates debt collection in this area.

INTELLECTUAL PROPERTY

It is important to ensure adequate protection of trademarks, domain names and other intellectual property in Russia.

Protection of intellectual property rights is obtained through registration of trademarks and patents under the relevant international treaties or directly with the competent Russian authority (Federal Service for Intellectual Property or Rospatent, https://rospatent.gov.ru/ru). Foreign companies must use patent attorneys admitted to practice in Russia to register their intellectual property with Rospatent. Licenses and sublicenses should also be registered to be valid in Russia.

The law on intellectual property has been completely revised with the enactment of Part IV of the Civil Code effective as from January 1, 2008. Part IV classifies intellectual property as follows:

- copyrights (literary, artistic and scientific works, software, databases, performances, phonographs and broadcasts);
- patents (inventions, utility models, industrial designs, selection patents, topology of integral circuits);
- manufacturing secrets (know how);
- firm or trade names, trade and service marks, appellations of origin, commercial designations, geographical designations.

Russia has ratified important international treaties such as the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, the 1994 Trademark Law Treaty, the Madrid Agreement Concerning the International Registration of Marks, the Convention Establishing the World Intellectual Property Organization and others. In February 2009 Russia further ratified the WIPO Copyright Treaty. With its accession to WTO Russia also becomes a party to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Comprehensive information on these treaties is available on http://www.wipo.int and www.wto.org.

The bilateral treaty on trade and economic cooperation between Russia and Switzerland grants the most-favoured nation status with respect to the protection of intellectual property rights. Similar agreements exist with the EU and other countries.

Counterfeit products and other infringements of intellectual property rights are an important problem for both domestic and foreign companies, and many still consider enforcement inadequate. In this context

Russia created a Court for Intellectual Rights, which is a specialized commercial court (Federal Constitutional Law No. 4 of December 6, 2011).

Russia traditionally adheres to the principle of national exhaustion of intellectual property rights (principle of regional exhaustion within the EAEU for trademarks, cf. Annex 26 to the EAEU Agreement) factually prohibiting parallel imports. However, the principle has been somehow weakened by recent court practice. Currently only the import of counterfeit goods is considered an administrative or criminal offense; a parallel importer (imports of original goods not authorized by the manufacturer) can only be sued under civil law. After various initiatives aimed at introducing the principle of the international exhaustion of IP rights (meaning that goods put into circulation by the manufacturer anywhere in the world can be legally imported and sold in Russia without the manufacturer's consent), the competent government agencies apparently decided that the problem should be solved at the level of the EAEU rather than at the national level (political pressure exists, in particular, in the area of medical drugs and the automotive industry).

Pursuant to Chapter 52 of the Customs Code of the Customs Union and articles 112 and 113 of the Federal Law "On Customs Regulation in the Russian Federation" it is possible to enter intellectual property rights into a special register kept by Customs at the national level, which allows the owner of the right to be notified of unauthorized imports. More information (including the register itself) is available through the Customs website https://customs.gov.ru/registers/objects-intellectual-property. A Unified Register of Objects of Intellectual Property of the Member States of the EAEU should become operational in the near future.

E-COMMERCE

Apart from the classical .ru domains, Russia has also implemented .рф domains in Cyrillic characters. Both .ru and .рф domains can be registered through RU-Center (www.nic.ru). There are also .su domains (former Soviet Union) and second level domains (com.ru, net.ru, org.ru, ru.net, msk.ru, spb.ru, etc.), etc.

The internet is regulated by legislation on information and telecommunication services. However, the content of the internet site can fall within the scope of general laws such as the law on mass media, on advertising, on consumer protection, the Criminal Code, the Code of Administrative Offenses, etc. Russian legislation prohibits, in particular, cold emails (advertising or offers not solicited by the addressee), but sanctions are not efficient as the number of advertising spam emails proves. According to press reports some of the world's most successful spammers work out of Russia. Newly enacted laws make it possible to block access to websites operated in breach of the law, and control over the internet is likely to increase.

Russia has enacted a law on the protection of personal data in line with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Companies intending to process personal data must notify Roskomnadzor (www.rkn.gov.ru) and are responsible for adequate protection of confidentiality. If data is collected by internet the privacy policy must be disclosed on the website. Russia adopted important amendments to its data protection law which require data bases containing data of Russian citizens to be localized on Russian soil. Recently the fines for failure to localize have been significantly increased.

If the internet is used for retail marketing, care should be taken to comply with advertising, consumer and personal data protection laws (in particular, Article 497 of the Civil Code and the "Rules for Remote Sales of Products" approved by Government Resolution No. 612 of September 27, 2007). Internet sales are deemed remote sales as the sales contract is entered into prior to the delivery and inspection of the product, which is selected based on catalogues or information published in the internet. Advertising must have a Russian language version, contain information on the seller, and consumer protection law obliges the seller to make essential information on the product, the sales conditions and the price in rouble available prior to delivery. The consumer can refuse delivery until delivery is made and has the right to return the product within seven days after delivery provided the product is undamaged and in good condition. This time period is extended to three months if the consumer was not informed of his right to return the product. Products manufactured as per the purchaser's specifications can not be returned if the quality is in compliance with contractual terms.

Most internet shops use the internet only as a marketing tool. Customers can place their orders filling in a special order form on the website or by email. Alternatively orders can generally be made by phone. The seller then delivers the products by messenger to the address indicated by the purchaser. Payment can be made in cash or by credit card upon delivery directly to the messenger. The purchaser signs a receipt for the product and receives a copy thereof and/or a cashier's receipt, which he must keep for possible future claims. The products must be accompanied by all relevant documentation (instruction manual, warranty, etc.) where applicable. Some shops require a prepayment, mostly by bank transfer on the basis of an invoice issued by the seller. In some cases products are not delivered by a messenger, but by the post. In this case payment can also be made according to the rules of the post company. Some internet shops accept payment by credit or debit cards or electronic cash (webmoney, cf. www.webmoney.ru or https://guarantee.money, www.paypal.com), see also Federal Law No. 161 of June 27, 2011 "On the National Payment System". Sometimes payment can be made using special payment terminals (see Federal Law No. 103 of June 2009) or mobile phones. Internet sales are said to be hampered by the insufficient development of the Russian settlement system and a general distrust towards banks and payment systems.

Russians are allowed to purchase from foreign internet shops, but deliveries can be slow due to the inefficiencies of the postal system and periodically arising problems with Customs. No customs payments are due for imports by individuals for non-commercial purposes of less than 31kg and with a value under 200 EUR per month (applicable if delivered by carrier or post; see Chapter 37 Customs Code of the EAEU and Decision of the EEC Council of December 20, 2017 No. 107). Imports exceeding this franchise are, as a rule, taxed at the rate of 15% (at least 2 EUR per kilo).

Federal Law No. 63 of April 6, 2011 “On the Electronic Signature” (seriously amended by Federal Law 476 of December 27, 2019) provides for the use of a “simple electronic signature” besides the “enhanced electronic signature” (digital signature). Subject to certain conditions the electronic signature can consist, for instance, of a code or password provided the use of such signature was agreed between the parties and permits the identification of the signatory of the document. Digital signatures (using encryption technology and public keys certified by an accredited certificate authority) are considered equivalent to hand written signatures by operation of the law. The status of other forms of electronic signatures is defined by agreement of the parties.

LITIGATION

Although in many cases a strong argument can be made for having recourse to the Russian courts, international arbitration remains an interesting and valid option. It should be noted that the courts competent to settle business disputes in Russia (commercial courts) are traditionally called “Arbitrazh Courts” though they are state courts and not arbitration tribunals. Commercial courts also handle disputes between business and government authorities (e.g. tax disputes). Litigation involving individuals is dealt with by the courts of ordinary jurisdiction, which also have jurisdiction over criminal matters. In 2014 the Supreme Civil and Commercial Courts have been merged with the declared objective to harmonize the practice of both branches of the judiciary.

Russia has long refused to recognize rulings of foreign state courts in the absence of a multi- or bilateral treaty. Commercial courts have mitigated this principle and admitted recognition based on Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms guaranteeing the right of access to a fair court hearing which comprises, as interpreted by the European Court on Human Rights, all stages of legal process including enforcement of foreign court decisions. This has allowed courts to enforce, in particular, decisions rendered by the High Court of England. The same principle should apply to decisions of Swiss courts although we have no knowledge of any precedents in this area. It should be noted, however, that the courts of ordinary jurisdiction strictly adhere to the principle “no treaty – no recognition”.

Russia is a party to the New York Convention on the Recognition and Enforcement of International Arbitration Awards. International disputes can be settled through ad hoc arbitration (e.g. UNCITRAL), using an international arbitration institution (ICC, Swiss Chambers of Commerce, etc.) or their Russian equivalent (International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation). The latter can be a good option in cases where Russian law applies.

International arbitration in Russia is regulated by the RF Law No. 5338-I of July 7, 1993 “On International Commercial Arbitration”. A new law on arbitration (Federal Law No. 382 of December 29, 2015, effective since September 1, 2016) was enacted recently and increases State control over private arbitration mechanisms. The new law favours institutional over ad hoc arbitration. Under the new law arbitration institutions in Russia (other than the International Commercial Arbitration Court and the Maritime Arbitration Commission at the Chamber of Commerce and Industry of the Russian Federation) must obtain the approval of the Russian Government (currently only three arbitration institutions – the Institution of Modern Arbitration, the Russian Union of Industrialists and Entrepreneurs and the National Center of Sport Arbitration - have obtained such approval). Approval is also required for foreign arbitration institutions administering arbitration proceedings within Russia (currently granted to Hong Kong International Arbitration Center and Vienna International Arbitration Center). Russia also enacted a law on alternative dispute resolution or mediation (Federal Law No. 193 of July 27, 2010).

Swiss Rules of International Arbitration of the Swiss Chambers of Commerce
www.swissarbitration.ch

ICC International Court of Arbitration
International Chamber of Commerce (Paris)
https://iccwbo.org

UNCITRAL Arbitration Rules
United Nations Commission on International Trade Law
https://uncitral.un.org

International Commercial Arbitration Court (ICAC).
109012 Moscow, 6 Iliyinka Street
www.tpprf-arb.ru

SETTING UP COMPANIES

Many foreign businesses first open (accredit) a **representative office**. As a rule representative offices have no commercial activity (i.e. do not manufacture products or render services) and are pure cost centres. They are therefore typically not permanent establishments (the definition of the permanent establishment of a Swiss company in Russia can be found in the double tax treaty between Switzerland and Russia) and do not pay corporate profit tax and VAT. At the same time they allow the foreign company to rent office space, to open bank accounts and to hire employees. The representative office is not a separate corporate entity, which means that the foreign company opening a representative office is fully liable for its debts and liabilities.

Since January 1, 2015 representative offices are accredited centrally by the interdistrict tax inspection No. 47 in Moscow. The tax authority also keeps a register of accredited representative offices and branches. Prior to filing the application the applicant must get the visa of the Chamber of Commerce and Industry with regard to the number of foreign employees employed (even if there are none).

CHAMBER OF COMMERCE AND INDUSTRY OF THE RUSSIAN FEDERATION (www.tpprf.ru)

To accredit and register a representative office a foreign company needs to submit, inter alia, the following documents:

1. application in the form specified by the Federal Tax Service;
2. extract from the Commercial Register or copy of the certificate of incorporation or equivalent;
3. copy of the articles of association, statutes or equivalent;
4. management decision to open and accredit the office, to appoint a director of the office;
5. power of attorney in favour of the director (head) of the office and internal regulations (local statutes) of the office;
6. document confirming tax registration in the country of incorporation.

Today the accreditation is granted for an indefinite time period.

It is further possible to register and accredit **branch offices** of foreign companies. In addition to the functions of a representative office (representing the foreign company's interests in Russia) branches may also manufacture goods, execute work and provide services in Russia and are therefore, as a rule, permanent establishments, i.e. subject to all applicable Russian taxes. In our experience most foreign businesses wishing to operate locally prefer establishing subsidiaries rather than branches. Branches (or representative offices operating as branches) exist mainly in the service sector. The procedure for the accreditation of a branch office is the same as for representative offices.

Local **subsidiaries** are most commonly incorporated in the form of limited liability companies or joint stock companies (see below). Federal Law No. 129 of August 8, 2001 “On State Registration of Legal Entities and Individual Businessmen” introduced a uniform procedure for the incorporation of companies based on the so-called “one-window” principle. The competent authority is the Federal Tax Service (its territorial agencies). The company is registered within three working days after submission of the necessary documents. Although the law contains an exhaustive list of documents and other requirements, some local nuances still survive.

The following documents are required to register the subsidiary of a foreign company:

1. extract from the Commercial Register or copy of the certificate of incorporation or equivalent for the parent company (founder);
2. application for registration;
3. resolution of the parent company (founder) on establishing the subsidiary;
4. corporate documents of the subsidiary (articles of association / charter / bye-laws of the joint stock / limited liability company).

The minimal share capital of limited liability and private joint stock companies is 10,000 roubles. The share capital of limited liability companies must be paid within four months from incorporation. As concerns joint stock companies the first 50% of the share capital must be paid within the first three months from incorporation, the remainder within the first year, but the company is not permitted to start business operations prior to payment of the first 50%. From a legal perspective there is, as a rule, no reason to provide for a share capital in excess of the legal minimum. A higher capital is required in various business sectors, in particular for banks and other companies of the financial industry. It should also be noted that tax legislation defines the debt-equity ratio applicable to subsidiaries financed by loans from their foreign parent company or its affiliates (thin capitalization rules). If the company does not have sufficient assets, loan interest cannot be deducted for profit tax purposes and is treated as a dividend for withholding tax.

Joint stock companies must further register their shares with the Central Bank of the Russian Federation, the supervisory authority of the Russian stock market.

It is advisable to register representative offices and subsidiaries through a local law firm. All foreign documents must be legalised with apostille and accompanied by a certified Russian translation (the translation is best done locally). In order to register a representative office or subsidiary, a director and an address is needed. The director can be a Russian or foreign individual (a work permit may be required).

Although there is no legal requirement in this respect, the director had best be resident in Russia. It is sometimes difficult to rent office premises and obtain an address prior to registration. In this and similar cases the address (mailbox address) can be purchased, but such “fictitious” addresses should be used with caution. It is crucial to make sure that mail is forwarded as legal notices (tax, administrative and court procedures) tend to be sent to the registered address. Letters sent to the registered address are considered duly delivered. This also applies to letters notified to the address of a foreign company’s local representative in Russia. Under money laundering rules banks now systematically require the office lease agreement, and some banks even send a representative to check whether the office physically exists.

Approximately two-three months are generally needed to make the representative office or approximately one month to make a subsidiary fully operational (including opening bank accounts).

COMMON CORPORATE FORMS

For subsidiaries and joint ventures it is important to choose a corporate form which is appropriate to reach the long-term objectives of the parent company.

The most common corporate forms are:

- public joint stock company (the common English abbreviation is “PJSC”, the Russian abbreviation “ПАО”);
- private joint stock company (the common English abbreviation is “JSC”, the Russian abbreviation is “АО”);
- limited liability company (the common English abbreviation is “LLC”, the Russian abbreviation is “ООО”).

The formerly existing open joint stock companies (OAO) and closed joint stock companies (ZAO) have been abolished as of September 1, 2014. However, companies are required to make the relevant changes to their name only when they next register amendments to their articles of association.

The most frequently used corporate form today is the LLC, which is regulated by a comparatively well-written, flexible and stable law. Public joint stock companies are also used, but normally for companies created through privatisation of State property and/or publicly held companies (banks, insurance companies, etc.). Public joint stock companies can be subject to extensive disclosure requirements. The shares of all joint stock companies are securities (negotiable instruments), and share issues are subject to financial market supervision regardless of company size. All joint stock companies need to entrust their register of shareholders to an independent registrar and are subject to an external audit. Compliance costs

therefore make joint stock companies rarely an attractive option for privately held investments although recent amendments to the law have increased the flexibility of private joint stock companies.

The principal distinctions between private JSCs and LLCs are not very different from those distinguishing the AG/SA and the GmbH/SARL under Swiss law. The main difference between the private JSC and the LLC concerns the transfer of shares. The shares in a public JSC are freely transferable. The articles of association (sometimes called charter) of private JSCs and LLCs can restrict transferability. The law on LLCs contains many features which make it possible to take into account the wishes of the shareholder in a specific situation, for instance in a joint venture project. Following recent amendments to the Civil Code and the JSC law such possibilities also exist with respect to private JSCs, but they are still more limited. Companies may adopt internal regulations governing the relationship between the shareholders and the company. Internal regulations are not public and do not need to be registered, but may not be in contradiction with the articles of association.

Transfers of shares in LLCs must be certified by a notary and registered by the Federal Tax Service, which can considerably complicate share transfers in practice, but also reduces the risk of fraud. It is also generally considered that contracts for the sale of shares in an LLC are always subject to Russian law.

Due to recent revisions of both the laws on JCSs and LLCs it is now possible for shareholders to enter into a shareholders' agreement with relation to their holdings in Russian companies. A recent revision incorporated provisions on shareholders agreements (called "corporate agreements") into the Civil Code. It further introduced the concept of agreements between the shareholders and creditors of the company. It should be noted, however, that these agreements do not bind the company. Shareholders' agreements with respect to shares in public joint stock companies are subject to disclosure requirements, and shareholders' agreements in general must be notified to the company. Shareholders' agreements can now be governed by foreign law (a question long disputed), but must comply with mandatory provisions of Russian corporate law. Investors in joint venture projects often prefer registering a holding company off shore and structuring their relations at the level of the foreign holding company. In such case shareholder relations can be governed by foreign law (often English law), disputes resolved in a foreign jurisdiction or arbitration tribunal. Shares in the joint venture, or the joint venture itself can later be sold at the holding company level, which is generally simpler, more rapid and can also have tax advantages. The use of a foreign holding company also reduces the risk of claims against the ultimate parent companies in connection with the operations of the Russian joint venture.

A Russian LLC or private JSC can normally be held 100% by a parent company. However, this is not possible under Russian law if the parent company is held in turn by a single corporate shareholder. At present the parent company can be registered in any jurisdiction. Since January 1, 2017 Russian

companies must identify and document their beneficial owners. Individuals are considered beneficial owners if they control the company, in particular own directly or indirectly 25% equity or more.

The key person in a Russian company is the CEO (in Russia commonly called general director). Unlike Swiss law Russian law long ignored the concept of collective signature authority. Since September 1, 2014 companies can have two chief executives acting jointly or individually. The law now also allows corporate directors. It is very important to carefully select the general director and negotiate his employment contract. The same can be said of the chief accountant, the second most important person in a Russian company. Under Russian law the general director is largely responsible for compliance, both internally and vis-à-vis the state authorities. Chief accountants of banks, insurance companies, publicly held and some other types of companies must meet certain minimum qualifications. The accounting can be outsourced with a wide range of firms to choose from.

LLCs and private JSCs may further have an executive and/or supervisory board. As a rule, neither LLCs nor private JSCs are required to publish their financial statements. All private JSCs are subject to external audits. An external audit is required for LLCs, in particular, if the annual turnover exceeds 400 million roubles or the accounting value of the assets exceeds 60 million rubles.

Russia has put in place a Unified State Register of Legal Entities (USRLE), which is the equivalent of the Swiss Commercial Register. The Register contains the company name, address, share capital, name of the general director, name and shares of the members (only for LLC's) and other information. Extracts from the Register can be obtained relatively easily. Company information can be accessed on-line (www.nalog.ru or www.fedresurs.ru). The latter site, which also includes information on insolvency proceedings, contains the so-called unified federal register of legally significant information on facts of the activity of legal entities. Companies must increasingly disclose corporate information in this resource (e.g. on audits, on corporate guarantees, on net asset values, etc.

The most important laws regulating Russian corporations are the following:

- Civil Code (Part 1 Federal Law No. 51 of November 30, 1994; Part 2 Federal Law No. 14 of January 26, 1996; Part 3 Federal Law No. 146 of November 26, 2001, Part 4 Federal Law No. 230 of December 18, 2006);
- Federal Law on Joint Stock Companies (Law No. 208 of December 26, 1995);
- Federal Law on Limited Liability Companies (Law No. 14 of February 8, 1998);
- Federal Law on the Securities Market (Law No. 39 of April 22, 1996) and implementing regulations published by the Federal Financial Markets Service or its successor, the Security Market and Commodity Market Department of the Central Bank (irrelevant for LLC's).

EMPLOYMENT LAW

To avoid surprises foreign investors should be familiar with the most important provisions of Russian employment law. The Russian Labour Code considerably restricts the contractual liberty of the employer and the employee. As a rule, employees can resign at any time by a 14 days' prior written notice while employers can dismiss employees only for one of the reasons specified by the law. Salaries must be paid in rubles and twice per month. The position of the employee in the relationship is strong, and courts very often decide in favour of employees. It is rather difficult to sue employees for damages. If employees are wrongfully dismissed, the court can force the employer to reinstate them in their job. Employment law is formalistic. Employment contracts must be in writing, and many decisions (e.g. business trips, vacations, disciplinary sanctions, etc.) must be documented.

For all these reasons it is important to carefully select candidates. There are many professional recruiting agencies to assist companies in identifying the proper person for a job.

In December 2014 the Labour Code has been completed by a section regulating the particularities of the employment of foreign citizens. It is now clearly stated that the employment of foreigners is also for an indefinite term. The Code requires medical insurance as a prerequisite for the employment and regulates the termination of the contract upon expiry of the work permit.

An amendment to section 49.1 of the Labour Code on remote work will become effective on January 1, 2021 and remove some of the uncertainties related to home office work, in particular in the context of the Covid-19 pandemic. It confirms, *inter alia*, that in an exceptional situation (e.g. during a pandemic) the employer can ask employees to work from home, the employee's consent not being required.

Compliance with employment law can be investigated by the Labour Inspection, and the employer can be fined in the event of a breach. Work places must be certified.

INVESTMENT

The status, rights and guarantees of foreign investors are set forth in Federal Law No. 39 of February 25, 1999 "On Investment Activity in the Russian Federation Implemented in the Form of Fixed Capital Investment", Federal Law No. 160 of July 9, 1999 "On Foreign Investment in the Russian Federation". One should also refer to the relevant multi- and bilateral treaties on the protection of foreign investments. Russian law acknowledges the precedence of international law and treaties over national legislation. A law restricting foreign investments in specific industry sectors was enacted on April 29, 2008 (Federal Law on

the “Procedure for Making Foreign Investments in Commercial Companies Having Strategic Importance for the Defence of the Country and the Security of the State”).

Today most privileges granted to foreign investors in the nineties of the past century have been abolished. Current legislation guarantees foreign investors essentially national treatment.

The most important and most discussed provision of the law on foreign investments is the so-called “grandfather clause“ which protects foreign investors and companies with foreign investments against unfavourable changes in the legislation of the Russian Federation. The provision stipulates, in particular, that, should certain unfavourable developments in legislation lead to an increase in the cumulative tax burden, a foreign investor remains subject to the conditions existing at the beginning of the implementation of the project. The unfavourable developments in question are defined in the law. The interest of the provision is much reduced by the fact that it protects only so-called priority projects. However, the law contains a number of other classical provisions (guarantee of repatriation of profits, guarantee of access to the courts, etc.) which confirm Russia’s adherence to the generally acknowledged principles of international law with respect of the treatment of foreign investors. The practical importance of these provisions is in our opinion quite limited.

Today Russian law provides privileges for investors mainly (and increasingly) in the form of special territories (free economic zone, since April 2015 territories of advanced social and economic development) or technoparks (for instance the centre of innovation “Skolkovo” near Moscow). In these areas investors are not only offered various privileges, but also more efficient and simpler administrative procedures (one window principle, etc.). Federal Law No. 69 of April 1, 2020 “On the Protection and Promotion of Investments in the Russian Federation” introduces the possibility for project companies to enter into a special agreement on the protection and promotion of the investment with the respective Region(s) and, if applicable, the Russian Federation if the investment fulfils certain criteria and above specified investment amounts. This option, available for larger investments, will grant investors broader grandfather rights for specified time periods. The agreement can contain an arbitration clause subject to the arbitration taking place in Russia. The law also regulates government support (at the regional or federal level) and provides for the creation of a central data base on investments and government support measures. Special laws exist for concessions (Federal Law No. 115 of July 21, 2005) and private-public partnerships (Federal Law No. 224 of July 23, 2015).

As indicated above, Russia’s traditional approach in the area of investment promotion consisted in creating incentives, mainly tax and customs privileges. More recently, the Government started focussing on special zones offering not only a special customs and tax treatment, but also other support (infrastructure, simpler and more efficient administration, subsidies, etc.). A new form of promotion is the conclusion of a special investment contract (“SIC”) with the State introduced by the Federal Law No. 488 of December 31, 2014

“On Industrial Policy in the Russian Federation”. Under an investment contract the investor undertakes to implement specific investments into local production while the Government offers specific incentives. The investor is also offered the benefit of the grandfather’s clause. An amendment to the law in August 2019 has restricted the use of special investment contracts to projects introducing new state-of-the art technologies for the manufacture of Russian products which are competitive in the global market.

IMPORT SUBSTITUTION AND LOCALIZATION

The law on industrial policy authorizes the Government to restrict the access of foreign products and services in the area of government procurement and procurement by State-owned companies. Such procurement is regulated by Federal Law No. 44 of April 3, 2013 “On the Contractual System for the Procurement of Goods, Works and Services for State and Municipal Needs” and by Federal Law No. 223 of July 18, 2011 “On the Procurement of Goods, Works and Services by Certain Types of State-Owned Companies”. Procurement is normally organized in the form of tenders. The relevant regulations, which tend to be industry-specific, are particularly important in Russia where the State still controls very important segments of the market. Moreover, the relevant principles tend to expand to the private sector informally (legally that would be contrary to WTO principles). Detailed information on import substitution and localization of production in Russia can be found in the “Practical Guide: Import Substitution in Russia”, published by the Swiss Business Hub Russia.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS

Entry conditions are basically defined by the Federal Law No. 114 of August 15, 1996 “On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation”. Most foreign nationals need a Russian visa. The type of visa (diplomatic, business, tourist, etc.) depends on the purpose of the visit. Multi-entry business visas are granted generously although the administrative procedure is rather burdensome. Multi-entry visas allow a maximum stay of 90 days within a 180 days period similarly to Schengen visas. It should further be noted that in most cases visas must be obtained in the country of domicile. A visa agreement between Russia and Switzerland became effective on February 1, 2011 facilitating invitations for business visas (the invitation from a Russian company must no longer be processed through the migration authorities, but can be submitted directly to the Russian Consulate in Switzerland).

Upon entry to Russia a migration form must be completed in two parts: one part remains with the border guard, the other part must be kept during the stay and surrendered upon exit from the country.

Federal Law No. 109 of July 18, 2006 “On Migration Records for Foreign Citizens and Stateless Persons in the Russian Federation” further obliges the inviting organization or individual to notify the migration authorities of the arrival of the foreigner (notification of departure is no longer required). The application of this law is not uniform, and checks happen, in particular, outside of the big cities. It is therefore advisable to carry a copy of the migration form and the other identity documents with you.

Federal Law No. 115 of July 25, 2002 "On the Legal Status of Foreign Citizens in the Russian Federation" defines the following categories:

- temporary stay (based exclusively on a visa where required);
- temporary residence permit (is comparable to the Swiss “B” permit, valid three years, visa still required);
- permanent residence permit (is comparable to the Swiss “C” permit, visa no longer required, one-time registration at domicile instead of notification of migration authorities upon each entry and exit).

Work permits must be obtained by all foreigners who are not in the benefit of a permanent or temporary residence permit and are generally granted for one calendar year (or the duration of the employment if less). This requirement also applies to representative offices although the authorities lack a consistent approach in this regard. The employer must first apply for an authorization to hire a specified number of foreigners. The individual work permit is then obtained based on this authorization. There exist quotas, etc., in particular also a requirement to announce the need for work permits during the preceding calendar year. A special work visa is delivered based on the work permit. The individual applying for a work permit must obtain a medical certificate confirming the absence of AIDS, have a medical insurance and obtain a certificate confirming the knowledge of Russian language, history and the fundamentals of Russian law. Applying for work permits and work visas is a time-consuming process although there are constant efforts to streamline and shorten it (one window principle). Important restrictions exist for work (including business trips) outside of the region delivering the work permit.

A special procedure for highly qualified specialists was introduced in 2010. The employer is responsible for determining which employees are highly qualified, the only mandatory criterion under the law being the amount of the salary (as a rule at least 167,000 RUB per calendar month). Highly qualified specialists can be hired by Russian companies and by subsidiaries, branches and representative offices of foreign companies (for representative offices since January 1, 2015). The employer does not need an authorization to hire, and the specialist immediately obtains a work permit and work visa for the duration of his employment as per his employment agreement (maximum three years, with the possibility to prolong). The employee can further apply for a permanent residence permit (but only for the duration of the employment with a maximum of three years whereas ordinary permanent residence permits are issued for an indefinite

term) and bring his family. If the employment is terminated, the permits and visa are no longer valid (with a grace period of 30 days, which can be used to find new employment). The procedure for qualified specialists has the advantage of being quicker and simpler than the ordinary procedure and should always be successful if the conditions are fulfilled. Permits can be obtained for more than one region. A similar procedure was introduced for transfers within the group and so-called key personnel. The procedure applies provided the employee has already worked for at least one year within the group abroad.

Migration is a sensitive political issue. This is partly due to the economic crisis, partly to prevailing protectionist sentiments. As a result, quotas have been considerably reduced, and procedures change frequently. Therefore, problems and delays can arise although in our experience most work permit issues can be solved in practice if properly managed. However, existing regulations lack flexibility and force companies to plan secondments to Russia well and in advance. The Federal Migration Service was abolished in 2016. Today the competent migration authority is the Ministry of Internal Affairs.

It is important that visa and permit issues are handled carefully. While the implementation of Russian laws is often lax and migration authorities have declared that the laws referred to above would be applied intelligently, non-compliance (e.g. use of the wrong type of visa) can nevertheless lead to uncomfortable situations and heavy fines. There also exist numerous reasons and authorities which can block entry into the country (repeated administrative offenses can, for instance, suffice).

The Russian Federation and the European Union have started negotiations in 2010 on the abolition of visa requirements (suspended following the Ukraine crisis).

Important international travel restrictions were introduced in the context of the COVID-19 pandemic. Regulations change frequently. An excellent source of information is the official COVID-19 website https://стопкоронавирус.рф.

SOURCES OF INFORMATION AND LINKS

Swiss Business Hub Russia: www.s-ge.com/en/russia
Switzerland Global Enterprise: http://www.s-ge.com/
Embassy of Switzerland in Moscow and General Consulate in St.-Petersburg: www.eda.admin.ch/moscow
Association of European Business: https://aebrus.ru
American Chamber of Commerce: https://www.amcham.ru/eng
Russian Chamber of Commerce and Industry: https://tpprf.ru
Authorities of the Russian Federation: www.gov.ru

Central Bank of the Russian Federation: www.cbr.ru
Federal Tax Service of the Russian Federation: www.nalog.ru
Federal Agency for Technical Regulations and Metrology (Rosstandart): https://www.rst.gov.ru/portal/gost
Federal Service for Intellectual Property, Patents and Trademarks (Rospatent): https://rospatent.gov.ru/ru

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