

ASSOCIATION OF EUROPEAN BUSINESSES

**STATUS OF SMEs IN RUSSIA: PRACTICAL ASPECTS.
WHAT FOREIGN INVESTORS HAVE TO KEEP IN MIND**

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MOSCOW

ABOUT BALASHOVA LEGAL CONSULTANTS

BALASHOVA LEGAL CONSULTANTS is an independent law firm specialized in Russian and foreign corporate, labour and migration law.

Our clients are international and Russian companies in trade and production spheres, automotive, machine and construction industries, consulting, bank and investment sectors, etc.

Our company is a Legal Counsel of the German and Austrian Embassies in Moscow and the Austrian Economic Forum, as well as a member of the German-Russian Chamber of Commerce in Russia (AHK) and Advoselect, a network of German-speaking commercial law firms worldwide.



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SMALL AND MEDIUM-SIZED ENTERPRISES ("SMEs")

- ✓ In accordance with the Federal Law No. 209-FZ dated July 24, 2007 "On development of small and medium-sized entrepreneurship in the Russian Federation" ("FZ-209") legal entities and individual entrepreneurs may be considered as small, including micro, and medium-sized enterprises in case if they comply with the respective criteria and are registered in the Unified Register of Subjects of Small and Medium-sized Entrepreneurship ("Register of SMEs")

GENERAL CRITERIA FOR SMEs

✓ **Structure of charter capital:**

- ✓ foreign legal entities – no more than 49% of participatory interest in the charter capital

✓ **Average number of employees for preceding calendar year:**

- ✓ micro enterprise - up to 15
- ✓ small enterprise - up to 100
- ✓ medium-sized enterprise - up to 250

✓ **Level of income for preceding calendar year:**

- ✓ micro enterprise – max. 120 Mio Rubles (ca. 1,6 Mio Euro)
- ✓ small enterprise – max. 800 Mio Rubles (ca. 10,7 Mio Euro)
- ✓ medium-sized enterprise – max. 2 billion Rubles (ca. 26,7 Mio Euro)

EXEMPTION FOR FOREIGN PARTICIPANTS

- ✓ In accordance with the amendments to the FZ-209 which are in force since December 01, 2018 there is no limitation in the structure of charter capital of the Russian SMEs with regard to the foreign participants provided that such foreign legal entities themselves comply with both criteria for SMEs (on average number of employees and level of income for preceding calendar year)

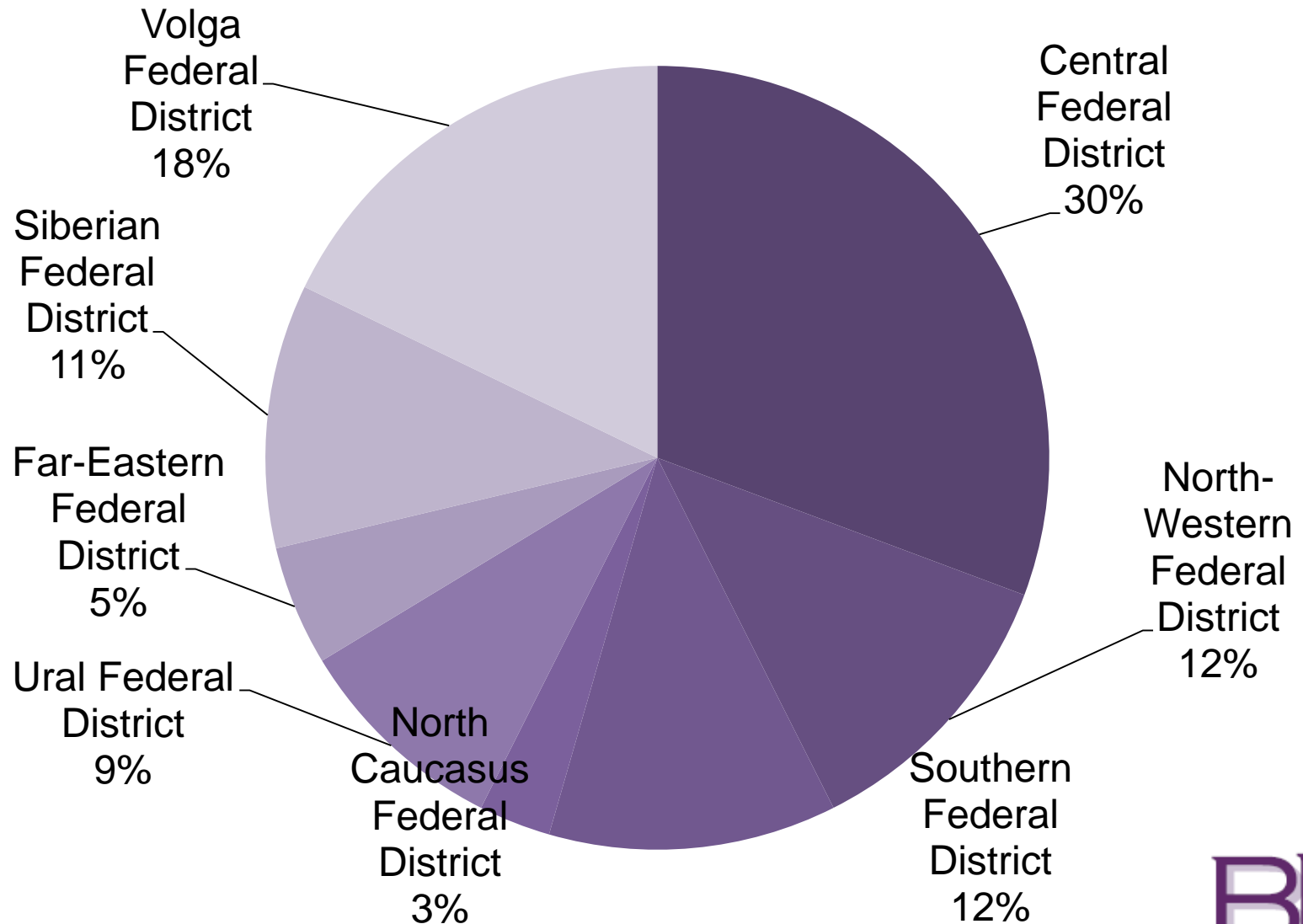
REGISTER OF SMEs

- ✓ The legal entities which comply with the criteria for SMEs shall be automatically included by the Russian tax authorities into the Register of SMEs upon the data summarized with regard to the business activities of such legal entities
- ✓ In case a legal entity is not listed in the Register of SMEs it may on its own initiative send an electronic inquiry to the Russian tax authorities for inclusion into the register
- ✓ However due to technical limitations there is no possibility to confirm that foreign participants of a possible SME comply with the criteria for SMEs

EXAMPLES & STATISTICS (1)

- ✓ According to the information provided on the web-site of the Russian tax authorities 6 058 279 SMEs with 15 843 300 employees are presently active as of February 10, 2019
- ✓ The largest number of SMEs (1 875 576) is registered in the Central Federal District of Russia (see the chart on the following page)

EXAMPLES & STATISTICS (2)



PREFERENCES FOR SMEs (1)

- ✓ Special tax treatment (simplified taxation system, patent system of taxation)
- ✓ Simplifications of accounting principles, including simplified reporting form
- ✓ Simplified procedure for cash register transactions
- ✓ Simplified procedure for statistics reports
- ✓ Benefits and quotas by participation in public procurement in accordance with the Federal Laws No. 44-FZ and No. 223-FZ

PREFERENCES FOR SMEs (2)

- ✓ Financial support (subsidies, budget investments, guarantees on SME's commitments)
- ✓ Support through the provision of property (land plots, buildings, equipment, transport, etc. on favorable terms, free of charge or for a compensation in accordance with special programs)
- ✓ Information support (information systems, official web-sites)
- ✓ Consulting support
- ✓ Support of SMEs in specific fields (education, innovation and industrial production, craft activities, foreign economic and agricultural activities)
- ✓ Federal Corporation for the development of small and medium-sized enterprises (SME Corporation) (credit and guarantee assistance)

INCORPORATION OF SMEs

- ✓ Conditions of doing business in the Russian Federation:
 - ✓ open a subdivision (representative office or a branch) or establish a legal entity (subsidiary), mostly in form of an LLC
 - ✓ the Russian tax authorities shall automatically designate a newly registered company as SME (micro enterprise) and enter its data into the Register of SMEs under applicable legislation (though the latter is not always performed by the authorities)

INCORPORATION FORM

- ✓ The most popular form is Limited Liability Company, LLC (in Russian: "OOO")

	ООО
Status	A legal entity (subsidiary)
Charter capital	Min. 10.000 Rub (ca. EUR 130)
Commercial activities	Possible
Functions	Representation of the mother company in Russia in full
Liability	Liability for all obligations
Incorporation term	For unlimited time
Number of foreign employees	No limits

INCORPORATION PROCEDURE

- ✓ The incorporation procedure of a Russian LLC includes the following stages:
 - ✓ preparation of foundation documents and obtaining the document confirming the legal address
 - ✓ registration at the tax authority
 - ✓ registration at the state extra-budgetary funds
 - ✓ stamp production
 - ✓ opening of bank account(s) in a Russian bank

REGISTRATION OF CHANGES

- ✓ The procedure of registration of changes in an LLC includes the following stages:
 - ✓ preparation of a resolution confirming the planned changes and a registration application
 - ✓ registration at the tax authority
 - ✓ notification of bodies concerned (banks etc.)
- ✓ Amendments may refer to:
 - ✓ charter data (new version of charter, amount of charter capital etc.), in this case a new charter is to be registered as well
 - ✓ other data (change of general manager, change of address, etc.)

NEGATIVE TENDENCIES FOR LLCs (1)

- ✓ Unofficial toughening of requirements to shareholders, members of managing bodies (especially general managers), legal addresses and rented premises as well as to registration documents; additional checks and coordination procedures with registration authorities (officially declared reason: fighting illegal business)
 - ✓ examples: preliminary checks of registration documents before filing, examinations of future managing directors at the premises of registration bodies (several examinations within one procedure are possible), on-site inspections of the premises and direct communication of registration bodies' representatives with owners of the rented premises

NEGATIVE TENDENCIES FOR LLCs (2)

- ✓ Temporary suspensions of registrations for additional check of data
 - ✓ check of the data to be included into the Unified State Register of Legal Entities ("EGRUL") which often happens by registration of changes in the company (suspensions for 1 month)
- ✓ Checking the data already included into EGRUL
 - ✓ check of the data regarding addresses, shareholders or managing directors of the companies which can be marked as "mass" ones (=acting in the respective capacity in more than five companies). Respective marks are made in the register and can be corrected after corresponding changes in the company are made; in case if no changes are undertaken within 6 month the company may be excluded from EGRUL

NEGATIVE TENDENCIES FOR LLCs (3)

- ✓ Registration bodies often inform servicing banks of the companies about the above mentioned checks of suspicious data
 - ✓ they can even recommend to block the company's bank accounts in case if the prescribed changes are not made. The banks' reaction can be different, e.g. all electronic banking services can be blocked until the changes are registered
- ✓ Servicing banks also steadily toughen their requirements to documents and information filed by the companies
 - ✓ it refers to any possible data and sets of documents for opening of bank accounts as well as for their further maintenance

POSITIVE TENDENCIES FOR LLCs (1)

- ✓ Possibility to personally submit registration documents signed by an individual "digital signature" in electronic form (without preliminary notarization)
- ✓ Possibility to submit registration documents through a notary in electronic form
- ✓ Implementation of electronic interaction system between registration (tax) bodies and so-called "multifunctional centers"; possible issuance of all registration documents in electronic form (the latter not being actually implemented yet)

POSITIVE TENDENCIES FOR LLCs (2)

- ✓ Possibility to submit additional (corrected) documents in case of registration denial without repeated payment of the respective state duty
- ✓ Possibility for interested persons to subscribe for relevant registration news regarding selected companies on the web-site of registration authorities in order to control possible future registrations of changes in these legal entities and to be able to file objections to these registrations

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- LL.M., TU Dresden
- Legal Counsel on Labor issues, Berlin
- Over 18 years of consulting experience of transnational corporations, especially on secondment matters, during the disputes with the company's top-management, mass transfers and dismissals, HR-audits
- Experienced coach in the field of labor law for top-management and HR-specialists of the companies
- Chief of Personnel Committee of the Russian-German Chamber of Commerce
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THANK YOU FOR YOUR ATTENTION!

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