

**AEB**  **HOW TO INVEST IN RUSSIA**

THE AEB GUIDE TO INVESTING IN RUSSIA



**MAXIM ORESHKIN**

Minister of Economic Development  
of the Russian Federation

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**Dear colleagues,**

The key priority for the Government of the Russian Federation is to ensure favourable conditions for doing business.

A comprehensive approach to the regulation of entrepreneurial activity ensured Russia's rise from 120<sup>th</sup> place in 2012 to 31<sup>st</sup> in the World Bank's Doing Business ranking.

In 2018, the Business Climate Transformation mechanism was launched to manage systemic changes in the business environment. The key objective of this mechanism is to ensure rapid responses to the business community's requests for the elimination of existing regulatory restrictions. The action plan of the Business Climate Transformation is reviewed twice annually with the direct participation of the business community, including the Association of European Businesses.

Additionally, great attention is paid to strengthening the protection of legitimate business rights and mitigating the criminal law risks of doing business. The President of the Russian Federation has set the task of intensifying this line of activity.

Another promising area is the development of a 'regulatory guillotine' mechanism to reduce the number of requirements. It is designed to create an adequate modern regulatory system meeting the requirements of technological development and based on the identification and effective mitigation of the most significant social risks.

Thank you for your active participation in improving the Russian investment climate. We urge you to be even more active in developing and implementing systemic mechanisms to improve the business environment. We look forward to further fruitful cooperation.

**JOHAN VANDERPLAETSE**

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## Dear readers,

Welcome to the 2019 edition of the AEB 'How to invest in Russia' guide.

The AEB presents the 11<sup>th</sup> annual edition of 'How to invest in Russia', bringing together practical advice from well-known professionals. The operating and investment environment remains essentially the same as in the previous year. Political tensions are still high, and sanctions and counter-sanctions put in place in 2014 are unlikely to be removed in the near term. While all financial stability indicators look strong, with high foreign exchange reserves, a fiscal surplus, and good terms of trade, the underlying performance of the economy remains weak. Productivity is low, and improvement would require investment, which has not been forthcoming. Foreign direct investment has fallen dramatically, reflecting the ongoing cross-border risk premium. The Russian macroeconomic picture is stable and the core strength has been established in a fiscal surplus, good balance of trade, and increasing foreign currency reserves. Through the use of the fiscal rule, the country has also been able to double its wealth fund and is expected to hit the target level of 12% of GDP by 2021 enabling the fund to contribute significantly to investment without lessening the backstop capability.

Recently there have been some early signs that there could be progress on the relationship with Ukraine. This might provide the first stage in de-escalating tensions with the latter, and, if so, to a gradual improvement in the political crisis.

The AEB reiterates its position in favour of the de-escalation of conflict, and remains opposed to economic sanctions or limitations on free trade or investment. It is incumbent on all parties within the business environment to maintain dialogue in an effort to de-escalate the current tensions.

Apart from the direct impact of sanctions, which reduce GDP growth, increase the country risk premium, create pressure on long-term funding, and fuel inflation, there is the indirect impact of higher interest rates, capital and intellectual flight, and a loss of domestic investor and consumer confidence. Given the political nature of the drivers, it is no longer possible to forecast how long these negative influences will last and how deeply they will impact the economy.

Nevertheless, the Russian economy of 146 million people will continue to present tremendous opportunities for investors who are prepared to accept the risks involved in working here. The AEB survey of European investors acknowledges the increased risks of the operating environment, but also notes the consistently more positive perspective of those with existing investments.

This current edition of the 'How to invest in Russia' guide will bring you updates on the investment climate, and the legal, financial, tax and intellectual property aspects. In addition, it also provides insight into investments by regions and by industries, as well as into the opportunities and challenges when localising in Russia.

We would like to thank all the authors who helped by making their valuable contributions to this guide, sharing their knowledge of the Russian market and their experience of running a business here. We are also most grateful to the Ministry of Economic Development of Russia and the Federal Antimonopoly Service, who have supported the guide over the years.

We hope this publication will serve its purpose, bringing more investment to Russia and promoting a business environment which is beneficial to all interested parties.

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# Part I.

# Russia is the right place for investing

# Foreign investment control: the latest changes in legislation and state policy



## IGOR ARTEMIEV

### Head of the Federal Antimonopoly Service (FAS Russia)

Since 10 March 2004, Mr. Artemiev has been Head of the Federal Antimonopoly Service of the Russian Federation. He is the author of 43 articles and seven monographs on state budget and economy.

Mr. Artemiev is Member of the Government Commission for Control over Foreign Investments in the Russian Federation; Member of the Government Commission for Administrative Reform; Member of the Government Commission for Development of Competition and Small Business Support. Mr. Artemiev was awarded with the Order for Service to the Motherland of the 4<sup>th</sup> and the 3<sup>rd</sup> grades.

State investment policy is one of the key tools used by the Government in order to ensure its integrity, independence and competitiveness by developing and applying new technologies, increasing the quality of goods, works and services, developing competition and improving population welfare.

However, each country independently determines the industries that are stra-

telegically important for its defence and security. Investments in such industries may be restricted on the legislative level. Normally, in any country, the list of these industries includes natural resource extraction and processing, defence, aviation, healthcare, transportation and telecommunications.

On April 29, 2008, Russia adopted Federal Law No. 57-FZ 'On the Procedure for Foreign Investments in Business Entities that Are of Strategic Importance in Ensuring the Defence and Security of the Country' (hereinafter referred to as Law No. 57-FZ).

The purpose of Law No. 57-FZ was to consolidate separate regulations that one way or another limit the participation of foreign businesses in Russian enterprises, unite such regulations into one federal law, create a single, transparent decision-making procedure that is clear to everyone, transit from prohibitions to preliminary control and establish penalties for violation of the law. Until 2008, such restrictions existed separately in laws touching upon different industries. In many cases, these restrictions, which had existed since the Soviet period, were contained in various by-laws and instructions; some of them even belonged to certain security classifications. The adoption of Law No. 57-FZ changed the situation dramatically; the restrictions, which are based on the requirements of the Constitution of the Russian Federation and establish the procedure for foreign investments in

strategically important business entities in a specific manner, became clear and transparent and were lifted to the level of federal legislation.

Law No. 57-FZ contains a detailed description of its purpose – to ensure the defence and security of the country by establishing a special procedure for foreign investment in industries that are strategically important for ensuring the defence and security of the country through the implementation of statutory restrictions for a range of entities determined in Law No. 57-FZ.

What is the structure of Law No. 57-FZ?

First, this Law contains requirements defining the rules for the execution of transactions by foreign investors resulting in their establishing control over strategically important companies or acquiring the property of such companies. Second, the Law establishes a complete prohibition on foreign governments, companies controlled thereby and a number of other categories of entities establishing control over strategically important national entities. Third, the Law contains a limited list of strategic business activities. Fourth, the Law establishes the procedure for considering foreign investors' petitions for preliminary approval of transactions subject to control under the Law, defines the powers of governmental bodies in the process of controlling foreign investments and establishes terms for decision-making. Finally, the Law contains measures aimed at preventing

violations of the procedure above and eliminating their consequences.

Hence, Law No. 57-FZ contains quite specific and clear provisions, which define the scope of its application. Primarily, it touches upon transactions and other actions performed by foreign investors both within the Russian Federation and abroad (this refers to the extraterritoriality of the law's operation), as a result of which they establish control over strategically important companies. The Law also covers relations arising in connection with the acquisition of property of strategically important companies worth more than 25% of the book value of their fixed production-related assets.

It is important to note that, besides the norms traditional for corporate law, which state that it is possible to control business entities by owning stakes (shares) in such companies, the Law defines other transactions and actions requiring preliminary approval. These include the possibility of blocking the resolutions of strategic companies' governance bodies; rights, including the right to appoint the sole executive body or elect a specific number of members to collective bodies and the right to determine the resolutions of strategic companies' governance bodies; and cases of establishing control by entering into shareholder agreements.

Essentially, the Law describes more complex control systems than shareholding, e.g. systems based on shareholder agreements and various multi-tiered transactions.

Currently, there exists an entire system of laws and regulations on this matter. They include not only Law No. 57-FZ, but also Federal Law No. 160-FZ dated

July 9, 1999 'On Foreign Investments in the Russian Federation', Federal Law No. 166-FZ dated December 20, 2014 'On Fisheries and the Conservation of Aquatic Biological Resources', Law of the Russian Federation dated February 21, 1992 No. 2395-1 'On Subsoil Resources', a number of resolutions of the Government of the Russian Federation and administrative procedures of government bodies, as well as interdepartmental orders.

Taking into account law enforcement practices, including world practices, Law No. 57-FZ is constantly being improved.

The first package of amendments to Law No. 57-FZ was adopted in 2011, the second one – in 2014, the third one – in 2017, and the fourth one – in 2018. These amendment packages included such material changes as the exclusion from the scope of the Law of foreign investors controlled by the Russian Federation, of a constituent entity of the Russian Federation or a citizen of the Russian Federation who does not have other citizenship; the exclusion of cryptographic activities carried out by banks in the authorised capital, of which there is no share of the Russian Federation from strategic ones; exclusion from the scope of the law of international financial organisations, to which the Russian Federation is a party; clarification of strategic activities.

An important innovation introduced into Law No. 57-FZ is the assignment of a special status to foreign investors that do not submit information to competent authorities on their beneficiaries, beneficial owners and controlling entities and equating their status and rights to those of foreign governments, international organisations and entities controlled thereby in terms of restricting foreign investments in strategic industries.

It is noteworthy that the initial version of Law No. 57-FZ only included foreign governments, international organisations and entities controlled thereby in a separate group of foreign investors, to which stricter statutory restrictions and unconditional prohibitions applied.

By a resolution of the Government of the Russian Federation, it was established that the Federal Antimonopoly Service (FAS Russia) was the federal executive body authorised to perform the functions of controlling foreign investments in strategic entities. The FAS Russia has extensive experience in the field of economic concentration, since transactions falling within the scope of Law No. 57-FZ are similar to those considered under Federal Law No. 135-FZ dated July 16, 2006 'On the Protection of Competition'. Consideration of economic concentration transactions pursuant to the requirements of Law No. 135-FZ, Law No. 57-FZ and Law No. 160-FZ is carried out by a single service, which enables prompt information exchange and decision-making.

It is important to note that decisions on the transactions considered under Law No. 57-FZ are made collectively, for which purpose the Government Commission for Control over Foreign Investments in the Russian Federation has been established. It is headed by the Chairman of the Government of the Russian Federation; it consists of Deputy Chairmen of the Government and heads of federal executive bodies responsible both for the defence and security of the country and for the economic development of Russia, shaping the country's state policy and regulating strategic industries. This makes it possible to consider each transaction submitted for consideration to the Government Commission in a detailed and focused



manner at regular meetings and make well-reasoned and grounded decisions.

A specialised structural unit – the Department for Control of Foreign Investments – has been created to support the activities of the FAS Russia as the competent body for the fulfilment of the objectives set for it.

Since the adoption of Law No. 57-FZ, 592 petitions have been submitted to the FAS Russia, 263 have been considered by the Government Commission, 245 transactions have been approved (78 with the imposition of obligations; with regard to 18, it was decided to deny preliminary approval due to threats to the defence and security of the country), 254 petitions did not require preliminary approval, 57 were revoked by the applicants due to the abandonment of intent to perform the planned transactions, and 18 are currently under consideration.

Such figures demonstrate a favourable attitude towards foreign investors.

As of 2018, the total amount of transactions granted preliminary approval by the Commission was 631 billion roubles (≈9.5 billion US dollars), and the total volume of planned foreign investments under such transactions amounts to 426 billion roubles (≈6.4 billion US dollars).

It should be noted that the economy of Russia is attractive for foreign investors. The most attractive strategic fields for foreign investors are the geological study of subsurface resources and/or the exploration and extraction of minerals from deposits of federal importance, as well as airport services.

Investors come from the Republic of Kazakhstan, the Republic of Cyprus, the Federal Republic of Germany, the State

of Qatar, the Swiss Confederation, the Kingdom of Norway, etc.

It should be noted that currently, the FAS Russia is also developing judicial practice for the application of Law No. 57-FZ. Special attention is being paid to cases where a foreign investor establishes control over strategic companies without obtaining preliminary approvals from the Government Commission and without submitting a petition to the FAS Russia. The non-observance of the law entails legal consequences. For example, the FAS Russia has the right to submit a claim to the court for disqualification from voting at the General Meeting of Shareholders of a strategic company on the basis of illegally acquired stakes.

Within the framework of its judicial work, the FAS Russia challenges various means of establishing control, including covert control, even up to challenging the awards of foreign courts within the Russian jurisdiction; on the other hand, in the course of judicial proceedings, foreign investors' violations are eliminated, which enables the resolution of disputes in a non-confrontational way, without affecting the investment climate of Russia.

A good example of the development of the said judicial practice is a landmark case against Jining Limited Liability Company, a business entity from Heihe, China.

The FAS Russia established that Jining had acquired a 100% stake in Amurmed LLC from a citizen of the Russian Federation; Amurmed is an entity that is strategically important for the defence and security of Russia, using a mineral deposit of federal importance.

The transaction had been entered into in violation of Law No. 57-FZ without obtaining preliminary approval from the

Government Commission for the Control of Foreign Investments in the Russian Federation, in connection with which the FAS Russia filed a claim in court.

During the court proceedings, Jining made an attempt to evade liability by trying to return a portion of the previously purchased shares in Amurmed LLC to the said citizen of the Russian Federation. The court of the first instance partially refused to satisfy the claim of the FAS Russia since the defendant had eliminated the consequences of the previously committed offence.

However, the appeals court sustained the claim of the FAS Russia in full and deemed the contract for the purchase of the 100% stake in Amurmed LLC null and void. This factor renders all other transactions executed during the illegal ownership by Jining of the Russian strategic company null and void.

Hence, the FAS Russia prevented the establishment of the practice of mala fide foreign investors evading the liability established in Law No. 57-FZ for the execution of transactions in violation of the provisions of the said law.

In conclusion, it should be noted that, in pursuing the goal of bringing the foreign investment laws of the Russian Federation into juridical security, the FAS Russia continues to actively work on the development of laws, including as a member of the established Expert Council on Foreign Investments, whose priority objectives are the reduction of administrative barriers for foreign companies in the current economic situation, as well as experience sharing and the implementation of the best world practices in the field of foreign investments. ■

# How the sentiment of European companies in Russia has changed



## ALEXANDER DEMIDOV

Managing Director (CEO) of GfK Rus  
(from 1991 to 2019)

Dr. Alexander M. Demidov is a well-known Russian sociologist, one of the founders of the public opinion studies and market research in USSR/Russia.

In 1991, he founded GfK Rus, the Russian branch of the global market research and data analytics company GfK SE.

Alexander got education in law and sociology; Doctor of Philosophy.

He is the co-author of a number of monographs and numerous publications in Russian and international media.

Alexander is Head of GfK Rus Department of the Sociology Faculty at the Higher School of Economics.

The annual "Strategies and prospects of European companies in Russia" AEB survey has shown that despite the current geopolitical situation, Russia is succeeding in preserving the confidence of the European business. The AEB-GfK Business Barometer measuring the sentiment of the European businessmen working in Russia remains in the zone of positive expectations, at the level of 2018, 2017, and even pre-crisis 2013.

And although we can say that during the past several years we have been witnessing a slow return to "business as usual", there are still internal and external negative factors poisoning the business climate in Russia.

The 12<sup>th</sup> "Strategies and prospects for European companies in Russia" survey was conducted by the AEB in conjunction with GfK Rus, and provides an overview of the Russian investment climate attractiveness while highlighting the key challenges and strategies of European companies doing business in Russia. This year the survey took place in March-April of 2019 in the form of online surveys and personal interviews with top managers of the AEB member companies working in Russia.

As part of the study, we calculate so-called AEB-GfK's comprehensive index (Business Barometer), which reflects the general state of business and the mood of European companies operating in Russia. According to this year results, the index increased by 2 points compared to the previous year, reaching 140 out of 200 possible points. The AEB-GfK index growth was mainly due to an improvement in the evaluations of the macroeconomic situation in the country, in the business development outlook, and in short-term expectations for the Russian economy.

But the most important sign of the improving situation is that business continues to grow and this supports the positive mood of the European business working in Russia.

According to the AEB-GfK survey, the principal reasons for the entry and presence on the Russian market are the large market volume, its great potential and its positive development. These reasons were marked as the most important for their business by 92%, 92% and 91% of the companies, respectively.

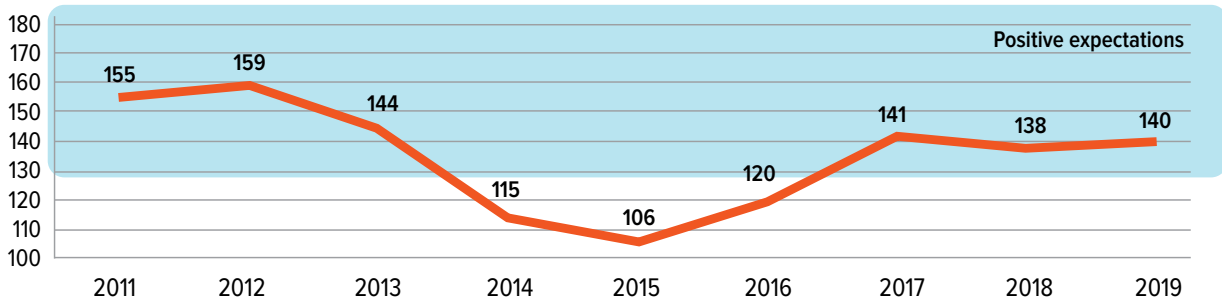
And this year, as it seems, the market has not disappointed the European companies working in Russia. A major part of surveyed companies (66%) reported that in 2018 their turnover had increased in comparison with the previous year. This indicator has shown positive dynamics for the last three years. Only 11% of the companies noted that the turnover decreased compared to the previous year.

In general, the survey results show that the situation in Russia's economy and in their own business has not brought any unpleasant surprises to the European companies. The macroeconomic stability in the country largely contributed to this. A majority of the companies (66%) noted that the general economic conditions in early 2019 (first 3 months) met their expectations.

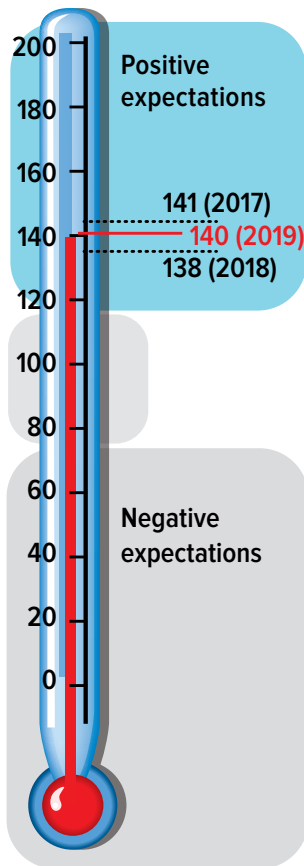
## What is hindering business

At the same time, as the AEB survey participants note, the situation around Russia remains rather difficult. The most negative factors for the current business market noted by the European companies are volatility of the rouble (78%), US policy towards Russia (75%)

► **AEB-GfK barometer: business expectations in Russia (2011-2019)**



► **AEB-GfK index, 2019**



and economic sanctions against Russia (71%).

The above-mentioned factors have a negative impact not only on the business but also on the entire Russian economy, according to the participants of the survey.

Therefore, the assessments of the prospects for increasing investment in Russia

in the current year are as cautious as in the previous year. 17% of the companies expect an increased investment volume in their sectors in the next 2-3 years. 28% expect investment volume growth in Russia in general in the same period.

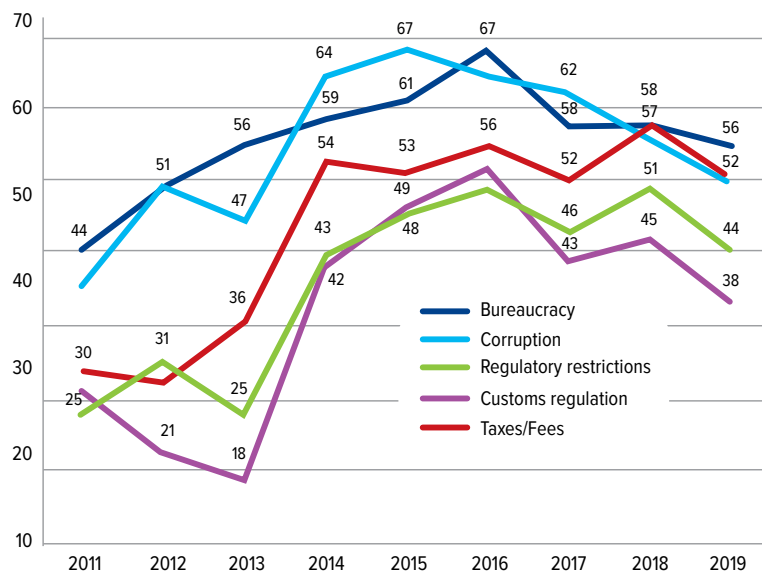
**Evaluation of the business environment in Russia by European companies**

As in the previous years, this year European companies gave rather low scores to the business culture and business environment in Russia. And more than a half of the surveyed European companies say that they do not believe that the situation with bureaucracy, taxes/duties and corruption will improve.

At the same time, the share of pessimists – those who think that the situation with corruption, taxes and bureaucracy can only deteriorate – among the respondents from European businesses in Russia has significantly decreased, on average by almost 10 percent points compared to the survey results in 2014-2016, when the fears were growing amid mutual sanctions.

In addition, more than half of the companies (57%) reported that they went to court to recover debts and most cases were successful. 29% of the companies reported that they never had any bad debts in Russia. ■

► **Expectations of European business in Russia regarding changes in certain operational/problem areas in the next 2 years (% of total respondents with negative expectations)**



# Part II.

# Localisation and investments

# State support for industrial projects: successful examples and new opportunities



**SERGEY VOLOGODSKY**  
Deputy Director,  
Industrial Development Fund

Sergey Vologodsky has served as Deputy Director of the Industrial Development Fund since April 2015.

Prior to taking up the position of Deputy Director, Sergey served at the Ministry of Industry and Trade of the Russian Federation, the Ministry of Economic Development of the Russian Federation, Procter and Gamble and Bank Societe Generale Vostok.

Sergey holds a specialist diploma in Government management from the Financial Academy under the Government of the Russian Federation and has a Master's degree in International economy in the Russian Foreign Trade Academy. Sergey has got MBA with distinction from Kingston University (London).

Mr. Vologodsky is a member of the Investment Policy Committee of the Russian Union of Industrialists and Entrepreneurs, of Moscow Exchange Council 'Growth Sector', of the Board of Directors of Association of industrial parks and of several regional Industrial Development Funds boards.

Sergey was awarded by the Letter of Acknowledgment of the Ministry of Economic Development of the Russian Federation and the Ministry of Industry and Trade of the Russian Federation.

Promoting the localisation of production in Russia, the implementation of an import substitution policy, as well as the entry of industrial enterprises into foreign markets are one of the main directions of state policy in the field of industry today. At the same time, there are a number of challenges and tasks for industrial investors that need to be resolved. In the process of making investment decisions and implementing industrial projects, decisive factors are conditions for doing business, including stability of the economic activity of enterprises and their taxation as well as ability to attract debt capital at low interest rates. So, the Industrial Development Fund (IDF) occupies an important place in the system of state support for industry in the Russian Federation. For the implementation of industrial technology projects the Fund provides targeted loans, acts as the operator of the special investment contract mechanism (SPIC), and carries out international cooperation through interaction with foreign business associations and Trade Representations of the Russian Federation abroad.

Since 2014, the IDF has become an effective tool for supporting industrial projects and has funded more than 470 projects worth more than 100 billion roubles in various industries and regions of Russia. By this work, more

than 160 enterprises have already launched new production facilities. The implementation of all projects funded by the IDF will bring more than 160 billion roubles in tax revenue to budgets of various levels and will create more than 23,000 new high-performance jobs. To implement industrial projects, the IDF provides targeted loans at a rate of 1%, 3% and 5% per annum for up to 5-7 years in an amount of 5 million to 2 billion roubles, stimulating the inflow of direct investment into the real sector of the economy. The cost of IDF loans is below market, but it is possible to use them only in a targeted way. Today, the IDF offers a wide range of programmes to finance projects aimed at developing new high-tech products, import substitution, export, leasing of production equipment, implementation of machine tool projects, digitalisation of existing industries, production of components, labelling of drugs and increasing labour productivity.

One of the IDF's priority programmes, 'Components', is aimed at developing a network of local suppliers. This is a very important topic for Russian industry in general and for foreign manufacturing companies in the Russian market in particular. The Component Products programme is in high demand among companies that produce a component base and plan to integrate into the supply chain of localised in Russia compa-

nies and holdings. Its conditions may be attractive for companies: for the first 3 years, the interest rate is 1% per annum and 5% for the remaining term, while the loan amount is 50-500 million roubles. The programme provides deferred payment of principal of the loan for the first 3 years, which allows companies to enter serial production and generate project revenue. The share of project co-financing by the enterprise has been reduced to a minimum of 20% of its total cost. By the way, since the launch of the Components programme, the IDF has provided more than 11 billion roubles for the implementation of 39 projects. IDF funds under this programme have a wide range of opportunities for targeted use: money can be used to develop a new technology/product, prepare for its production and launch on the market, acquire Russian/foreign licences and patents, develop engineering, purchase Russian/imported industrial equipment, and even be part of general business expenses for the project.



## Conditions for doing business, including stability of the economic activity of enterprises and their taxation are crucial to implement industrial projects.

In addition, a new loan financing programme, 'Priority Projects', was launched this year. Under this programme, the Industrial Development Fund provides loans to create products for the production of liquefied natural gas (medium- and large-capacity) and shelf projects. The IDF also finances the production of high-power turbines, drilling rigs with a lifting capacity of 320 tonnes, rotary-controlled systems and equipment for hydraulic fracturing. Projects are ad-

mitted to the programme by decision of the Ministry of Industry and Trade of Russia. Borrowed co-financing is provided for projects implemented in the priority areas of Russian industry and aimed at import substitution, as well as at the localisation and creation of mass production of highly competitive, high-tech, critical industrial products competitive in foreign markets. It is important to note that, unlike the other IDF programme, the maximum loan amount is 2 billion roubles.

Understanding the need for constant communication with business, the IDF has a Consulting Centre, which acts as a 'one-stop shop' for industrial investors and assists them in understanding all the peculiarities of IDF financing programmes and state support measures. Consulting Centre specialists provide detailed information on preferential loans of the IDF and help to assess the degree to which the project meets the criteria of a specific IDF programme. In addition, consultations are provided on a wide range of federal measures of state support for industry included in the Navigator of the State Industry Information System. In order to assess the scope of this work, it is important to note that on average more



than 15,000 calls are received by the Consulting Centre each year.

The SPIC 2.0 mechanism provides new opportunities to increase the investment attractiveness of Russia, to strengthen the development, transfer and implementation of advanced, modern technologies, and most important, to ensure stable business conditions for industrial investors in the Russian Federation. On 13 August 2019, a package of amendments to Federal Law No. 488 'On Industrial Policy in the Russian Federation' and to the Tax and Budget Codes entered into force. A number of significant changes will be implemented in the new SPIC 2.0 mechanism. For example, the goal of a project implemented by an investor within the framework

of the SPIC must be the introduction or development and implementation of modern technology from the list approved by the Government of the Russian Federation for the manufacturing of products that are globally competitive. The maximum period of a SPIC is significantly increased – no more than 15 years for projects with total investment up to 50 billion roubles and no more than 20 years for projects with total investment of 50 billion roubles. Prolonged SPIC terms provide investors with the opportunity to implement projects with a long payback period and a long product life cycle. It is important to note that the minimum investment level is cancelled (previously in SPIC 1.0 it was 750 million roubles). One of the main changes is the cancellation of the tax

exemption limit for the year 2025. Now it is possible to apply incentive measures throughout the entire period of the SPIC, including industry subsidies. However, SPIC 2.0 has another limitation – the preferential income tax rate is valid until the tax and non-tax expenses of the project's budget exceed 50% of capital investment. It makes possible to trace the comparability of the investment planned under the project and the volume of state support, as well as ensure budgetary effectiveness. In addition to this, non-application of changes in tax legislation that lead to a deterioration of the taxpayer's position remains, and it is also possible to include in the SPIC as a promoting measure and a guarantee of stability of the business environment for the investor. The new SPIC

mechanism becomes much more attractive for both Russian and foreign investors, while 45 special investment contracts have already been signed. This indicates the demand for a SPIC in various industries: machine tools, automotive industry, pharmaceuticals, etc. It should be stressed that 27 of the 45 contracts are signed by companies with foreign capital, including such major players in the world market as CLAAS, Mercedes-Benz, Volvo, Peugeot-Citroen, Vestas, AstraZeneka, and Sanofi. They have received invariable tax conditions for the duration of the contract, the possibility of an accelerated procedure for obtaining the status of products manufactured in the Russian Federation (Made in Russia), as well as the possibility of applying preferential rates on corporate income tax and property tax. A number of companies apply to the IDF in order to obtain preferential financing in parallel with signing of a SPIC.

The Fund, acting as the operator of the SPIC mechanism, provides a comprehensive study of investment projects with investors for compliance with the terms of SPIC signing, performs an expert assessment of the set of documents (applications) for the conclusion of the SPIC, prepares an expert opinion on the project, and takes part in coordinating SPIC parameters and legal work.

The IDF also promotes the SPIC mechanism among foreign investors, using a full range of opportunities, including the Trade Representations of the Russian Federation and foreign business associations. Since 2018, cooperation agreements have been signed with the Association of European Businesses, the Russian-

German Chamber of Commerce, the Korea Trade-Investment Promotion Agency, the Franco-Russian Chamber of Commerce and Industry, and the Turkish Exporters Assembly. Working interaction continues with other associations. As a result of this interaction, we see, first of all, the creation of added value for business: specific companies involved in financial support for the implementation of projects in Russia, the search for suppliers of raw materials, components and consumables with the status 'Made in Russia,' the establishment of technological cooperation between Russian and foreign industrial companies,

The SPIC 2.0 mechanism provides new opportunities to strengthen the development, transfer and implementation of advanced technologies.

and assistance in solving other current problems. For example, as part of systematic interaction between the IDF and the Russian-German Foreign Trade Chamber, 100% of the project is funded by the German company Schattdecor (Shattdecor AG Group) for the production of decorative cladding film on a paper base for furniture and building materials. At the IDF's initiative, the agenda of the meeting of the Russian-German Working

Group on Strategic Cooperation in the Field of Economics and Finance included the problematic issue of implementing the project of the German machine tool group Niles-Simmons-Hegenscheidt, one of the 30 largest global machine tool builders, to localise the production of high-tech lathes for the Russian market. Since 2018, as part of the joint programme (Technical Cooperation) of the IDF and the Korea Trade-Investment Promotion Agency, an IDF borrower, Russian Mechanics, which manufactures next-generation snowmobiles for the Arctic and the Far North, and Korea R&D, a South Korean manufacturer of industrial engines, have signed a Memorandum of Cooperation for engine building. The issue of creating an electronic platform for international cooperation in the industrial sector with a pilot project is being discussed. As a pilot project this may be a Russian-Korean platform for technological and industrial cooperation with popular services for foreign and Russian companies. In addition, active work is currently underway on cooperation with the Trade Representations of the Russian Federation. A number of consultations are being held to support investment projects aimed at creating localised production in Russia from countries such as India, France, Egypt, Germany, Turkey, etc.

In summary, we can say that in spite of a number of challenges, problems and tasks, which industrialists are facing, there is a system of government support measures in Russia that can be used to maximise the effectiveness of investment projects in all key industries. The Industrial Development Fund is interested in localising foreign investors in Russia. And we are always ready for a constructive dialogue! ■



# Reformatting of special investment contracts (or SPIC 2.0)



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Significant changes to the statutory rules for the conclusion of special investment contracts were enacted in the Russian Federation in 2014 by the Federal Law 'On Industrial Policy in the Russian Federation' to incentivise localisation of production in Russia; these changes have been applied in practice since 2015.

Amendments to the Federal Law 'On Industrial Policy in the Russian Federation' were enacted on 13 August 2019;

they are known as SPIC 2.0 and their objective is to reform and relaunch the arrangements for special investment contracts.

However, regulations enacted solely at the federal level are not sufficient for a full relaunch of this special investment contract tool. For a complete restart, the Government of the Russian Federation must adopt a range of subordinate legislation – in particular, to establish a procedure for the conclusion of special investment contracts and approve a list of cutting-edge technologies for which investors may conclude such contracts to develop (implement) these technologies.

The principal objective of this new format is to facilitate the entry into Russia of cutting-edge technologies for mass production of competitive and unique industrial products; this entry will create new jobs and have a positive impact on the income of Russia's constituent territories.

This is a distinctive feature of this new model. According to the previous requirements, special investment contracts could be concluded for any type of product.

In accordance with SPIC 2.0, a special investment contract may only be concluded for high-tech products, i.e. the development and implementation

of cutting-edge technologies included in a special list to be approved by the Government of the Russian Federation.

The exact definition of the term 'cutting-edge technologies' is not yet quite clear, and the procedure to include such technologies in the above-mentioned list has not been defined.

Another important change is that SPIC 2.0 will be a four-party contract concluded by the investor with the Russian Federation, the concerned constituent territory of the Russian Federation and the concerned municipality (representing the public sector) simultaneously. Naturally, this is a step towards additional stability in doing business. This stability will be promoted at all government levels.

It should also be highlighted that only one investor can represent the private sector as a party to SPIC 2.0. So far, the current legal wording does not envisage the possibility of co-investing or contract participation by any other private sector entity. Perhaps the involvement of other parties will be allowed by subordinate legislation (decrees of the Government of the Russian Federation) which is yet to be adopted. SPIC 1.0 rules allowed participation in the contract by other parties attracted by the investor (such as engineering centres, distributors, financial centres, etc.).

### Contract conclusion procedure

According to the new rules, SPIC 2.0 will be awarded based on the outcome of an open or closed competitive selection process (tender).

The law allows two exceptions to this rule (i.e. conclusion of a contract without a tender):

- conclusion of a special investment contract on the terms and conditions proposed by the investor and compliant with the Russian laws by a decision of the President of the Russian Federation in order to implement a strategically important project for the development of Russia’s economy or to ensure national security;

- if only one bid has been submitted to the competitive tender and that bid satisfies the requirements established by law.

An open tender can be initiated by the public sector (the Russian Federation, the Russian Federation together with one of Russia’s constituent areas and a municipality) as well as by the investor.

Closed competitive tenders will be held to award special investment contracts for the implementation of projects to develop or to implement military, special purpose or dual-use technologies for mass production of industrial products on their basis to ensure national security.

A prerequisite for the conclusion of a SPIC 2.0 contract will be granting by the laws of the concerned Russia’s constituent territory, as of the contract date, of industrial incentives applicable to the investor and the existence of an approved procedure for their application.

Prior to submission of its bid to the duly authorised federal government body, the investor will have to coordinate the investment project with the relevant regional and municipal governments.

The law sets the following criteria for the selection of a winning bid in the competitive tender held to award a special investment contract:



Greenstate Industrial Park. This is the territory where leading companies are based. Siemens, SMC Pneumatik, Ponsse, Raven Russia, Viking Life Saving Equipment.

18 residents have opted for the greenstate industrial park

**Prepared infrastructure**  
Your project delivered on time and without budget overruns

**Reliability**  
YIT Corporation has been in Russia since 1961

**Customer support**  
The Park’s maintenance and management company is working 24/7



Rail connection	0 km	Pulkovo Airport	15 km
City Ring Road	1 km	Sea Port of SPb	16 km
Tallinn motorway	1 km	Moscow motorway	23 km
Kiev motorway	9 km	Sea Port of Ust-Luga	120 km

- the proposed term for the introduction of the cutting-edge technology, which is the time period beginning with the special investment contract conclusion and ending with the manufacture of the first batch of industrial products based on this technology;
- the proposed amount of the industrial products to be manufactured during the special investment contract lifetime;
- the proposed level of technology to localise industrial production using a technology included in the list of cutting-edge technologies approved by the Government of the Russian Federation.

concluded for a maximum of 15 years for projects with investments of up to 50 billion roubles (VAT exclusive), or for a maximum of 20 years for projects with investments of over 50 billion roubles (VAT exclusive).

### Tax incentives

SPIC 2.0 investors will continue to enjoy tax benefits. These benefits include a zero income tax rate, preferential land tax, property tax and transport tax rates at the regional tax level, but only a preferential income tax rate at the federal tax level.

The new rules have removed the restriction on the application of tax ben-

surey only if the revenue from sales of goods under the SPIC made at least 90% of all contractual revenues other than gains from exchange rate differences.

Starting from 1 January 2020, two options will be available to the SPIC 2.0 participants:

- to apply preferential tax rates subject to the above-mentioned conditions for the entity's entire tax base (as per the previous rules); or
- to apply preferential tax rates only to the entity's tax base associated with the implementation of the investment project under the SPIC. In this case compliance with the 90% rule will not be required, but the entity will have to maintain separate accounting records.

The entity will have to approve the selected option in its accounting policies and may not change this decision for the duration of the SPIC.

The limitations on investor support: the investor will only enjoy preferential tax rates until the end of the reporting or tax period in which the total support granted to the SPIC participant from the treasuries at all government levels (including tax revenues lost by these treasuries) exceeds 50% of the investor's capital investments in the investment project.

### Time limit of SPIC 2.0 contracts

According to the new rules, special investment contracts under the amended SPIC 2.0 version may only be concluded until 31 December 2030. All contracts concluded in accordance with the previous rules (SPIC 1.0) will remain effective. ■

In accordance with SPIC 2.0, a special investment contract may only be concluded for high-tech products, i.e. the development and implementation of cutting-edge technologies included in a special list to be approved by the Government of Russia.

### Investment value in SPIC 2.0

While the previous rules for special investment contracts (SPIC 1.0), which were concluded for a term of up to 10 years taking into account the period required for the project to reach its full budgeted operating income level, included the minimum investment requirement of 750 million roubles, the new special investment contract version (SPIC 2.0) does not set any investment threshold.

According to the new rules, the duration of SPIC 2.0 will depend on the investment value. The contract will be

efits. The previous rules only allowed exemptions until 2025. This time limitation has been eliminated under the new rules. For the new rules to actually work, it will be necessary to make the relevant amendments to the subordinate legislation.

### Preferential income tax rates

The terms and conditions for the application of preferential income tax rates have been adjusted. Previously, it was possible to enjoy a zero income tax rate payable to the federal treasury and a reduced income tax rate payable to the regional trea-

# Draft Federal Law 'On Protection and Encouragement of Investments': overview of key provisions



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**T**he draft law 'On Protection and Encouragement of Investments' (hereinafter, Draft Law) has now been developed and published for public discussion.

It has been prepared in order to implement the provisions of Order of President Putin No. 204 dated 7 May 2018 'On National Goals and Strategic Tasks for the Development of the Russian Federation to 2024'. These provisions included securing growth rates above the global average and creating a highly productive export sector based on modern technologies in the most important sectors of the economy, primarily in the processing industries and agriculture.

The Draft Law can be regarded as a framework law on investment in Russia, as well as a law guaranteeing a stable investment climate, which aims to provide a transparent and predictable legislative framework for large investment projects.

In particular, it attempts to systematise and replace the stability guarantees for investment projects existing under current laws (e.g. Special Investment Contract, Public-Private Partnership, Special Economic Zone) with a unified stability clause for projects for which an agreement is concluded.

The Draft Law provides for the possibility to enter into a special agreement on the

protection and encouragement of investments (hereinafter, Agreement) between the Government of the Russian Federation, Russian region(s) and investor(s).

## Agreement on the protection and encouragement of investments

### Qualifying industries

Investment projects in the following sectors qualify for an Agreement: agriculture, forestry, fishing and fish farming, mining (except for extraction of crude oil and natural gas [not including projects on liquefying natural gas]), manufacturing (except for the production of tobacco products, alcohol and liquid fuels, not including the production of liquid fuel from coal, and in installations for secondary processing of oil raw materials according to the list approved by the Government of the Russian Federation), electrical, gas and steam power, air conditioning, heat supply, water supply, sanitation, waste management, pollution management, construction, transportation and storage, information and communications sector, hospitality, tourism and health care, including projects involving the production of dual-use products.

There are certain financial requirements for qualifying projects: the project's budget should total at least 10 billion roubles, while private investments should amount to at least 3 billion roubles.

The Russian government can decrease the investment threshold for the project's total budget or the share of pri-

vate investments in the project's budget, depending on the industry.

The standard duration of an Agreement is set as 6 years for investments up to 30 billion roubles and 12 years for investments over 30 billion roubles. Regardless of the amount of investment, if the investment period exceeds 6 years, the duration of the Agreement is set as 18 years.

The duration of the Agreement may be extended for another 6 years if the investor undertakes to reinvest income from the project into a new project in Russia in an amount of at least 1 billion roubles within this 6-year period.

The Draft Law can be regarded as a law guaranteeing a stable investment climate, which aims to provide a transparent and predictable legislative framework for large investment projects.

### Parties to the Agreement:

- investor: a Russian or a foreign person/legal entity/unincorporated organisation that provides financing for the investment project and arranges project management or implements the investment project. The Agreement cannot be concluded with a legal entity residing in a low-tax jurisdiction and/or a jurisdiction that limits information exchange with Russia, according to the list from the Russian Ministry of Finance.<sup>1</sup> Neither can the Agreement be concluded

with a Russian legal entity that is more than 50% owned by a foreign legal entity;

- the Russian Federation;
- the region of the Russian Federation where the investment project is planned for implementation (or several regions if the investment project is implemented in these regions);
- co-investor: an individual or legal entity (including a credit entity, a leasing company, a partnership, a fund, a specialised foreign sovereign fund, a Russian or foreign investment fund, a non-state pension fund, an investment partnership, or a unit investment fund) engaged by the investor to co-finance the project;

- entity implementing the project: the investor or a legal entity controlled by the investor created under the laws of the Russian Federation (including an organisation specially created by the investor to implement the project), producing (planning to produce) the project's products.

### An Agreement should contain the following essential provisions:

- object(s) of investment activity;
- investor's obligation to make its own investments in the project in the

<sup>1</sup> Order No.108n of the Ministry of Finance of the Russian Federation dated 13 November 2007 'On the Adoption of the List of States and Territories Providing Preferred Tax Regimes and/or not Requiring Disclosure or Provision of Information on Financial Transactions (Offshore Zones)'



- amount and on the terms and conditions established by the Agreement;
- investor's obligation to finance and implement the project on time and on the terms and conditions established by the Agreement;
- total budget of the project;
- obligations of the Russian Federation to compensate the investor for any losses incurred as a result of failure to ensure the stability of the terms and conditions of project implementation
- procedure the investor should follow to submit information on the fulfillment of obligations under the Agreement;
- duration of the Agreement;
- responsibility of the parties for non-performance and/or improper performance of their obligations under the Agreement;
- other material terms and conditions.

#### **Guarantees for investors envisaged in the Agreement**

#### *General stability clauses*

The Draft Law stipulates that the terms and conditions of any statutory acts which regulate business operations in the sphere of the project's activity (including those related to licensing and certification, use of natural resources, environmental protection, export or customs operations, architectural design and construction), which were introduced after the Agreement was concluded, and which introduce additional obligations, limitations or interdictions as compared to the rights and obligations of the investor/entity implementing the project at the time the Agreement was concluded shall not apply to the investor or entity implementing the project (as applicable) until the Agreement expires.

#### *Tax stability clauses*

The Draft Law stipulates that the terms and conditions of any statutory acts which regulate taxation, were intro-

duced after the Agreement was concluded, change tax rates, tax concessions, the calculation procedure, the procedure and time frames for the payment of corporate income tax, property tax, transport tax and land tax, introduce new taxes/obligatory duties instead of these taxes, change the time frames for payment and the procedure for VAT refund shall not apply to the entity implementing the project in relation to the execution of the Agreement.

The stability clauses do not apply to legislative amendments resulting from the implementation of international agreements concluded by the Russian Federation and legislative acts of the Eurasian Economic Union (applied in Russia), as well as legislative amendments introduced to protect the foundations of the constitutional system, including the protection of citizens' lives and health and maintenance of state defence and safety.

#### *Tax Increment Financing (TIF)*

The Agreement may stipulate a future refund of taxes paid over the period of the investment project and the respective customs duties in the form of subsidies that will be used to build infrastructure (the procedure for granting these subsidies has not yet been stipulated).

The TIF mechanism was already mentioned in the Major Directions of Tax Policy for 2015 and for the 2016-2017 Planning Period. However, there have not been any developments in this regard since then.

The stability clauses under the Agreement apply to investment projects realised, among other things, in the following forms/under the following regimes:

Special Investment Project (SPIC), Public-Private Partnership (PPP), Con-

cession Agreement, Priority Social and Economic Development Areas (PSEDA), Free Economic Zone, Special Economic Zone (SEZ), Free Port of Vladivostok, and Regional Investment Project (RIP).

### Procedure for concluding an Agreement

The Investor should submit a special declaration on implementation of an investment project – and likely a comprehensive set of documents – to the federal authorities.

The template of the Agreement, the procedure for its conclusion (and the relevant set of documents), and the procedures for monitoring the implementation of Agreements have yet to be developed by the Russian government.

Investment projects for which the relevant Agreements have been concluded are included in the special register of Agreements.

### Summary/conclusions

The Draft Law is aimed at unifying guarantees of stability of legislative

terms and conditions for investors, including the guarantees provided as part of SPICs, PPPs, Concession Agreements, etc.

However, it seems the process of considering the Draft Law is not going smoothly (possibly because of the varying positions of different governmental departments) and a sufficient number of by-laws specifying the procedures, criteria and requirements for the parties to the Agreement will have to be developed.

In particular, based on the mass media, Vice-Premier Kozak has recently developed another draft law which introduces differing conditions (for example, the minimal investment threshold is RUB 15 billion, the state support measures are to be provided on a contest basis, etc.).

In addition, in its current version the Draft Law has a number of limitations that could possibly be addressed during further consideration of it: 1) an Agreement can only be concluded in

respect of new investment projects, i.e. before any investments are made; 2) although the Draft Law expands the tax stability clause to such direct taxes as corporate income tax, property tax, transport tax, and land tax, mineral extraction tax and social security contributions are not currently covered by the Draft Law; 3) crude oil and natural gas extraction lie outside the scope of the Draft Law, even though these are strategic industries. Certain other industries (e.g. retail, tobacco products and alcohol) are also not covered; 4) under the current wording of the tax stability clause, all amendments to tax legislation – not only detrimental but also beneficial ones – would not apply to a private party to the Agreement until the end of the Agreement.

As such, even if in theory the potential for this mechanism to support and boost foreign investments can be viewed as promising, there is a certain level of skepticism as to whether practical implementation will fully address this strategic goal. ■

#### LIST OF LAWS TO BE AMENDED WHEN THE DRAFT LAW IS ADOPTED AND COMES INTO EFFECT (I.E. STABILITY CLAUSES WILL BE ADDED):

- Federal Law No. 39-FZ dated 25 February 1999 'On Investment Activities Carried Out in the Russian Federation in the Form of Capital Investments';
- Federal Law No. 160-FZ dated 9 July 1999 'On Foreign Investments in the Russian Federation';
- Federal Law No. 116-FZ dated 22 July 2005 'On Special Economic Zones in the Russian Federation';
- Federal Law No. 16-FZ dated 10 January 2006 'On the Special Economic Zone in the Kaliningrad Region and on Changes to Certain Legislative Acts of the Russian Federation';
- Federal Law No. 377-FZ dated 29 November 2014 'On Development of the Republic of Crimea and the Federal City of Sevastopol';
- Federal Law No. 488-FZ dated 31 December 2014 'On Industrial Policy in the Russian Federation';
- Federal Law No. 224-FZ dated 13 July 2015 'On Public-Private Partnerships, Municipal Private Partnerships in the Russian Federation and on Changes to Certain Legislative Acts of the Russian Federation';
- Federal Law No. 115-FZ dated 21 July 2005 'On Concession Agreements';
- Federal Law No. 223-FZ dated 18 July 2011 'On Sourcing Goods, Work, Services by Certain Legal Entities'.

# Utilisation of technology transfer in the pharmaceutical industry



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Russia has faced many crucial changes in the pharmaceutical sphere the last few years. As the government is a significant actor in this industry, to understand the industry one needs to grasp the key policy priorities, such as the implementation of GMP standards, special investment contracts (SPICs), track-and-trace system for drugs, and localisation of production. One of the policy cornerstones is the Pharma-2020 programme, which is a pharmaceutical industry strategic development plan that includes the above-mentioned aspects. Pharma-2020 has brought about many

changes. For example, 10 years ago Russian drugs occupied only about 20% of market and the entire market volume was less than about 300 billion roubles. Now drugs produced at Russian factories represent about 30% of the market, and the Russian drug market is estimated at about 1.2 trillion roubles. According to various sources, over 150 billion roubles have been invested in technological equipment and other forms of support. More than 80 international companies have since localised their production in different ways. Thus, overall, understanding and managing technology transfer has become

a standard routine for most international companies active in Russia.

The complex nature of modern technological innovations and the speed of their development no longer allow research institutes and even large research centres commissioned by industrial corporations to rely solely on their own R&D. That is why one of the most important aspects of the innovation process is technology transfer, i.e. the transfer of accumulated technological experience, scientific and technical knowledge, and management technologies with the aim of advancing scientific and tech-



nological progress. The successful transfer criterion is the correct application of the transferred technology in production and the release of innovative products of high quality that would be in high demand. One area where the technology transfer fits in the Russian market is the pharmaceutical industry.

Business localisation accompanied by technology transfer is a key area for developing the pharmaceutical business in Russia. The role of technology transfer in the modern world is hard to overestimate. This way of localisation facilitates a quick increase in the production capacity, enhances safety of supplies to patients, raises the speed of launching a product on the market, improves the competitiveness of an enterprise, etc.<sup>1</sup>

Apart from clear geographical, social, economic, legal and other criteria, it is important that the Russian manufacturer is reliable and complies with both local and international standards and rules.

Localisation of production contributes to further success. Enterprises that have or are establishing manufacture in Russia are in a more advantageous position than those focused exclusively on exporting to Russia. They can take part in government tenders on par with local companies, and in

some sectors participate in state development assistance programmes. They are better protected from currency fluctuations.<sup>2</sup>

### Transfer process planning

Localisation can be achieved in different ways – by construction of a new plant (green-field), modernisation and/or re-equipment of an old one, or technology transfer to a ready-made production site. It is also important to choose whether the company invests on its own or jointly with a partner. Each solution has both advantages and drawbacks. The construction of a new plant by a company on its own and the subsequent production transfer can guarantee fulfilment of all the company's requirements, ensure full control, and create the basis for future development. However, this is one of the most

of picking a partner among the many manufacturers of medicines registered in Russia. Apart from clear geographical, social, economic, legal and other criteria, it is important that the Russian manufacturer is reliable and complies with both local and international standards and rules. You need experience, knowledge and skills to implement a transfer. All this has to be audited by a large team of experts, because a properly organised transfer must guarantee that the localised product will be identical to the original one. In technology transfer, the company management skills play a crucial role. A well-organised process is an indicator of a well-developed quality management system at the enterprise. It also leads to a reduction in material and time costs.

We should note that the transfer process has several features that, depending on the management's experience, can carry both risks and opportunities for process optimisation. When assessing the technical capabilities of the receiving side, it should be born in mind that it needs equipment similar to that available to the transferring side, but not necessarily identical. Often the equipment may be similar, but differ in certain characteristics, e.g. the output volume or speed. In this case, in addition to the technology transfer factor, the scaling factor will also be considered. Moreover, it may be necessary to both increase (with the expansion of production) and decrease (technology transfer to a new market with a lower consumption of the drug) the

expensive solutions. It is also one of the most drawn-out. In addition, hiring new staff, building a team, and utilising the capacity of such a plant will be a huge challenge for the management.

If a company decides to work in a partnership, it faces a difficult choice

<sup>1</sup> Problems and prospects of economics and management: proceedings of the V International Scientific Conference. St. Petersburg, 2016 <https://moluch.ru/conf/econ/archive/219/11502/>

<sup>2</sup> Fursova I. Business has taken root: localisation of production in Russia is becoming a trend. Rossiyskaya Gazeta, Special issue No. 110 (7573), 23.05.2018; <https://rg.ru/2018/05/23/lokalizaciia-proizvodstva-v-rossii-stala-trendom-dlia-nemcev.html>



volume. Here the so-called 'disposable technologies' can be of great practical importance. The concept of using disposable plastic tanks and filtration systems can be implemented in modern reactor equipment for preparing solutions, storage and transfer of substance concentrates, as well as in filling machines for finishing dosage forms, if sterile liquid dosage forms are involved. Disposable technologies ensure maximum versatility in technology transfer and reduce the time for installation and commissioning of equipment to, for instance, 2-3 days for reactor equipment.

When planning the transfer process, the complexity of the drug dosage form should also be considered. When transferring complex products, the company should arrange tests that will guarantee the identity of the product reproduced at the new site. For example, testing a bigger number of collected samples (including at different labo-

ratories for subsequent comparison of results), and an in-depth stability study programme, including monitoring of additional indicators. It is important to realise that the development of modern technology is impossible without the transfer of experience.

Technological transfer is deemed to be successful if a technical (engineering) batch has been successfully produced and tested. A routine production test (3 validation batches) shows that the entire transfer (not only technological, but also analytical methods, cleaning assemblies/equipment/premises experience, and staff qualifications) has been completed.

### Main technology transfer stages

Thus, we can define the transfer as a logical, controlled and documented procedure to transfer the pharmaceutical drug control technology and methods from the developer to the

manufacturer, or from one manufacturer to another.

The main documents that fully describe the technology transfer process are the ISPE and WHO guidelines. According to these documents, the transfer process has the following main stages:

- Signing a contract that includes a clause related to establishing a transfer team, delegation of responsibilities for the transfer, and a schedule.
- Developing documentation.
- Training of the receiving party's employees (conducting training programmes and seminars).
- Transfer of analytical methods.
- Technology transfer (exchange of specialist delegations, re-equipment and upgrade of the recipient's laboratory, etc.)
- Validation and verification.
- Post-transfer control.

Each stage should be documented.

Below there is a table with an approximate list of documents developed in the course of the transfer:<sup>3</sup>

<sup>3</sup> Rudko A. Technology transfer... Be ready! GMP news No. 3 (17), 19.11.2018  
<https://gmpnews.ru/2018/11/k-transferu-texnologij-bud-gotov/>

STAGE/TASK	SOURCE DOCUMENTATION	TRANSFER DOCUMENTATION
<b>Project launch</b>	Project plan and quality control plan, risk assessment protocol, risk mitigation plan, GAP analysis	Quality Agreement, Project Implementation Plan, TOT Protocol
<b>Evaluation of instrumentation</b>	Plan and equipment of SU production facilities, list of all equipment and systems, qualification statuses (DQ, IQ, OQ) and reports, manuals, SOPs, etc.	Step-by-step comparison with RU production facilities, GAP analysis, Qualification protocol and report
<b>Safety evaluation</b>	Specific waste and its disposal	
<b>Staff training</b>	Standard operating procedures and training programmes	Training protocol, evaluation of results
<b>Transfer of analytical techniques</b>	Specifications, including in-house control, methodology validation reports	Protocol and report on the transfer of methods
<b>Supply of raw materials</b>	Specifications and Additional Information on APIs and Auxiliary Materials and Ingredients	
<b>Transfer process</b>	Information about reference parties, development report, stability data, deviation reports, information on ASF, etc.	Process validation protocol and report
<b>Cleaning</b>	Validation of cleaning, including information on solubility, therapeutic doses, category (toxicology), SOP for cleaning, etc.	Cleaning validation protocol and report

Technology transfer in the pharmaceutical industry is very important both for foreign companies and for the Russian manufacturers. For the former, it allows not only to maintain, but also to increase their market share in Russia. For the latter, it provides opportunities for accelerated growth right away, when the reces-

sion is still minimal within the industry – the corporate income has not dropped yet, and workforce productivity remains very high as compared to other industries.

This cooperation trend between Russian and foreign pharmaceutical companies accompanied by technology

transfer will obviously be of a long-term nature. In order to maintain successful cooperation, it is important to consider such features as legal protection of transferred technologies, the quality of pharmaceutical products or medical equipment produced with their use, their ultimate cost to the consumers, etc.<sup>4</sup> ■

<sup>4</sup> Problems and prospects of economics and management: proceedings of the V International Scientific Conference. St. Petersburg, 2016  
<https://moluch.ru/conf/econ/archive/219/11502/>

# Part III.

## Before you start

# Doing business in Russia: how to bridge the gaps



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Alina has been advising international investors on their activities in Russia for 7 years, has experience and expertise in corporate and contract law, international investments & international projects support, public-private partnerships.

## Structuring your new company: Trust and 'Matreshka' Rule

In the Russian law there is still no 'trust' concept. There is a 'fiduciary management' notion, however, it does not imply the transfer of ownership (property) rights to management, as compared to the English 'trust' concept. Therefore, the fiduciary management does not serve the same purposes as the trust – here is the 1<sup>st</sup> gap which you cannot actually bridge.

The issue of implementing the trust notion in the same form it is understood under the common law has been raised in the discussions at the level of the President and the Government of the Russian Federation. However, at the moment the only achievement of those discussions is the enactment of the tax regulations on the controlled foreign companies (chapter 3.4 of the Tax Code of the Russian Federation) as of January 1, 2015. After this enactment the Russian tax legislation has become aware of the term 'trust' and it has been defined as 'a foreign structure without the creation of a legal entity'. However, it obviously refers to foreign trusts the incorporation of which might result in extra responsibilities for tax residents

to inform the state bodies about the trust and pay taxes from its profit in the Russian Federation.

The 2<sup>nd</sup> structuring gap is the so-called 'Matreshka' rule, which was cancelled in Germany and France for example, but still exists in Russia. According to the Russian legislation,<sup>1</sup> a legal entity consisting of one person (individual or another legal entity) cannot be the sole participant of a Russian LLC (nor can it be the sole shareholder of a JSC). Experts and businessmen have been discussing for a while already that this rule does not contribute to tracing of the actual owners of businesses, i.e. to lifting of the corporate veil. However, this provision still remains the same. Formally, a company that was registered in violation of this rule may be liquidated on the basis of a court decision confirming that the company's registration was invalid.<sup>2</sup> The claim for liquidation may be filed with the court by the tax authorities. However, practically the risk of filing such a claim and further liquidation of the company by court is not very high, because tax authorities and courts take the position of the Constitutional Court of the Russian Federation into account.<sup>3</sup> According to the mentioned position, liquidation is an exceptional measure, which shall be proportionate not only to the violations

**W**hen a foreign investor considers expanding business onto the Russian market, such an endeavor can be quite unpredictable, in particular when it comes to Russian jurisdiction compared to European. Let us take a look at the most common practical 'gaps' the Russian legal system involves and how you may 'bridge' them.

<sup>1</sup> Paragraph 2 of Article 7 of the Federal Law as of 08.02.1998 No. 14-FZ 'On Limited Liability Companies' and Paragraph 2 of Article 10 of Federal Law as of 26.12.1995 No. 208-FZ 'On Joint Stock Companies'

<sup>2</sup> Subparagraph 1, Paragraph 3 of Article 61 of the Civil Code of the Russian Federation

<sup>3</sup> The Constitutional Court ruling No. 14-P dated 18.07.2003

committed by the legal entity, but also to the consequences caused.

Nevertheless, to be formally compliant with the Russian legislation, you should consider the following solutions to bridge this gap: 1) introducing one more participant (shareholder) at the level of the company to be established or 2) at the level of the parent company (or individual). Practically the 1<sup>st</sup> option is usually chosen because it is less time and effort consuming as compared to the 2<sup>nd</sup> one.

### Can your newly established company run its business right away?

Following all the legislation rules, you and your business partners have probably already discussed the future

company's name, authorised capital and other mandatory issues, including general manager's position and bank accounts to be opened. The problem here is that in Russia there is no concept of an LLC being in the process of establishment ('GmbH in Gründung'), which is why the preparatory steps for the future operation of the company cannot be arranged by the company itself in advance.

Thus, the Russian legislation obviously does not forbid a foreigner to be appointed as a director of the company. However, the gap here occurs because of the rule that only the already established company may apply for a work permit for its director. Therefore, a foreigner cannot be appointed as a director in a newly established legal entity

from the beginning of its operation. This gap is usually bridged by appointment of a Russian citizen as a director for the initial period of the company's activity (2-3 months). After receipt of the work permit the foreign citizen may be appointed to the CEO's position upon a resolution of the empowered corporate body. The 2<sup>nd</sup> possible solution might be the appointment of a management company (or a manager) as an individual executing the powers of a director for the same initial period of the company's activity with the further change to a foreign director. The 2<sup>nd</sup> option might be more comfortable for an investor, because it does not involve the labour law issues with the relevant guarantees and possible compensations in case of dismissal of an individual.

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Реклама

As for the bank account, it also cannot be opened simultaneously with the company registration as banks require an application for opening an account to be submitted to the bank for official consideration after company registration. It is also obligatory to submit copies of the documents confirming the fact of registration. How is this usually fixed? You should receive an application draft and the list of documents required to open an account from the bank in advance. You fill in all the bank's forms and questionnaires, get all the necessary information and receive the required documents from the headquarters of the future company. Then you confirm the filled-in blanks and documents set with the bank (i.e. the bank should confirm that it additionally requires only the information and documents which will be received as a result of the registration procedure). After receipt of the set of documents from the registration authority you finalise the set and submit it to the bank for official consideration. In such cases opening of the account might take 2-10 days after the registration completion.

### **Changing the management: can it be smooth?**

When you intend to change the general manager and appoint a foreigner in an operating company, it might still be more difficult than you imagine.

Thus, you have appointed the foreign citizen as the director of the company. Only after that you can submit the documents for receipt of a work permit and in parallel submit the package for registration of the new director in the Companies Register ('EGRUL'). Formally the director is empowered to act on

behalf of the company without a power of attorney from the date indicated in the resolution regarding the appointment. But on the other hand the new foreign director is not able to really act on behalf of the company (i.e. perform duties as an employee) prior to receipt of a work permit. A kind of paradox occurs here: the director has powers to act from the corporate law standpoint, but the migration legislation forbids him/her to act. If this prohibition is violated, the director and the company may be held liable. The administrative fines vary for companies from 250,000 to 1,000,000 roubles and for individuals from 2,000 to 7,000 roubles. The only way to avoid this for the director is to refrain from signing any documents and from exercising any other actions on behalf of the company to exclude the risks.

The new director should obviously be authorised to manage the funds on the company's bank accounts. However, the change of the individuals authorised to make payments on behalf of the company cannot be carried out simultaneously with the change of the director as the bank requires among others the copies of the documents confirming the new director's registration in the EGRUL. Therefore, only after receipt of such confirmation documents the company is able to submit a statement on changing the authorised signatories to the bank. However, if the bank is not informed about the previous director's authorities' termination, he/she will be able to still manage the bank accounts.

Thus, there are two possible scenarios in this case. The first option: before termination of powers of the previous director you may add the 'signature'

of the future director to the online banking system on the basis of a power of attorney issued by the company, giving him/her the right to exercise payments individually. After termination of powers of the previous director you may inform the bank about it and the future director will still be able to manage the bank account using the power of attorney. After appointment of this person as the new director and receipt of the work permit you may apply to the bank for changing his/her status from 'Attorney' to 'Director'. This is how the gap between two directors can be bridged.

The second option is not preferable from the compliance point of view, but if the first option was not arranged in advance, the second one can turn out to be the only possible temporary solution in case you cannot let your bank accounts be 'frozen'. If you are quite satisfied with the previous director and you terminated his/her powers not because of any misconduct, practically you may propose him/her to temporarily manage the bank accounts until the new director is authorised in the bank. It should be noted that formally these will be considered unauthorised actions of the person, whose powers have already been terminated, and such actions can potentially be challenged in court (e.g. by the company's counterparties). Therefore, it is recommended to initiate the first option in advance.

There are obviously other 'gaps' a foreign investor might be surprised by in Russia, and as for now, not all of them can be bridged. Nevertheless, the legislation and court practice are constantly evolving, enabling Russia to climb up positions in various world business rankings. ■

# Tax incentives for investors in Russia: what's next?



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tion in case of nationalisation of property, free transfer of income from Russia, the most-favoured-nation regime,<sup>2</sup> and the grandfather clause. Current Russian legislation provides for various tax incentives that also consider the above principles to certain extent.

## Types of tax incentives for investors

First of all, there are incentives associated with certain activities, e.g. 150% R&D super deduction, reduced rates for social security contributions for IT companies, etc. Secondly, there are project-related tax incentives, e.g. Skolkovo (project participants may obtain incentives with respect to VAT, corporate income tax, corporate property tax, and social security contributions).

There are other incentives as well. Both the federal and regional investment promotion laws provide for tax incentives and other measures to support investors, which mostly allow application of reduced tax rates for taxing profits (corporate income tax), property (corporate property tax) or personal income (personal income tax). Also, some non-tax measures may be allowed (low-rated lease payments for land in state ownership, subsidies from the federal or regional budget, financial support through loans or grants from the Industrial Development Fund, etc.). To obtain the benefits, investors generally have to comply with certain requirements, in particular, the project should qual-

The investment framework in Russia has significantly changed and to some extent improved in recent years. Russia is currently ranked 31<sup>st</sup> in the World Bank's 'Doing Business Report',<sup>1</sup> whereby at the time of the ranking's launch a few years ago, Russia occupied 124<sup>th</sup> place. Russia ranks 53<sup>rd</sup> in 'Taxation' and is achieving higher positions each year. The ultimate, officially declared goal –

to be among the Top 20 in the investment ranking – should make Russia more attractive to investors. Also, tax incentives provided locally in the Russian regions should serve this purpose.

In general, Russian investment legislation provides for a number of protective rules for investors, including, but not limited to guarantees against negative changes in the legislation, compensa-

<sup>1</sup> <https://russian.doingbusiness.org/ru/data/exploreconomies/russia>

<sup>2</sup> The same conditions for doing business compared to Russian companies.





ify as a priority project for Russian authorities (this usually means new technologies, IT, import substitution, development of regional infrastructure, etc.). Also, a minimum investment threshold may be set forth as one of the criteria, or a requirement for the salaries of employees hired for the project to be no lower than the average regional level.

### Special investment contracts (SPIC)

Federal Law No. 488-FZ 'On Industrial Policy' dated 31.12.2014 introduced the special investment contract (SPIC) as a government support guarantee for major companies investing in technology, the list of which is being approved by the state. SPICs create special benefits and incentives for investors – whether Russian or foreign – to invest in Russia and localise their production. In particular, there may be tax holidays available with regard to corporate income tax and corporate property tax.

Investors enjoy the opportunity to enter into SPICs with authorities at the federal, regional and local levels. Initially, there was a high investment threshold for the federal level (750 million roubles), which is currently abolished. Also, the terms of incentives were extended as a result of amendments to the above law in August 2019. They currently reach up to 15 years instead of 10 years for projects with total investments of up to 50 billion roubles and up to 20 years for projects with total investments exceeding 50 billion roubles. The incentives provided under SPICs concluded prior to the above amendments remain unchanged, so the same rules apply to them as before.

### Regional investments project

Another opportunity to receive certain tax and other incentives is the implementation of a regional investment project. Such projects should be aimed at industrial manufacturing

of goods and meet the following requirements:

- 100% localisation of production in the relevant constituent entity of the Russian Federation, partial localisation is also allowed with respect to some regions (e.g. Buryatia, Sakha, Tyva);
- At least 50 million roubles capital investment over a 3-year period or at least 500 million roubles over a 5-year period;
- The company does not apply special tax regimes, is not a resident of a special economic zone or located in the territory of priority social and economic development.

Eligible entities obtain a set of benefits that may vary in the regions:

- zero corporate income tax rate;
- application of a reducing coefficient with respect to mineral extraction tax (0, 0.2, 0.4, 0.6, 0.8 depending on the tax period and territory);
- application of increased depreciation rate (up to 2) to fixed assets.

### Investing in regions

Russian regions have fairly broad legislative powers and may independently establish both preferential conditions for investors and the procedure and requirements for using such conditions, unless there are limitations set forth by the Tax Code or other federal laws. There are 85 regions in Russia and each one has different regional regulations. So, the benefits offered by the regions are quite diverse and may include lower rates, as well as full or partial exemptions for corporate property tax and land tax. They may also guarantee unchanged tax rates for investors.

In most regions, investors must undergo authorisation with respect to

the project in order to obtain tax incentives. For this, submission/approval of a business plan and signing of an agreement with the region are generally required.

### Special economic zone (SEZ)

Special economic zones are territories with a special legal status and preferential economic and tax conditions for resident companies. Each special economic zone involves benefits in a certain area of activity. In particular, there are:

- logistics SEZ;
- industrial SEZ;
- technological SEZ;
- tourism SEZ.

There are 27 SEZs in Russia (10 industrial, 6 technological, 10 tourism, and 1 logistics).<sup>3</sup> Residents of such zones enjoy significant tax, customs and economic benefits. They are entitled to pay corporate income tax at a reduced rate varying from 0 to 15.5%, purchase land at a price not exceeding 50% of the cadastral value, and be exempt from import and export customs duties and import VAT on them. Residents may apply a 0% rate for transport, corporate property and land taxes during the first 10 years. In addition, there is a guarantee against adverse changes in the legislation.

### Territory of advanced social and economic development (TASED)

There are currently more than 100 TASEDs in Russia and their number continues to increase. TASED residents enjoy the following incentives and benefits:

- reduced corporate income tax rate (established by the constituent entity of the Russian Federation);
- reduced tariffs of social security contributions;
- simplified VAT recovery;
- land tax exemption (in several TASED).

Notably, tax benefits are guaranteed for the entire duration of the residency. To become a TASED resident, an application and a corresponding package of documents must be submitted to the managing company of a certain TASED and a special agreement on carrying out activities must be signed.

### 'Russian offshores'

These are special administrative areas (SAR) newly introduced by Russian legislation for re-domiciliation of foreign companies to Russia. At the moment, there are only two of them: on Russky Island in the Primorsky region and October Island in the Kaliningrad region. Eventual tax benefits may include reduced tax rates on dividends, proceeds from the sale of shares, etc.

### Free Port of Vladivostok (FPV)

From a tax perspective, residents of the FPV are generally entitled to a reduced corporate income tax rate and reduced tariffs of social security contributions. They may also apply incentives in relation to VAT similar to TASEDs.

Considering the above, investors have a lot of opportunities for various projects in Russia and most of them allow the tax burden to be reduced. It is important to start preparations for a project in advance. This should include considering the eventual num-

ber of incentives and favourable regimes for which the project could potentially qualify and clarifying the application procedures (if any). Moreover, a project's relevance should be checked from the perspective of sanctions and the presence of further restrictions (some strategic industries have foreign investment restrictions). It is also important to stay updated on continuing and proposed legislative changes. Some insights on this could be taken from a document regularly published by the Ministry of Finance of Russia: the Main Directions of the Budget, Tax and Customs Tariff Policies. For example, the Main Directions of the Budget, Tax and Customs Tariff Policies for 2019 and for the Planning Period 2020 and 2021 describe one of the major directions as creation of stable tax conditions for the oil and gas sector by fixing the existing rules for the next 6 years. Another goal is to achieve certainty in the legislative changes by foreseeing a statutory rule that laws published after a certain date which significantly worsen the taxpayers' position or tax conditions should come into force no earlier than one year later. This should end the existing practice of chaotic adoption of numerous tax laws that amend the existing rules at the end of the year.

In general, it could be concluded that despite complicated political and economic circumstances, Russia remains a fairly attractive place for foreign investments. This is also due to the wide range of support measures and tax incentives. An increase in Russia's investment attractiveness is also highly aspired to at the official level, in particular, due to Russia's expected entry into the Top 20 of the Doing Business rating. ■

<sup>3</sup> Based on status on 04.09.2019.

# New compliance challenges posed by rollback on transparency of state procurement and ownership rights



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In a 2018 report by Transparency International about the implementation of the Brisbane Commitments, it was noted that Russia had fulfilled 40-60% of its obligations. Most countries fell within this range. The organisation scored Russia high in the following areas: introducing the concept of beneficiaries, identifying and mitigating risks, domestic and international co-operation, beneficial ownership information and tax evasion, bearer share and nominees. Conversely, from 2015 to 2017, access to beneficial ownership information and beneficial ownership information of trusts regressed.

This article will now analyse the Russian government's recent manoeuvres which, rather than promoting transparency, were in fact aimed at reducing it, as well as the reasons behind these policy changes.

In autumn 2015, the Russian Federal Security Service (FSB) put forward a bill proposing to classify information related to real estate ownership, aircraft and ships.<sup>2</sup> By proposing to block public access to the Unified State Register of Real Estate (USRRE), the bill was designed to protect the integrity of property deals. Despite receiving the support of the government commission, the proposed legalisation was

The Western business community's commitment to improving its transparency has been one of the key trends in recent times. Significant amounts of corporate data relating to various aspects of business – from production statistics to ultimate beneficiaries – have become available in the public domain. This trend is also being con-

solidated at an interstate level: at the G20 summit, for example, an agreement was reached about introducing the concept of 'beneficial owners' and making information about them readily available.<sup>1</sup>

<sup>1</sup> <https://transparency.org.ru/research/drugie-issledovaniya/rossiya-vmeste-so-vsey-g20-obeshchala-sdelat-biznes-prozrachnym-poluchaetsya-poka-ne-ochen.html>

<sup>2</sup> <https://www.rbc.ru/economics/06/10/2015/5612984c9a7947855de1caee>

frozen.<sup>3</sup> Roman Rubanov, who currently runs the Anti-Corruption Foundation, which often uses information from the USSRRE during its investigations, has suggested that the appearance of the bill might be linked to the revelation that the FSB's former chief Nikolay Patrushev has 1.1 billion roubles worth of real estate assets.<sup>4</sup>

In summer 2016, the names of the children of Yury Chaika, the Prosecutor General of the Russian Federation, were changed to character sets on the Federal Service for State Registration, Cadastre and Cartography (Rosreestr), making it very difficult to determine the nature of their real estate assets.<sup>5</sup> Prior to this in 2015, the aforementioned Anti-Corruption Foundation published an investigation into the business activities of the Prosecutor General's children in which it questioned their lawfulness. The Presidential Press Secretary stated that the report was contrived and that it was not taken seriously in the Kremlin.<sup>6</sup> The actions of Rosreestr were later disputed in court, but it was ruled that they had not violated Russian law as 'federal laws do not give third parties the right to access citizens' personal data without their consent' (this is in reference to Russian data protection laws).<sup>7</sup>

In summer 2017, the Federal Assembly of the Russian Federation amended the law on 'state security,' removing the personal data of the president, prime minister, prosecutor general, the chairpersons of the Investigative Committee, of both houses of parliament and the Constitutional courts, and their families from public registers (for example, Rosreestr and the Unified State Register of Legal Entities [USRLE]).<sup>8</sup> It is worth noting that in spring of the same year another investigation by the (albeit heavily politicised) Anti-Corruption Foundation was



published, accusing Prime Minister Dmitry Medvedev of indirectly owning valuable real estate.<sup>9</sup> Although the courts ordered the Anti-Corruption Foundation to remove the video from YouTube (this request has not been obliged) on account of the fact that it 'discredited the honour and dignity' of one of the defendants (Alisher Usmanov)<sup>10</sup> and due to its mixed reception by the expert community,<sup>11</sup> the publication resonated in society, leading to some protests on 26 March and 12 June 2017.<sup>12</sup>

At the end of 2017, the transparency surrounding state procurement was significantly reduced by order of the government, all information related to purchases made by the Ministry of Defence, the FSB and the Foreign Intelligence Services became classified. These institutions gained the right to identify their suppliers in secret, and all information about contracts became state secrets.<sup>13</sup> Such a measure can be explained by the difficulties caused largely by anti-Russian sanctions. In

<sup>3</sup> <https://og.ru/politics/2016/05/18/80919>

<sup>4</sup> <https://www.rbc.ru/economics/06/10/2015/5612984c9a7947855de1caee>

<sup>5</sup> <https://meduza.io/shapito/2016/06/09/ludu3-chayka-i-yfyau9-chayka>

<sup>6</sup> <https://www.rbc.ru/politics/07/12/2015/566564879a7947c4da36b745>

<sup>7</sup> <https://www.vedomosti.ru/realty/articles/2017/10/19/738417-razreshil-zasekretit-svedeniya-vmadeltsah-nedvizhimosti>

<sup>8</sup> <https://www.vedomosti.ru/politics/articles/2017/06/16/694626-zasekrechivat-imuschestve-chinovnikov>

<sup>9</sup> <https://www.rbc.ru/society/02/03/2017/58b7f3959a79474158912948>

<sup>10</sup> <https://tass.ru/proisshestiya/4297234>

<sup>11</sup> <https://tass.ru/proisshestiya/4297234>

<sup>12</sup> <https://www.rbc.ru/photoreport/26/03/2017/58d821a09a794774f91fddeb#ws>,  
<https://www.rbc.ru/politics/13/06/2017/593e2f389a7947800c2f33db>

<sup>13</sup> <https://www.forbes.ru/biznes/353621-gostayna-protiv-sankciy-silovikam-i-goskompaniyam-razreshili-zasekretit-dannye-o>

autumn 2017, the FSB, the Foreign Intelligence Services, and the General Directorate of the General Staff of the Armed Forces were added by the US State Department to the sanctions lists.

Along with these Russian law enforcement agencies, the largest manufacturers of state defence equipment were put on the sanctions list: Kalashnikov, Rosoboronexport, Helicopters of Russia, etc.<sup>14</sup> As long as the talk surrounding the lifting of sanctions remains simply as talk, it is unsurprising that this measure – initially introduced for six months – has already been extended three times (the current decree is valid until 1 January 2020). If the sanctions are not lifted, this trend is likely to continue. In November 2018, a further bill proposing the classification of all defence-related procurement came under government consideration. However, such large-scale measures were deemed excessive. All the same, information relating to some areas of procurement – development, modernisation, weapons servicing, and space infrastructure manufacturing – remained classified.<sup>15</sup> Furthermore, the Federal National Guard (Rosgvardia) has suggested that from December 2019 it will classify its purchases.<sup>16</sup> It is worth noting that in August 2018 another ‘viral’ investigation was published, alleging that Rosgvardia buys their troops’ rations at inflated prices. Rosgvardia criticised the investigation as a falsification and a provocation.<sup>17</sup>

After the legislation was introduced, some studies claimed that 35% of public procurement in 2018 was classified. Several Russian experts consider this estimate to be inflated, although they recognise the effect that sanctions have had on this process. A decrease in the percentage of classified public procurement might be possible if the law enforcement agencies were to declassify some of their less sensitive purchases. For example, contracts related to the healthcare system or housing and public utilities.<sup>18</sup>

## The risks associated with a reduction in Russian business transparency can be minimised through a systemic change.

In spring 2019, the Russian government published a decree allowing legal entities to classify information relating to co-owners, directors and enterprise licences in the USRLE in the following circumstances: if they are registered in Crimea or Sevastopol, if they find themselves under foreign sanctions or on the list of banks authorised for state defence contracts (the list includes more than 20 large Russian banks, such as Sberbank, VTB, Alfa-Bank, etc.). It was also decreed that information about subsidiaries and state companies based in Crimea or Sevastopol

could be classified. In terms of the clause on sanctions, this refers specifically to those organisations affected by the 2017 initiative Countering America’s Adversaries Through Sanctions Act (CAATSA).<sup>19</sup> The Russian government’s reaction seems to be an obvious effort to soften the impact of anti-Russian sanctions on national enterprises. As is clear from the aforementioned examples, the main reasons put forward for justifying the new measures are anti-Russian sanctions and investigations by journalists.

It is worth noting that the sanctions have caused not only state companies but also private companies to reduce their transparency. The statistics show that en masse Russian companies are turning away from the label ‘public joint stock company’. Out of nearly a thousand companies comprising 80% of the total national income, more than half do not publish public information about their activities (in 2015, the figure was less than 25%).<sup>20</sup>

As a result, it is difficult to look at the Russian investment market with much optimism from a Western point of view. Instead of increasing transparency – one of the keys to a thriving investment climate – Russia has taken measures to reduce it. This has negatively affected the country’s investment appeal, as well as undermined the confidence of potential investors for whom there are already other worries, such as the

<sup>14</sup> <https://www.rbc.ru/politics/27/10/2017/59f360619a79477350172a64>

<sup>15</sup> <https://www.rbc.ru/politics/30/04/2019/5cc8486d9a7947212a6dc998>

<sup>16</sup> <https://www.rbc.ru/politics/26/04/2019/5cc3602a9a794703ce3f770d>

<sup>17</sup> <https://www.rbc.ru/politics/31/08/2018/5b890ee69a79472a00dec0f5>

<sup>18</sup> <https://iz.ru/877209/dmitrii-grinkevich-aleksei-ramm/gossselka-zakryta-35-biudzhetnykh-zakupok-okazalis-zasekrechennymi>

<sup>19</sup> <https://www.rbc.ru/economics/11/04/2019/5cae1ee29a7947722c3e75bd>

<sup>20</sup> <https://www.kommersant.ru/doc/3527286>



arrest of the US businessman Michael Calvey – an issue that remains ongoing and which has divided opinion.<sup>21</sup>

In our view, this negative trend may continue. First, on account of the unlikelihood of relations between Russia and Western countries improving (although Western leaders are clearly divided on the issue of Russia, as opinions at the G7 in August showed). On the one hand, it is a given that cooperation continues on some level. For example, Mercedes-Benz is opening a car factory in Russia, and the Nord Stream 2 is nearing completion.<sup>22</sup> On the other hand, there is no reason to expect a breakthrough in relations. In the last five years, pressure for sanctions on Russia have only increased. Additionally, it would be wrong to assume that Russia will change its position in the coming years.

Domestic policy is also not expected to change. Most likely, continued pressure on those conducting business in Russia and on foreign business partners will lead to the additional closure of certain segments of the Russian market. As has been suggested, for example, Rosgvardia's move to classify its procurement contracts, in tow with the Foreign Intelligence Service, the FSB, and the Ministry of Defence, may soon be implemented.

It is worth mentioning that the cited cases are mostly related to state structures and less related to investors working with private companies that are not related to Crimea and Sevastopol. However, at the same time, one should not forget that, according to various estimates, the public sector makes up 30-70% of the Russian economy. Some experts have

noted that the lower estimates – for example, 33% given by the IMF – excludes companies which were formerly independent of the state yet may be entirely dependent on state subsidies or even have state entities on their shareholders' lists. Accordingly, one can say that the state sector occupies the lion's share of the Russian market. In addition to 'setting the rules of the game', the state is itself a major, active player. In the current climate, the state's actions set a trend which, in one way or another, affects the whole system of economic relations in Russia.

The risks associated with a reduction in Russian business transparency can be minimised through a systemic change. However, this requires either extraneous help like the unlikely easing of Western sanctions or changes in Russian domestic policy. Neither of these possibilities are by any means guaranteed. ■

<sup>21</sup> <https://www.rbc.ru/finances/11/04/2019/5caf0b6f9a7947c6047d214e>

<sup>22</sup> <https://www.vedomosti.ru/auto/articles/2019/04/03/798178-mercedes-benz>

# What international e-commerce companies should know about Russian law in order to do business in Russia?



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International online retailers' interest in the Russian market is currently growing. Over the past three years, e-commerce revenue in Russia has increased by 2,579 million US dollars.<sup>1</sup> Meanwhile, existing and potential market players often suffer from a lack of credible information about the legal requirements applicable to e-commerce in Russia. From VAT to customs taxation to the collection, use and storage of personal data, this article gives an overview of what international e-commerce companies should know about Russian laws.

## Taxation

### VAT in cross-border e-commerce

B2C cross-border online purchases via mail are not subject to VAT, though the Russian business media periodically reports discussions at the government level on imposing VAT on such purchases. However, there is no strong sign that authorities will approve the introduction of such tax in the near future.

<sup>1</sup> <https://www.statista.com/outlook/243/149/ecommerce/russia>

If a Russian company makes purchases on an international retail website, the transaction is subject to VAT, which is due from the Russian buyer. The buyer must pay VAT at the standard 20% rate based on the customs value during the customs procedure. A VAT deduction may be applied subsequently, depending on the use of the imported goods.

apply such a tax. Private parcels and small packages pass through customs control freely, unless a customs officer has reasonable doubts as to their content or value/weight regarding the customs tax thresholds. Hence, only items that are clearly undervalued or look like a commercial shipment have customs duties de facto imposed on them.

comply, thus taking the risk that their websites may be blocked by Russian authorities, as was the case with LinkedIn in 2016.

If a company retains a third party to process personal data on its behalf, an agreement with that third party must set out the requirements for personal data protection.

#### **Customs tax threshold for tax-free orders**

Online cross-border B2C purchases are exempt from any customs taxes:

- if their cumulative amount per month does not exceed 500 euros;<sup>2</sup>
- or if their cumulative weight per month does not exceed 31 kg.

Purchases above this threshold are subject to a 30% customs fee (applied to their fractional value above the threshold), with a minimum of 4 euros per 1 kg of weight exceeding the threshold.

Starting from 1 January 2020, the threshold will be lowered to 200 euros – but this will be per package, not per month. The tax rate will also be lowered from 30% to 15%.

For postal shipments, there is no efficient way to control the thresholds and

The situation differs for items delivered by private courier services (e.g. DHL). These are required to collect Russian purchasers' taxpayer identification numbers and disclose them to the customs office along with the shipping details. This mechanism helps customs to monitor the cumulative value of items delivered through such channel.

### **Personal data legislation**

#### **Personal data storage law**

Since September 2015, when the personal data storage law came into force, companies are obliged to initially store and update personal data of Russian citizens with the use of databases located within Russia. The transfer of personal data outside of Russia is permitted only after data localisation has been completed. While many businesses prefer to move user data from foreign servers to Russia, others have failed or refused to

#### **Legislation on personal data collection, use and treatment**

Russian personal data law provides for various obligations of companies involved in the processing of personal data. From an international e-commerce perspective, the crucial ones are as follows:

##### *Written consent of the data subject*

In many cases, companies are required to obtain data subjects' written consent to the processing of their personal data. For example, written consent may be required in order to transfer personal data to those countries which Russian legislation believes do not provide a sufficient level of protection of data subjects' rights, including the US and China. The problem is that written consent must include certain detailed information, such as the passport details of the data subject.

If a company retains a third party to process personal data on its behalf (e.g. a Russian data centre), an agreement with that third party must set out the requirements for personal data protection and must contain other provisions specified by law.

##### *Notification to the regulator*

Companies must, before processing starts, notify Roskomnadzor (the proper Russian regulator) of their intention to process personal data. There are certain exceptions to this requirement. For example, notification may be unnecessary in respect

<sup>2</sup> Since January 1, 2019, the tax-free threshold has been lowered to 500 euros from the previous 1,000 euros.





of personal data processed only to perform an agreement with the data subject. In practice, Roskomnadzor often requests companies that have not filed notifications to provide explanations for their inaction.

#### *Privacy policy*

A company that collects personal data through the Internet must publish its privacy policy online. Russian law does not provide explicit requirements for privacy policies. However, Roskomnadzor has issued non-binding recommendations concerning their content. If a privacy policy complies with the GDPR, it may still not comply with Russian law.

#### **Why foreign online retailers are concerned**

Russian personal data law applies to all companies (even those that do not have any physical presence in Russia) targeting Russian users. For example, the use of the .ru domain name and the existence of a web page or an advertising campaign in Russian may suffice for these laws to apply to a foreign retailer.

In April 2019, the head of Roskomnadzor publicly encouraged his subordinate to oversee the compliance of foreign e-commerce companies with the personal data storage law. Moreover, Roskomnadzor may initiate an investigation of a company's data processing activities based on a single user complaint or based on online monitoring performed by Roskomnadzor officials on a regular basis.

Russian personal data law does not fully correspond to the GDPR. Therefore, compliance with Russian law may require additional effort from a company that has already ensured its compliance with the GDPR.

#### **Penalties for non-compliance**

The blocking of a website by Russian authorities is the greatest risk for e-commerce companies if they violate Russian data protection law. LinkedIn has been blocked in Russia since 2016. Currently, Roskomnadzor is trying to make Twitter and Facebook move their databases with personal data of Russian citizens to Russia.

Furthermore, the illegal processing of personal data may entail administrative fines and claims for the reimbursement of damages and moral harm caused to data subjects. The fines are relatively low (up to approximately 1,000 euros). However, the aggregate amount for several violations may be significant.

An initiative is currently being discussed to increase the amount of fines for failure to comply with the Russian data localisation requirement up to approximately 82,000 euros for the first violation and 248,000 euros for a repeated violation. The relevant bill has been submitted to the State Duma.

Compensation for moral harm and damages is also low. In practice, it usually does not exceed approximately 100 euros.

#### **Product restrictions and certification**

##### **Prohibited goods**

Alcohol, tobacco products, drugs, jewelry, pharmaceutical products, weapons,

'spy equipment', and certain other goods specified by Russian law are prohibited from being sold online in Russia. The same rules apply both to online sales within Russia and to cross-border orders.

The online sale of prohibited goods may lead to an administrative fine of up to approximately 560 euros, the seizure of the relevant goods, and the blocking of the retailer's website in Russia.

In 2020, Russia may legalise online sales of alcohol.

### **Goods subject to certification**

Foreign online retailers are not obliged to certify goods if they are not imported for subsequent distribution in Russia. Otherwise, the goods must comply with technical regulations concerning perfume and cosmetic products, children's products, toys, clothes and shoes, furs, leather products, sports equipment, locks, etc.

To obtain a certification, an international online retailer must submit an application to the accredited certification body, which then performs research and either decides to certify the product or deny certification. A foreign retailer may authorise its partner in Russia to apply for certification of a product on its behalf.

### **Product labelling**

Some goods, such as perfumes, shoes, cameras and clothing, are subject to mandatory identification labelling. This rule applies to those international online retailers that sell goods through Russian distribution centres.

## **Product information**

### **Product information on site catalogue**

E-commerce companies must provide customers with product descriptions

and other specific information related to the product (places of production, warranties, prices, payment terms, etc.). This information should be expressed clearly and plainly in the Russian language. Failure to provide the information may entail administrative fines, increased liability for product defects and harm caused to customers, and the consumer's withdrawal from the agreement. In practice, it is difficult to enforce any relevant legal decisions against a company which has no presence in Russia.

### **Product information for customs authorities**

In terms of information placed on the packaging of goods, there are no special customs requirements that apply to the international delivery of consumer goods by mail or via shipping service providers. However, such packages of goods must comply with the mandatory requirements of Russian law, including consumer protection law.

### **Terms of purchase and the consumer agreement**

There are no specific requirements for agreements between Russian customers and foreign sellers.

The parties are free to choose foreign law as applicable to their agreement. However, in this case, the consumer will enjoy the protection of his/her rights under the mandatory provisions of Russian consumer protection law. For that reason, the purchase agreement must not violate the relevant provisions of Russian consumer protection law, such as the provisions concerning the consumer's right to withdraw from the agreement within seven days from the delivery of goods, to demand the replacement

of defective goods, to withdraw from the agreement if the goods are defective, etc.

## **Other legal requirements for international e-commerce companies**

### **Liability of marketplaces**

E-commerce platforms must provide customers with reliable information about both the platforms themselves and about their sellers. In some cases, an e-commerce platform may be required to pay compensation for losses caused by inaccurate information about goods. In addition, if goods are not delivered on time and the customer withdraws from the purchase agreement, such platforms must refund any prepayment to the customer.

### **Trademark protection**

Online retailers must respect third parties' rights to trademarks when they choose their domain names, slogans and other designations. They may also want to protect their designations as trademarks protected in Russia.

### **Payment regulation compliance**

International online retailers should ensure that the payment solutions they use comply with Russian legislation (including the data localisation requirement). In some cases (e.g. online sales through distribution centres in Russia), the law on cash registers may apply to international online retailers.

### **Advertising law compliance**

Russian legislation employs a broad definition of an advertisement, hence some content published on a website may be considered to be advertising. It is recommended to ensure that such content complies with Russian advertising law. ■

# Protection of intellectual property in Russia: practical overview



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His core activities include consulting on the protection of rights to intellectual property: inventor's patents, utility models and industrial prototypes, and also copyright, know-how, and first and foremost trademark rights. Taras also advises on information technologies. He also advises clients on issues of contract law, in particular international contract law and dispute resolution.

Mr. Derkatsch is listed in Best Lawyers in the fields Intellectual Property Law, Information Technology Law and Media Law, and has been included in the Legal500 list of recommended lawyers.

## Introduction

Practice shows that when companies plan to enter a new market, they usually prioritise supplying products to the new market as quickly as possible through subsidiaries or distributors, and gaining market share. In the pro-

cess companies tend to put a number of important legal issues on the back burner, for instance, those related to the protection of intellectual property (IP). As a result, they only start paying attention to this issue when they have already been confronted by a number of difficulties, from seizure of their products by the customs authorities and actions related to suspected trademark infringement, to unfair competition through the sale of counterfeit products or registration of a domain name in contravention of their rights.

We highly recommend a different approach – to prioritise meticulous legal preparation before accessing a new market, in particular issues related to IP protection.

## IP registration

The first step when protecting IP on a new market is to register IP in the relevant country. Generally, the legal protection of trademarks, inventions, utility models and industrial prototypes involves the registration of such IP with the Federal Service for Intellectual Property (Rospatent).

The legal protection of trademarks in Russia can also be ensured through the international registration of the trademark with the World Intellectual Property Organisation. This approach can take more time than registration directly with Rospatent.

Meanwhile, only national registration with Rospatent is permitted for inventions, utility models and industrial prototypes. The registration of an invention with the Eurasian Patent Organisation located in Moscow is another option. In doing so, the rights to an invention may also be protected in Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Turkmenistan.

As in the European Union, the state registration of copyrighted IP (including software) is not obligatory in Russia. While such registration is voluntary, it is highly recommended for valuable IP assets, as this makes it easier to prove who is the asset owner.

Trade names are protected in Russia upon their registration in the respective register (e.g. in the commercial register in Germany or in the company register in Austria) based on the Paris Convention for the Protection of Industrial Property. Protection begins when a company launches any activity in Russia, for example, imports its products or participates in exhibitions, etc.

## IP rights transfer registration

The general rule is that any legal actions with IP rights (for example, transfer, licensing, pledge, etc.) must

be registered with Rospatent if registration of the relevant IP rights themselves is required.

Since 2014 this registration is not applicable to the respective agreements. It only applies to the transfer of IP rights (licensing, pledge, etc.). As a result, all the relevant agreements may be concluded in simple written form according to the general rules of the Civil Code of the Russian Federation. In the absence of such registration, these agreements will have no legal force in respect of any third parties (including the state authorities), but will be deemed concluded and effective for the parties to such agreements.

The registration process can be completed in different ways: applicants can submit a brief notification signed by both parties, the entire agreement or a notarised extract from the agreement to Rospatent. It is irrelevant whether the agreement is subject to Russian or foreign law – Rospatent will still check whether the submitted documents comply with certain provisions of Russian law and deny registration in the event of non-compliance. Foreign companies should bear in mind that these provisions will be applicable in every case, and seek advice from Russian lawyers or patent attorneys as to whether the respective foreign agreement complies with such provisions before signing the respective agreement.

Finally, such agreements must be enforceable in court. However, as there is no agreement between Russia and Germany (and also a number of other EU countries and the USA) on the recognition and enforcement of judgments by foreign state courts, we recommend selecting either an

arbitration tribunal or a Russian state court (in cases when enforcement is to be performed in Russia).

### Trademark protection

Once the relevant IP has been registered, it requires further legal protection. In the case of trademarks – one IP item commonly used all over the world – trademark infringement in Russia frequently occurs in two key areas.

Firstly, this concerns online sale of products and services. Infringers often register domain names that are confusingly similar to trademarks protected in Russia, and then use these domain names to advertise and sell products which are usually sold and advertised under the relevant trademark by its owner, or simply offer to sell the domain name to the latter. In

that the trademark owner will be able to sue the infringer, obtain control of the domain name and receive monetary compensation (with compensation ranging from approximately 150 to 70,000 euros, depending on the actual infringement).

The aforementioned approach is also applicable in situations when the infringer registers their own creative and unique domain name but uses a protected trademark on the website connected to this domain name. In this case, the trademark owner will also have the right to sue the infringer. It is highly likely that the trademark owner will also be able to compel the infringer during pre-trial negotiations or in court to delete all words and images which are confusingly similar to the protected trademark, and pay compensation.

## The legal protection of trademarks, inventions, utility models and industrial prototypes involves the registration of such IP with the Federal Service for Intellectual Property.

some instances, such infringers even pretend to be the official Russian distributors of the trademark owner (e.g. a foreign manufacturer), misleading consumers and adversely affecting the trademark owner's profits in the process.

So far, Russian jurisprudence and the practice of the antitrust authorities have been developing in favour of trademark owners. If the domain name is confusingly similar to a protected trademark, it is highly likely

In most cases of online infringement, it is not important whether the products advertised and sold via the infringer's website are original or counterfeit. On the other hand, this question becomes material in the second area of frequent trademark infringement – the import of products into the Russian Federation and their further sale.

If the products are counterfeit (in other words, they were manufactured by another party and the rel-

evant trademark was not applied by the trademark owner or was not applied upon its request), then the case is simple – the products should be seized and destroyed by the customs authorities or the police acting ex officio. The trademark owner will also have the right to sue the infringer, demand that the latter destroy the counterfeit products and pay compensation.

The situation is more complicated, however, for parallel imports. In this case original products (i.e. products that were duly manufactured and the relevant trademark applied by the trademark owner or upon its request)

ter (registration is free). As a result, parallel importers are detained at the border by the customs authorities; the trademark owner is immediately notified and is able to take all the necessary legal actions against the infringer.

Until February 2018 such legal actions usually included claims for the confiscation and destruction of the respective goods and compensation payment. However, in February 2018 the Constitutional Court of the Russian Federation ruled that a claim for the confiscation and destruction of goods may only be satisfied if the plaintiff has proven that the goods

Finally, the Constitutional Court stated that identical sanctions could not be applied to parallel importers and the importers of counterfeit products, as in the latter case the trademark owners suffer reputational damage related to the non-compliance of the products with the anticipated attributes and consumer requirements. As a result, the Constitutional Court determined that compensation paid to the trademark owner in case of parallel imports must in general be lower than for importing counterfeit products.

### Copyright protection

Copyright is used to protect a range of different IP items: texts, music, pictures and photos, video, designs, etc. Most of this IP may be successfully used in business and, consequently, may also become a target for infringers.

At the beginning of this article we recommended that you register all valuable copyrighted IP. But it is also true that for some copyrighted IP registration is impractical (for various reasons). Nonetheless, there are many ways to prove copyright to the respective IP. For this purpose, each company should meticulously prepare and keep all the documents that will assist in proving its rights. Such documents may include, for instance, employment contracts with the individuals responsible for the creation of such IP (the job duties of such individuals listed in their employment contracts should include the creation of the respective type of copyrighted IP, e.g. photos or software), special letters (or any other types of written documents) addressed to such individuals with requests that they create the respective copyrighted IP, the certificates of acceptance of the work

## Under Russian law the import of products marked with any trademark constitutes the use of the respective trademark, which requires the consent of the trademark owner.

are imported into Russia by an importer who did not receive the permission of the trademark owner to do so. This permission is mandatory, as under Russian law the import of products marked with any trademark constitutes the use of the respective trademark, which requires the consent of the trademark owner. Once it has been obtained, the exclusive right to the trademark is exhausted, and the importer and its customers may freely sell the respective products in Russia.

Generally, parallel imports are not prosecuted by the Russian state authorities. However, trademark owners are entitled to enter their trademarks into a special Russian customs regis-

imported by the parallel importer pose a threat to public health or public interests (for example, public interests would be at risk if the parallel imports were to be purchased via the special governmental procurement system).

The Constitutional Court also ruled that the rights of trademark owners may in general be restricted in certain circumstances, e.g. if the trademark owner acts in bad faith or abuses its rights. In such cases the claim filed by the trademark owner against a parallel importer may be dismissed in full, or the amount of compensation might be reduced substantially.



results, etc. If the creation of copyrighted IP is outsourced, then the relevant contract should contain special provisions related to the IP rights and the transfer of such IP rights to the customer.

The most popular copyright infringement area can be found online. For instance, if an unfair competitor runs a website where it advertises and offers products similar to yours, it may be experienced enough not to use the protected trademarks on its website or in the domain name. Nevertheless, the competitor may still use product pictures and text descriptions that it has copied from your website, or even the entire design of your website. The use of this copyrighted IP also constitutes copyright infringement. After the infringement has been documented by screenshots, the respective infringement case may be taken to court,

and the infringer may be compelled to delete all the unlawfully uploaded materials from the website and pay compensation to the owner of the copyrighted materials (with compensation ranging from approximately 150 to 70,000 euros, depending on the particular infringement).

Another area of possible infringement is one of the most popular copyrighted items – software. The physical media containing the software (for example, compact discs) may be circulated freely (without the specific consent of the software owner) on the Russian market once they have been lawfully introduced onto the market by the software owner or its official distributor – a licensee vested with the respective powers. The buyers of an official compact disc with software automatically receive the right to download the software to their computers – the same rights are usually

granted to any user who downloaded the software from an official online resource.

Some rights, however, tend not to be granted to the user, e.g. the right to transform or modify the software, use it on an unlimited number of computers, etc. For instance, modifications to video games that remove the copy protection protocols or anti-cheat systems constitute unlawful use of the software, i.e. infringement of the software owner's rights. Moreover, further distribution of such modified software, even if performed by third parties not involved in the modification process, will also be treated as a copyright infringement. The software owner will be entitled to file a claim demanding that the infringers delete all modified software copies, destroy the physical media containing them and pay compensation. ■

# Effective licence agreements with Russian clients, partners and subsidiaries



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## ANDREAS BITZI

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He has a degree in business administration and economics from the University of Bern, Switzerland, specialising in financial management. Andreas also passed level 2 of the CFA exam.

Andreas held positions as controller, project manager and CFO at Swiss Krono plants in Russia and Ukraine and worked as finance manager at Hewlett-Packard Switzerland. From 2008 through 2017, he managed an international consulting company in Russia, supporting foreign businesses in finance, legal, tax, HR, IT, accounting.

Since 2016, Andreas has been Chairman of the AEB North-Western Regional Committee.

local production and competitiveness of Russian products in foreign markets, with the ultimate goal of having significantly more added value in Russia. Within this context, localisation does not only refer to the transfer of technological operations and the use of domestic raw materials and components, but also the transfer of the related technology itself. In most cases, the industry-specific requirements for localisation are associated with a complete transfer of production technologies to the local producer. As a rule, a licence agreement serves as confirmation of the existence of such rights to use the production technology.

## The basics

A licence agreement is usually an agreement between two parties: a rights holder (licensor) and a rights user (licensee). The agreement normally involves a payment from the licensee to the licensor. This is called a licence fee, which can be fixed or variable, and a one-time payment or regular payments. The most important components of licence contracts are trademarks, patents and know-how. While the former two are quite straightforward and understandable, the latter is slightly ambiguous and sometimes difficult to understand and define. It can relate to any kind of secret and know-how that make processes more effective (production processes, sales processes, etc.).

## Introduction

The concept of import substitution – the replacement of imported goods by locally produced ones – is nothing new and has been in place and subject to ongoing discussions for

a couple of years. The idea is to diversify the economy and overcome the massive dependence on foreign technologies and industrial products. Therefore, the Russian government aims to create conditions to foster



In some cases, the licence agreement can be a tool to protect exclusive rights. In retail, the import of original goods, adjustment of sales technology, and building of distribution networks in Russia, as well as protection against parallel imports are directly connected to use of the respective foreign brand, which is the trademark belonging to the foreign owner. In this case, the licence agreement will cover the rights to use the trademark.

Thus, the demand for a licence agreement as a tool for the protection of intellectual rights has increased significantly in recent years, which entails the need for an expert approach to the drafting of such agreements and a detailed study of each situation individually.

Like any other agreement, a licence agreement must outline the essential terms and conditions, including the

name of the parties to the agreement (the licensor and the licensee) and the subject – the exclusive rights that are transferred for use, the methods and territory of use of the exclusive rights, the period for which the agreement is valid, the licence fee, and the procedure for its payment. The most common subject of a licence agreement is the transfer of rights to use a trademark, patent, or production secret (know-how). In light of recent legislative changes, a specific geographical location may also have to be indicated.

In most cases, the exclusive right must be registered in the Russian Federation (as a trademark, patent and others) in order for it to be the focus of a licence agreement. Thus, the right holder of a trademark registered in Russia (with the licensor or licensee) may apply for it to be included in the customs IP registry (TROIS),

thereby protecting it from trademark abuse by third parties.

### **Know-how**

A production secret (know-how) as an exclusive right cannot be registered in Russia. Despite this, the subject of a licence agreement constituting a production secret (know-how) must be clearly defined so that it can be identified. The essence of production secrets (know-how) is their confidential nature, which must be respected by both parties to the agreement. To achieve the greatest levels of protection, it is recommended to include provisions on compensation of losses (which can indicate potential penalty charges) into licence agreements in case of disclosure of confidential information to third parties and/or its illegal use.

Another factor that requires a clear description is how and in which territory the exclusive right will be used.

### **Terms and taxation**

The beginning and end of the term of the licence agreement directly depend on whether the exclusive rights constituting the subject of the agreement are subject to registration or not. In most cases, the licence agreement will not come into force until it is registered with the state patent organisation, Rospatent. This means that the rights to use the exclusive right are transferred and the licence fee is paid only after registration of the licence agreement. The term for a licence agreement on exclusive rights that are subject to registration must not exceed the term of the exclusive rights themselves. However, these provisions are not applicable to production secrets (know-how).



Unfortunately, when it comes to taxation, things can start to get a bit complicated. There have been cases where the tax authorities opposed the licence fees paid to the licensor prior to the registration of the licence agreement. In such cases, the tax authorities would claim that the costs can only be shown as tax deductible after registration. At the same time, there have been court cases where, contrary to the example above, the tax authorities oppose costs not shown as tax-deductible and paid to the licensor prior to registration of the contract. In such cases, the tax authorities would challenge the licence costs after registration of the agreement, arguing that if there had been actual usage of the licences before registration, but no licence fees shown as tax-deductible costs and paid to the licensor, there shall not be licence fees acceptable as tax-deductible costs after registration of the agreement. In short, the Russian Tax Code does not specifically refer to the registration date. In practice, however, it is used as a reference point. Fortunately for taxpayers, in both situations described above, there are mainly positive outcomes from court cases, provided there is proper documentation and reasonable proof.

The safest way to avoid issues is to have a licence agreement and register it as soon as possible, preferably before there is actual usage of the licences. In such a case, one can entirely avoid the issue of whether to have licence fees invoiced and shown as tax-deductible before or after registration.

### Law and jurisdiction

Special attention should be paid to the choice of law and jurisdiction.

To choose a foreign jurisdiction may, at first glance, look appealing, but in practice it may lead to difficulties. Verdicts of foreign courts are often very difficult to implement in the Russian Federation. The situation may change in the future if the Russian Federation ratifies the Convention on the recognition and enforcement of foreign judgments in civil or commercial matters, which was adopted on 2 July at the 22<sup>nd</sup> diplomatic session of the Hague Conference on Private International Law (Convention on the Recognition and Enforcement of Foreign Judgements in Civil or Commercial Matters). The main objective of the Convention is to establish a predictable and effective regime for cross-border enforcement of judgments in civil and commercial matters. However, intellectual property disputes are excluded from the scope of the Convention. It should also be noted that Russia itself has not yet signed the Convention, but only signed the final act of the diplomatic session which adopted the Convention.

In addition to state arbitration courts, the parties have the right to choose the jurisdiction of the International Commercial Arbitration Court. In this case, the licence agreement must contain a corresponding clause. Since July 2019, the Vienna International Centre (VIAC) has the right to work in Russia as the second analogue of Stockholm arbitration.

### Indication of origin

Recently, a bill was passed to introduce geographical indications as a new independent property right. This new IP right is meant to allow foreign and Russian manufacturers to protect

their rights associated with the geographical origin of their products.

Legal protection will be provided to designations of origin from a specific geographical location and are associated with a specific quality or reputation level. To qualify for such protection, one of the main production stages must be performed within the respective geographical location. This new IP rights element is being introduced in addition to the existing IP legislation on appellation of origin of goods. New amendments will come into force on 26 July 2020. According to the authors of the amendments, this will help to popularise and promote regional Russian brands whose unique selling points are due to their geographical location, and who have a certain tradition or know-how that is passed down from generation to generation. Examples for this are 'Tula gingerbread' or 'Bashkir honey'.

### Conclusions

As this article demonstrates, licence agreements are not only the basis for the transfer of licence fees, but also an important tool in the construction of commercial activities of a company, compliance with legal requirements, and protection of intellectual property rights. When developing a licence agreement, individual circumstances should be considered. This always requires expert evaluation to achieve optimal results and protection. The most important thing, contrary to what is often seen in practice, is to have a proper licence agreement in place that covers all necessary aspects of the usage of rights. This will help avoid potential issues with contractual partners, competitors or other market participants, as well as with the tax authorities. ■

# Part IV.

## Entrepreneurship in Russia: regional and industry specific aspects

# Lipetsk region: the energy of success



## DMITRIY AVEROV

**Deputy Head of the Lipetsk region Administration in charge of economy and investments**

Since October 2018, Mr. Averov has been Deputy Head of the Lipetsk region Administration in charge of economy and investments.

In 2016-2018, he worked as Deputy Head of the Lipetsk City Hall responsible for economy, roads and transportation. Prior to that, in 2015, Mr. Averov was elected Deputy of the Lipetsk City Council.

In 2011, he was appointed CEO of the Lipetsk branch of Rostelekom company. Since 2007 till 2011, he held executive positions in governing bodies of the leading federal corporations in the field of telecommunications.

Mr. Averov has an MBA in management.

He was born in 1974.

train from Moscow. The nearest sea ports of the Baltic and Black Seas as well as the European Union border are only 1,000 km away.

The Lipetsk region benefits from being at the intersection of major Russian transport routes. A major Russian federal highway (M4) passes through the region, connecting the northern and southern parts of European Russia. There are two large railway hubs in the region. More than 8.6 million tonnes of cargo are transported by rail annually. This geographic position provides investors with real advantages in terms of logistics, transportation and distribution.

## Small but strong

The Lipetsk region is quite young. In 2019 it is celebrating its 65<sup>th</sup> anniversary. It is among the smallest regions in Russia, with an area of 24,000 sq km and a population of 1.2 million residents. The region's capital is the city of Lipetsk, which has a population of half a million people. During these 65 years, residents of the region have

turned it into a mighty Russian industrial and agricultural stronghold.

Regional industry is represented by more than 2,200 enterprises. Industrial production accounts for 43% of the gross regional product, with more than 30% of all employed working in the industrial sector. Industry generates more than 45% of the total regional taxes. The Lipetsk region produces 19% of Russia's steel, 29% of the washing machines, 26% of the refrigerators and freezers, 60% of the concrete mixers and 25% of the agricultural machinery.

More than 100 global companies have established production facilities in the Lipetsk region, including NLMK Steel Corporation, Indesit International, Yokohama, Bekaert, ABB, PPG Industries, OBO Bettermann, Viessmann, Hawle, Horsch, Ropa, Honeywell, Kemin, Syngenta, Angel Yeast, Schlumberger, Fondital, Fenzi, Alu Pro, Sest-Luve, Doka, Ottevanger, Sucden (S&D), Groupe Soufflet, Lamb Weston, Cargill, and Mercor Proof.

The Lipetsk region benefits from being at the intersection of major Russian transport routes. The geographic position provides investors with real advantages in terms of logistics, transportation and distribution.

## Right position

If you look at a map of Russia, you will see that the Lipetsk region is located in the heart of Central Russia, 450 km south of Moscow. It is a 50-minute flight to the Lipetsk international airport or 5 hours by car or

► **Dynamics of agricultural production, 2000-2017**

	2000	2017
<b>Cereals (million tonnes)</b>	0.9	3.1
<b>Sugar beet (million tonnes)</b>	0.9	5.3
<b>Meat (all sorts, thousand tonnes)</b>	86	342
<b>Pork (thousand tonnes)</b>	24	129
<b>Poultry (thousand tonnes)</b>	22	191

The other highly developed sector is agriculture and food processing. The predominant type of soil in the Lipetsk region is 'chernozem', or black earth, which is rich in organic matter and very fertile. Regional farmers cultivate 11% of the total sugar beet crop in Russia and rank 3<sup>rd</sup> in production of vegetables in closed grounds.

Lipetsk food processing plants produce 14% of Russia's sugar, 74% of the canned fruits and vegetables and juice for children (mainly from apples and other fruits grown in the region), 20% of the baking yeast and 8% of the mineral water. The region is self-sufficient in the production of milk, pork and poultry, and eggs. It produces several times more than it can

consume and exports its agricultural products to 85 regions of Russia and 40 countries around the world.

**Export-oriented**

The Lipetsk region is one of Russia's export leaders. The region actively participates in the national project 'International Cooperation and Export'. Its exports increased by 27% in 2018 to USD 5.5 billion. It ranks 3<sup>rd</sup> among the 18 Russian Federal Central District regions in terms of export volume (after Moscow and Moscow Region) and places 14<sup>th</sup> among all 85 Russian regions.

Agricultural exports doubled, including cereals, sunflower oil, sugar, mineral water and beer.

Trade relations are maintained with 110 countries. The region's main foreign trade partners are Turkey (22%), Mexico (20%), Belgium (18%), the USA (6%), Denmark (6%) Germany (5%) and Belarus (3%).

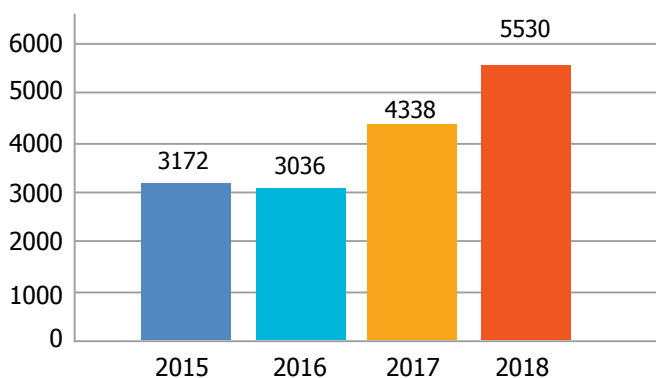
**Effective 3-level investment system**

To attract investments, the administration of the Lipetsk region has created an effective 3-level system, which consists of the Lipetsk federal special economic zone (Lipetsk SEZ), 10 regional economic zones, and 2 industrial parks. Investors are supported by the governor and the regional administration. The regional investment policy offers transparent investment conditions and aims to remove administrative barriers.

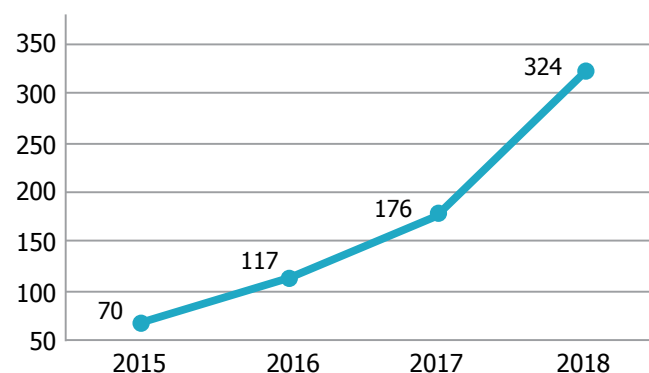
In 2019, the international Fitch Ratings Agency confirmed the Lipetsk region's rating as BB+ with a 'stable' forecast. According to the Expert RA agency, the Lipetsk region is 3<sup>rd</sup> among the least risky Russian regions for investors.

In 2018, fDi Magazine, published by the Financial Times, awarded the Lipetsk special economic zone with two nominations for Expansions and

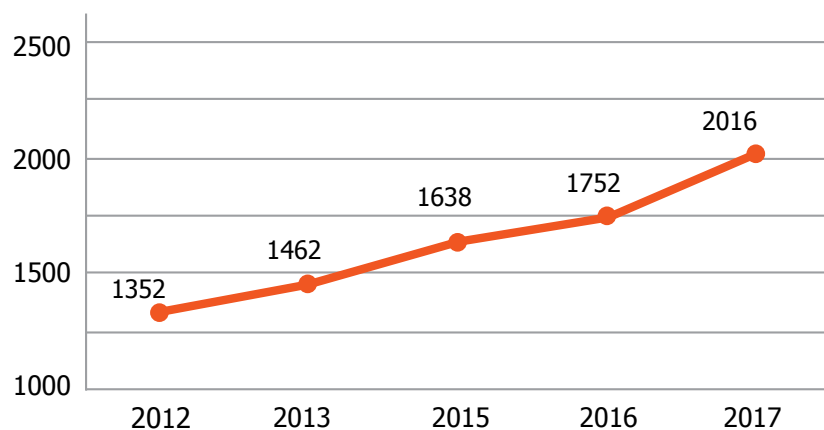
► **Export dynamics, 2015-2018 (mln USD)**



► **Agricultural export dynamics, 2015-2018 (mln USD)**



► **Investments in the Lipetsk region's economy, 2012-2017**  
(mln EUR)



Infrastructure Upgrades in its annual rating 'Global Free Zones of the Year'. Today it hosts 62 residents from 16 countries with investments of about 3 billion euros. These projects have already created 15,000 jobs. Ten regional economic zones host 40 tenants from various countries.

At all of these investment sites, investors are provided with a land lease on favourable terms and its subsequent purchase at a low cost, and they also enjoy numerous tax benefits. The sites are fully equipped with the necessary infrastructure (gas, electricity, and water supply and disposal) and ready-made production and storage facilities. The zero percent tax rate on property, transport and land for the first 5-10 years saves SEZ participants a significant amount of money. The largest investment projects are carried out by leading European countries as well as the USA, Japan and China.

### Lipetsk Special Economic Zone

The Lipetsk SEZ is the first special economic zone in Russia; it was created in 2006. Its first tenant started production in 2007. The Lipetsk SEZ

covers 2,302 hectares and is connected by railway with a regional railway hub in Gryazi. It is also located near major federal highways, including the M4 and M6.

Due to the need to accommodate new investors, the Lipetsk SEZ greatly increased its territory in 2016 thanks to a new site near the city of Yelets, with possible placement of 50 more residents and additional 10,000 jobs. Creation of the necessary infrastructure at the new site is in full swing, and 5 investors are already placing their production facilities with a declared investment volume of 200 million euros.

The main advantage of the Lipetsk SEZ is its free customs zone, which

exempts its tenants from paying customs duties and VAT when importing raw materials, components, equipment and construction materials to their sites. When exporting finished goods abroad (except EAEU countries), its tenants also pay no VAT or customs duties.

In addition to the free customs zone, SEZ residents benefit from a 2% corporate income tax rate for 5 years, 0% corporate property tax rate for 10 years, 0% vehicle tax rate for 10 years, 0% land tax rate for 5 years, and 2% income tax for 7 years and 7% for the next 5 years.

### Production clusters are being formed

The Lipetsk region has been developing several large clusters of business associations:

- **household appliances cluster** which currently includes about 20 enterprises;
- **LipetskMash cluster** for production of machine-tool products;
- **Valley of Machine-Building cluster** for machine-building and metalworking;
- **agro-industrial cluster** for growing and processing agricultural products;
- **pharmaceutical cluster** in the Terbuny regional special economic zone for production of medicines.

The main advantage of the Lipetsk SEZ is its free customs zone, which exempts its tenants from paying customs duties and VAT when importing raw materials, components, equipment and construction materials to their sites.

The key sector priorities of the Lipetsk region for foreign investment are mechanical and electrical engineering, metalworking, construction materials, agriculture and food processing, automotive and spare parts, agricultural machinery, pharmaceuticals and biotechnology, aviation, and tourism and recreation.

Other new clusters are currently being formed, including clusters for the production of spare parts and components for the automotive industry, for biotechnology, and for the food industry.

### Investment priorities

The key sector priorities of the Lipetsk region for foreign investment are mechanical and electrical engineering, metalworking, construction materials, agriculture and food processing, automotive and spare parts, agricultural machinery, pharmaceuticals and biotechnology, aviation, and tourism and recreation.

The Lipetsk region is ready to provide new enterprises with professionals of varying levels of experience, as well as with young professionals trained by local educational institutions. The region has 13 higher education institutions and 25 vocational training colleges that annually produce 10,000 young graduates in 230 specialties.

### Successful investment cases

Established in 2004, Indesit International Lipetsk was among the first foreign companies localised in the Lipetsk region. It is the Russian branch of Indesit, a globally recognised manufacturer of household appliances. Today 6,500 employees of Indesit International Lipetsk produce 29% of the washing machines and 26% of

the refrigerators and freezers in Russia. Francesco Celentano, Production Director of Indesit International Lipetsk, stated: "the investment policy in the Lipetsk region is very interesting and is going in the right direction. Our presence in the region has strengthened over the years. It proves that our decision in 2000 to localise our production here in Lipetsk was the right one."

Yokohama Rus was established in the Lipetsk SEZ 10 years ago. It is the Russian branch of the Japanese corporation Yokohama. 1.6 million high-quality automobile tyres are produced annually by 750 employees of Yokohama Rus. 90% of the tyres are sold on the Russian market, while the remaining 10% are exported. Kawada Kazuo, CEO of Yokohama Rus, noted: "our company has chosen the Lipetsk region because of its proximity to the main sales markets, well-developed infrastructure, large labour market and favourable logistics. But the main reason is the maximum attractiveness of the Lipetsk special economic zone."

Bekaert Lipetsk has operated in the Lipetsk SEZ since 2010. It is the Russian branch of the Belgian company Bekaert. 400 employees of Bekaert Lipetsk produce steel reinforcement cord for automobile tyres, including Yokohama tyres. Another important company product is steel fibres for

concrete reinforcement used in the construction industry. Bert de Grave, President of Bekaert, argued: "the Lipetsk special economic zone is the best site for foreign investment projects in Russia."

Angel Yeast Rus is one of the largest baking yeast plants in Russia. It was established in the Dankov regional special economic zone in 2015. It is the Russian branch of the Chinese baking yeast producer Angel Yeast, the number three yeast producer in the world. Today 560 employees of Angel Yeast Rus produce 30,000 tonnes of dried baking yeast annually. 70% of its production is exported, thus making Angel Yeast Rus a leading exporter in the region. Qin Jianhua, CEO of Angel Yeast Rus, told: "since our company produces baking yeast, the most important reason to locate our production in the Lipetsk region was a stable supply of raw materials. Every year our plant needs at least 100,000 tonnes of sugar beet, and the region's agriculture is capable of providing this volume."

### One look is worth a thousand words

If you are considering investment projects, the administration of the Lipetsk region cordially invites you to come and see all the advantages of the region's investment system and assures you of all the support in their implementation. ■

# Investment in life science business in Russia: common legal risks and mitigation options



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Partner, CIS Law Leader, EY

Georgy is the CIS Law Leader and Law Partner at EY Law Moscow.

Georgy specialises in corporate and M&A, structuring of domestic and international investment projects. He also works with private clients assisting them in structuring their personal assets, dealing with family and inheritance issues.

Georgy helps clients to structure their acquisition, disposal or joint-venture transactions both in Russia or in overseas jurisdiction, draft and successfully negotiate transaction documents from non-binding letter of intent to complex joint-venture documentation.



**ANDREY GLEBASHEV**  
Senior Associate, EY

Andrey is a Senior Associate at EY Law Moscow.

Andrey specialises in corporate/M&A with a special focus on life sciences industry.

He has significant experience in M&A structuring and transaction support, complex legal and regulatory due diligences, as well as corporate restructurings.

Andrey also advises clients on Russian pharmaceutical market access, interactions with healthcare professionals, conducting clinical trials, distribution of pharmaceuticals and medical devices, as well as on other regulatory aspects in healthcare, pharmaceuticals and medical devices.

tion between Russian parties. Choice of Russian law may even reduce the administrative, time and cost burden if disputes are dealt with through Russian state or (preferably) arbitration courts. Nevertheless, the Russian case law has added some national features which may sometimes (though not always) complicate structuring and negotiating a deal.

Where a transaction requires the use of mechanisms that are unfamiliar to Russian law or have not been tested in court yet, one possible option is to take these issues out of Russian jurisdiction.

As an example, an M&A agreement may be governed by English law, but it is important to bear in mind that matters which constitute the subject of corporate disputes must be settled in Russian state or Russian arbitration courts with a few exceptions.<sup>1</sup> The list of Russian arbitration courts and international arbitration courts is limited. It includes the International Commercial Arbitration Court. In 2019 foreign institutions such as the Hong Kong International Arbitration Centre (HKIAC) and the Vienna International Arbitral Centre (VIAC) were also admitted, but they have not yet deposited their rules with the Russian au-

**F**rom an M&A lawyer's perspective, life science business is a combination of licences, product or services portfolio, people, real estate and IT assets. These matters usually create the most common legal risks which might be mitigated in transaction documentation.

Since 2015 major amendments to law have been introduced to bring English law-alike mechanisms into Russian law M&A deals. It sounds natural if Russian law governs a transaction in relation to Russian assets or a transac-

<sup>1</sup> Article 225.1 of the Arbitration Procedure Code of the Russian Federation

thorities (as required by the law) and are technically unable to administer disputes.<sup>2</sup>

In majority of cases, a specific licence or even a combination of licences is required to carry on a life sciences business. Throughout its life, a company must ensure due compliance with li-

law was changed and all violations of pharmaceutical licensing requirements are now classed as major violations.<sup>5</sup> In the medical sector, licensing violations are still divided by severity, but only two are classed as minor violations: violation of the rules governing paid medical services and failure to ensure regular profes-

Risks associated with administrative liability for the violation of licensing requirements are usually identified during the due diligence. Lawyers try to protect their clients by including indemnities in the transaction documents.<sup>8</sup> Standard indemnities governed by Russian law have already been tested by Russian courts.<sup>9</sup> However, the case law with respect to indemnities is mainly developed around commercial disputes rather than corporate.

## An M&A agreement may be governed by English law, but matters which constitute the subject of corporate disputes must be settled in Russian state or Russian arbitration courts.

censing requirements – a set of specifications to premises, equipment and staff, as well as to its core pharmaceutical or medical business.

Prior to 2017, violations of licensing requirements applicable to pharmaceutical companies were divided into two groups: minor violations, which resulted in an administrative fine up to a maximum of 40,000 roubles<sup>3</sup> and major violations, which incurred a higher administrative fine, raised in 2016 to 200,000 roubles, or even suspension of business activities for up to 90 days.<sup>4</sup> However, in 2017 the

sional development training for medical staff.<sup>6</sup> Violations of any other requirements are considered as major violations. Ongoing compliance with licensing requirements is therefore a key consideration for every life science company.

There is a perception that the suspension of business as a sanction is not used by the authorities at all. In fact, this sanction applies, though not often. For example, we have seen the application of such sanction for significant violations of licensing requirements in pharmacy business.<sup>7</sup>

Among the licensing requirements are the requirements which concern employees. It applies both to pharmaceutical and medical companies. In particular, the law requires the head of a medical organisation to have specialised healthcare education, work experience and a valid specialist certificate. The Supreme Court recently emphasised that these requirements apply to the head of a medical organisation and not only to head doctors and other employees responsible for medical activities.<sup>10</sup> Non-compliance with this requirement is considered as a major violation. In an M&A transaction this can be mitigated differently. For example, the buyer may require that a proper person is appointed prior to completion of the deal as a condition precedent. Provisions of contract dealing with conditions precedent have al-

<sup>2</sup> Part 4 of Article 225.1 of the Arbitration Procedure Code of the Russian Federation

<sup>3</sup> Clause 3 of Article 14.1 of the Administrative Offences Code

<sup>4</sup> Clause 4 of Article 14.1 of the Administrative Offences Code

<sup>5</sup> Clause 6 of the Regulation on the Licensing of Pharmaceutical Activities (adopted by RF Government Decree No. 1081 of 22 December 2011)

<sup>6</sup> Clause 6 of the Regulation on the Licensing of Medical Activities (adopted by RF Government Decree No. 291 of 16 April 2012)

<sup>7</sup> Decision No. 09AP-27522/2018 of the Ninth Arbitration Appeal Court of 24 July 2018 on Case No. A40-69476/18, decision No. 09AP-33092/2017 of the Ninth Arbitration Appeal Court of 14.08.2017 on Case No. A40-86879/17

<sup>8</sup> Article 406.1 of the Civil Code of the Russian Federation

<sup>9</sup> Resolution No. 7 of the Plenum of the Supreme Court of the Russian Federation of 24 March 2016; Resolution No. F01-1070/2017 of the Arbitration Court of the Volga-Vyatka District of 26 April 2017 on Case No. A43-16569/2016; Resolution No. F05-21314/2017 of the Arbitration Court of the Moscow District of 4 June 2019 on Case No. A41-9514/2017

<sup>10</sup> Determination No. 308-KG18-13416 of the Supreme Court of the Russian Federation of 19 September 2019 on Case No. A53-37753/2017



ready been successfully tested in court practice even if satisfaction of such conditions is dependent on a party's will.<sup>11</sup>

In 2015, the Supreme Court considered the corresponding requirements for the pharmaceutical sector and arrived at a similar position, namely that the director of a pharmaceutical organisation must have a pharmaceutical education and relevant work experience.<sup>12</sup> Unlike in the case of the medical sector, however, the law does not specifically impose such requirements. A literal reading indicates that the requirements apply to the head of an organisation whose activities directly relate to wholesale, storage, transportation and (or) retail sale of

pharmaceuticals. Such a person would not necessarily be the head of a pharmaceutical organisation. This was the line maintained by the courts until the Supreme Court expressed the position referred to the above. Even after the Supreme Court issued its opinion, courts have carried on following the contrary position.<sup>13</sup>

A life science company frequently performs activities that involve the use of infectious substances, in which case it must obtain a separate licence (with a few exceptions).<sup>14</sup> In such case, the company in question is considered a strategic enterprise in which foreign investment may require prior approval.<sup>15</sup> Furthermore, where a company holding such a licence does not actually

carry on this activity, it still remains to be a strategic enterprise and transactions with its shares are still subject to governmental approval. Such approval may be one of the conditions precedent to the transaction which are directly permitted by Russian law.

We have seen examples when pharmaceutical companies terminated such licence in order to lose its strategic enterprise status and shortly after the transaction was closed, a company applied for the licence once again. Such practice may lead to qualification of the transaction with a foreign investor invalid.<sup>16</sup> This risk exists for at least 3 years following the transaction and may be a deal breaker for new investors. M&A documents may contain a provision which imposes an obligation of seller (to the extent he continues to be a shareholder) to procure that the licence is not obtained shortly after the deal.

The list of the licences required to operate a life science company may include different types of other licences. In order to secure further operation of a large group of licensed companies, one of the effective way is to split licences between the companies. Thus, the suspension of one licence due to various reasons may not affect operations of the other companies.



<sup>11</sup> Article 327.1 of the Civil Code of the Russian Federation; Resolution No. F07-3419/2017 of the Arbitration Court of the North-Western District of 12 May 2017 on Case No. A56-34384/2016; Determination No. VAS-981/14 of the Supreme Arbitration Court of the Russian Federation of 11 February 2014 on Case No. A76-15499/2012; Resolution No. F09-12197/13 of the Federal Arbitration Court of the Ural District of 28 November 2013 on Case No. A76-15499/2012

<sup>12</sup> Resolution No. 302-AD15-9002 of the Supreme Court of the Russian Federation of 17 August 2015

<sup>13</sup> Decision No. 09AP11300/2014-AC of the Ninth Arbitration Appeal Court of 28 April 2014 on Case No. A40-182839/13; Decision No. 09AP-38316/2012-AC of the Ninth Arbitration Appeal Court of 21 January 2013 on Case No. A40-116432/12-152-717

<sup>14</sup> Clause 19 of Article 12 of Federal Law No. 99-FZ of 4 May 2011 'On the Licensing of Certain Types of Activity'

<sup>15</sup> Clause 3 of Article 6 and Article 4 of Federal Law No. 57-FZ of 29 April 2008 'On the Procedure for Making Foreign Investments in Companies of Strategic Importance for National Defense and Security'

<sup>16</sup> Clause 1 of Article 10 and Article 168 of the Civil Code of the Russian Federation; Clause 8 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 25 of 23 June 2015 'On Application by Courts of Certain Provisions of Section I of Part One of the Civil Code of the Russian Federation'



Sometimes, a target company does not carry on activities for which it has obtained a licence. In this case the licence becomes dormant and the company usually takes insufficient care to ensure that all the licensing requirements are met. Consequently, there is a risk of major violations of such requirements even though the company does not actually use the licence. A thorough due diligence study is required to identify such violations. M&A documents may also address these risks using Russian law warranties. Another solution is to provide in M&A documents that a target company terminates those licences which it does not need prior to closing of the deal.

Where a transaction involves investment in a pharmaceutical company, the product portfolio plays a key role. According to the law, any operation with a medicine in the Russian market is al-

According to the law, any operation with a medicine in the Russian market is allowed if it is duly registered as must be confirmed by a registration certificate.

lowed if it is duly registered<sup>17</sup> as must be confirmed by a registration certificate.<sup>18</sup> Currently, all registration certificates are issued for an indefinite term. However, in the case of a medicine that is registered in Russia for the first time, the registration certificate will be issued for 5 years with a requirement for registration to be confirmed after this period. During that process, operations with such medicine are not restricted, but as a result of the confirmation procedure the registration authority may refuse to issue a registration certificate for an indefinite period if the risk of harm to human health due to the use

of such medicine outweighs the effectiveness of such product.<sup>19</sup> If this happens, the operation of such medicine is not allowed. This decision may adversely affect a transaction, especially if the medicine in question is one of the key products in a company's portfolio. This risk has to be properly addressed in transactional documents.

Along with industry specific risks described above, we have seen that corporate law risks and risks related to real estate are most frequent among those issues which must be dealt in the transaction documents. To certain extent, failure to deal with them may affect operation of the life science licence and have greater effect as one may expect. ■

<sup>17</sup> Clause 1 of Article 13 of Federal Law No. 61-FZ of 12 April 2010 'On the Circulation of Medicines'

<sup>18</sup> Clause 1 of Article 28 of Federal Law No. 61-FZ of 12 April 2010 'On the Circulation of Medicines'

<sup>19</sup> Clause 13 of Article 29 of Federal Law No. 61-FZ of 12 April 2010 'On the Circulation of Medicines'

# Renewable energy in the Russian energy sector: recent developments and key perspectives



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Dmitry is a Senior Associate in the real estate and construction team of CMS Russia.

His practice focuses on real estate, construction, contract and corporate law. Dmitry acts on behalf of foreign companies and regularly advises them, particularly in the areas of EPC projects, Greenfield and Brownfield development projects in various regions of Russia. He is also involved in due diligence as well as in drafting and negotiating agreements, including land plot leases, sale and purchase agreements and construction contracts.

He has participated in large investment projects in the renewables sector (wind and solar energy), oil and gas and automotive sectors.

The implementation of a renewable energy policy in the Russian energy sector has been debated over a relatively long time at various levels – economic, political, legal and environmental. Unfortunately, there have often been more talks than real or concrete actions. Indeed, large hydropower plants still account for a large share of the Russian renewable energy sector. Other power sources, notably, wind and solar energy, have traditionally been neglected by market players and politicians. There are, of course, mainly economic reasons for the insignificance of renewable energy in the Russian energy sector since oil-, gas- and coal-based power generation remains less expensive for end consumers.

The situation started to change only with the adoption of the state policy on energy efficiency improvement in 2009. The policy specifically focused renewable energy, setting a goal of boosting its contribution to the Russian energy sector to at least 4.5% by 2020. But in 2015, this deadline was postponed to 2024.

New energy solutions are now seen as a way to modernise the Russian

power system, but they are also parts of a broader socio-economic development model to achieve higher living standards in the country.

To motivate renewable energy market players, the Russian government adopted Decree 449<sup>1</sup> in 2013. This decree established the so-called ‘capacity supply scheme’, whose key idea is the determination of the remuneration (or fee) payable to the power generation capacity provider. The calculation of the remuneration is based on the beneficial fixed tariff that is established by the relevant long-term energy capacity supply agreements signed with the renewable energy source operators. A potential supplier is granted the right to enter into such agreements through a tender that is conducted by the administrator of the trading system (ATS). Under such agreement, a supplier is obliged to create a renewable energy facility within a certain timeframe and supply power into the Russian energy system. Then the supplier is entitled to receive remunerations for its capacity and the power supplied based on prices which will be fixed for 15 years.

The application of the beneficial fixed tariffs enables market players to re-

<sup>1</sup> “Decree of the Russian Government No. 449 dated 28 May 2013 ‘On the mechanism for the promotion of renewable energy on the wholesale electricity and capacity market’”

ceive a guaranteed return on their investments into the construction and operation of a power generating facility. Such tariffs take into account the amount of capital expenditure, currency fluctuations and other factors, and provide for a 12% profit margin. However, to apply these tariffs, the power suppliers have to comply with the Russian localisation requirements.

The first tender under Decree 449 was announced in 2013 and since then the ATS has annually announced tenders for available power capacity. The results of these annual tenders from 2013 to 2019 are summarised in the table below.

Therefore, the government has recently faced the challenge to determine how the renewable energy sector should develop after 2024. The discussions, both at the political and economic levels, are still ongoing and it is presently unclear how the sector will grow further post-2024.

The draft of the new Russian Energy Strategy until 2035 is now ready. Although this draft does not look so optimistic (as it focuses more on the problem of post-crisis economic development, which is definitely slower than the rate outlined in the Russian Energy Strategy until 2030), it sets out a goal to increase the share of renewable energy generation, excluding hydro-

The year 2035 is considered in many forecasts and assessments as the time when the cost of 'green' energy will fall to the average market price in the energy sector. Thereafter, no specific incentive measures will be required as the 'green' energy tariffs will become competitive.

Large industrial consumers, however, have objected to the extension of the current policy beyond 2024. The main reasons for their dissatisfaction stem from the forecast prices of the power capacity and the related costs of implementing renewable energy projects, which are still comparatively high. It sounds reasonable since, for example, the capital expenditures (CAPEX) for

	Target value (in MW)	Tendered value (in MW)
<b>Wind power sources</b>	3,796.71	3,376.61
<b>Solar power sources</b>	1,910.204	1,858.298
<b>Moderate-sized (with less than 25 MW of installed capacity) hydropower sources</b>	802.16	168.068
<b>Waste-burning power sources</b>	445	335

If all the power generating facilities relating to the tendered capacity value mentioned in this table are commissioned on time, the stated target of increasing the share of renewable energy in the overall power supply in Russia to 4.5% will be achieved by 2024. However, as of today, the value of the installed renewable power capacity is estimated at just about 1%, thus raising doubts over achieving this target by the stipulated timeline. On the other hand, almost all the whole target capacity value has been allocated.

power, in Russia by 9-14 times by 2035, compared to today's share.

These figures may change at a later stage, but the implementation of new renewable energy projects clearly needs adequate incentives.

It is highly likely that the existing capacity supply scheme, as the key incentive mechanism, will be prolonged, without significant changes, for the new period up to 2035. The key investors in the Russian renewable energy sector have supported such extension.

the construction of generating facilities that are actually the decisive criterion for the selection of renewable energy projects during tenders remain almost at the same level, irrespective of the year of the implementation of such projects. But, as the 2019 tender has shown, there is still room for decreasing the CAPEX as the winner of the tender was able to bid with an almost 40% discount.

We may, therefore, assume that the final decision will be rather politically motivated than economically grounded.

Another important selection criterion for projects during tenders is the requirement to use a certain percentage of Russian technology and locally produced components ('local content requirement' or 'localisation'). For example, for wind projects, the required degree of localisation is currently set at 65%, while the localisation benchmark for solar projects stands at 70%. This is a key condition to ensure the project's bankability and, thus its sustainability, as a reduction factor is applied to the tariffs for projects that are executed without the required degree of localisation. This reduction factor is set currently at 35% for solar power and 45% for wind, small hydro and waste treatment power sources.

## The key investors in the Russian renewable energy sector (mainly, foreign players) have supported the idea of making the existing local content requirements more flexible and more gradual.

The key investors in the Russian renewable energy sector (mainly, foreign players) have supported the idea of making the existing local content requirements more flexible and more gradual. They have generally agreed to meet the required degrees of localisation, but would like to mitigate the risks associated with the failure to retain the achieved localisation degree during the whole operation process.

We expect that some changes to the regime of localisation will follow; however, such changes will not be dramatic, since these local content requirements, in response to the EU and US sanctions, have become one of Russia's

main economic policy drivers supporting inbound investments and technology transfers needed to develop local innovative technologies in its economy, including the renewable energy sector.

It is anticipated that the government could extend the preferential regime to the segments that are currently outside the scope of Decree 449, such as energy supply in the 'non-tariff zones' and isolated territories. A decentralised electricity generation system is of interest to Russia's remote and distant regions, as it is economically impractical to extend high voltage electricity lines to such regions. Since these territories are not connected to the country's 'centralised' energy system, investors would

keenly welcome alternative preferences, such as subsidies, tax incentives, preferential loan interests, premium on tariffs, etc.

It could be envisaged that the implementation of waste-burning power projects will be further encouraged. However, the relevant environmental risks should be carefully assessed. In this respect, we expect the Russian renewable energy policy will keep focusing mainly on accelerating the deployment of wind and solar photovoltaic plants in the country.

It is worth mentioning here that the Market Council has initiated the de-

velopment of the concept of Russian green certificates, which may be used to supplement the existing capacity supply scheme. According to this concept, by selling these green certificates, the consumers could reduce their total amount of payments for capacity, while for the power suppliers, the green certificates could act as a source of return on their investments.

Consequently, the Russian renewable energy market is now waiting for future changes in the legal regime. Such changes will certainly give a new impulse to further development of this industry.

However, no dramatic changes should be expected. Most likely, the existing promotion mechanism (capacity supply scheme) will be prolonged until 2035.

We may assume that relevant developments will follow by the end of this year. They will enable all interested companies to be prepared for the new tender, which is supposed to be announced in the first half of 2020. Some additional changes may be adopted when the capacity volumes initially targeted until 2024 are commissioned and it becomes clearer how the extra 'green' capacity affects the wholesale energy market.

It is, therefore, recommended that companies planning to invest in the Russian renewable energy sector keep an eye on how the applicable legislation develops further and, in parallel, assess the various options on how to effectively act in the industry, such as creating consortiums with global or local players or limiting their participation to only financing renewable energy projects. ■

# Catching big fish on the Russian fishery shipbuilding and fish processing markets



## JEROEN KETTING

**Owner of Lighthouse Management, Lighthouse Technologies and KETTING.COM.**

Businessman and mentor, Jeroen Ketting, has been living and working in Russia since 1994 where he owns a 20-year-old operational management company, a 7-year-old industrial equipment distributor, and a 5-year-old training business. Jeroen is a strategist and trusted 'Russia' advisor for first line managers of international companies and an expert in EU-Russian business relations.

Using his 25-years business experience, Jeroen developed his signature Value Based Methods that inspire and motivate professionals through board and top-management sessions, seminars, corporate programmes and team building events.

He is a member of the AEB Honorary Council.

Charles F. Waterman, the famous author of many fishing and hunting books, said: 'Most of the world is covered by water. A fisherman's job is simple: pick out the best parts.'

Recently, I had the pleasure to spend a day in Urk, a quintessential Dutch fishing village with a fishery culture dating back to the tenth century. I had meetings and discussions with inspiring 'Urker' entrepreneurs representing fishing companies, shipbuilders, marine equipment producers, fish processors and traders who are looking at the opportunities that the 7 billion euros Russian fishery market provides. After my presentation on the opportunities of the Russian fishery sector, many companies expressed their interest and intention to take their first steps towards building a business in Russia. In this article I try to share their enthusiasm for the opportunities in the Russian market and the steps needed to capitalise on these opportunities.

Russia has 40,000 km of shoreline, borders 12 different seas and has 102,000 km of inland waterways. You would expect that a country with such characteristics has an impressive fishery sector and indeed, Russia's fishery sector,

being the 4<sup>th</sup> largest in the world after China, the USA and Indonesia, is impressive in size. Russia's fishing industry accounts for 7 billion euros of its GDP, and this figure is rising 5% each year. Russia's marine fishery sector accounts for about 4.5% of the world's marine fish production and its fishing fleet numbers over 2,000 vessels. Russia has several huge fishing ports in Kaliningrad, St. Petersburg, Murmansk, Sakhalin, Nakhodka, Vladivostok, Astrakhan and Novorossiysk. Russia exports a lot of pollock, cod, salmon and herring. The main export destinations are China, South Korea, Japan and, surprisingly, the Netherlands. There are several huge Russian fishing companies, such as Norebo Group, Russian Sea Fishery Company, Sakhalin-based Gidrostroy, Okeanrybflot, Nakhodka Active Marine Fishery Base, FOR Group of Companies, Preobrazhenie Base for Trawl Fleet (PBTF) and North-West Fishery Consortium (SZRK). The smaller companies operate around 20 fishing vessels and the larger ones over 40 vessels. The annual revenue of these companies ranges from 200 million US dollars to 800 million US dollars.

Despite these impressive statistics, the Russian fishing fleet as well as the fish-

ing port infrastructure is obsolete and needs to be upgraded. Most of Russia's 2,000 fishing vessels were built in the 1980s, and many of them do not meet today's safety requirements. According to the Russian Fisheries Agency (RosRybolovstvo), Russia needs approximately 400 fishing vessels: 220 fishing boats and 180 medium-range and large-range vessels. The total investment required to build a new fishing fleet is 738.9 billion roubles, out of which 128 billion roubles will be allocated from the federal budget. In the next five years, Russia is planning to build 40 vessels and several large processing facilities. In reality, Russian fisheries built only six vessels from 2013 to 2016. Five out of these six vessels were built in foreign shipyards. Therefore, there are strong doubts as to whether Russian shipyards are capable of fulfilling such ambitious plans and whether they are equipped to build high-tonnage fishing vessels. In terms of the technological development of Russia's fishery sector, there are still big steps to be made, and Western companies can play an important role in making Russia's fishery sector bigger and better. Hence, the opportunities that the Russian fishery sector offers to European companies in shipbuilding, processing and trading.

## Shipbuilding

Russian shipbuilding yards that are particularly active in building fishing vessels are the October Revolution Shipyard, Vyborg Shipyard (USC), the Leningrad Shipyard 'Pella', the Severnaya Shipyard, the Nobel Brothers Shipyard and the Yantar Shipyard (USC). Some of the largest shipyards are part of United Shipbuilding Company (USC), the largest state-owned consortium of shipyards. USC comprises 40 shipyards, accounting for 80% of

the design and production capacities of Russia's shipbuilding industry and employing more than 95,000 workers. The biggest shipyards are located around St. Petersburg.

Russia requires more than 400 new fishing vessels, 40 of which should be built in the next five years. Many of these vessels will be built in these Russian shipyards because of the Russian localisation policy. Through this localisation policy the Russian government is trying to stimulate the Russian shipbuilding industry by providing incentives to Russian fishery companies to place orders with Russian yards. Incentives take the form of allocation of fishing quotas depending on the volume of domestic investment.

Despite this localisation policy there is still a strong dependence on foreign know-how and technology. Fishing vessels have to be built in Russia, but parts and special equipment are usually imported, and design and engineering is performed by international companies with good experience.

Russian yards have a particular need for on-board fish processing complexes, main engines with a gearbox and shaft, line shafts, screw propellers and propulsion systems, deck equipment, marine electrical equipment, general marine set-up systems and electronic devices.

The main foreign shipbuilding companies active in Russia hail from Norway and Iceland.

## Fish processing

The fish processing sector poses another big challenge for the Russian fishery industry. Overall, the Russian fish processing sector is underdevel-

oped. 70% of Russian fish production and almost 90% of Russian fish exports still consist of raw and frozen fish. Fish processing equipment in Russia is largely outdated and the need for investments in new fish processing technology is estimated to be around 3 billion euros. As a result of different state support programmes for fish processors, processed fish exports are steadily growing and with it the demand for fish processing equipment. The more value that can be added to fish products inside Russia, the bigger profits will be in Russia and the better it will be for the Russian fish industry.

There are opportunities in fish processing to sell on-board and on-land fish processing technologies.

There are two types of fish processing equipment that are in demand: equipment for processing on board the vessel and equipment for processing in typical land-based facilities. There is demand for primary processing (cleaning, freezing), which is usually done on board. On-board processing is different for different types of fish and seafood. The most 'popular' fish in Russia – cod, pollock and haddock – can already be processed to fillet or minced on board. As most of the unprocessed fish is now exported, processing it on board will add great value and increase profits. This is why on-board processing has become a strategic direction among the major fishery companies in the last few years.

On land, the processing industry needs equipment for salting, drying, smoking, filleting and mincing fish.

Some of the dominant fish processing companies are Dobroflot, Russian Aquaculture, Meridian, Baltiyskiy Bereg, and Kurilskiy Bereg.



A large part of the fish processing industry also produces semi-conserved and conserved products. Some of the leading producers of canned fish are RusFishWorld, Zarodinu, Yuzhmorriyflot, Roskon, 5Morey, and Glavprodukt.

In the Russian market for fish processing equipment, you will find competitors from Germany, Iceland, Sweden, Spain and Japan.

### Fish trading

In fish trading, the opportunities for Western companies in Russia mainly concern the sourcing of fish in Russia. Russia is a major exporter of pollock, cod, herring and different types of salmon. According to Russian statistics, around 30% of all Russian fish exports are exported to the Netherlands. I asked Dutch fish traders why they hold such a prominent position in importing fish from Russia. They explained that fish stocks are decreasing in traditional fishing areas and that they see Russia as a strategic supplier to Western fish processors and traders.

Because of the Russian sanctions, most fish exports from Europe to Russia are banned. Only hatchlings, canned and processed fish and seafood are allowed for export to Russia.

The Russian fishery shipbuilding and fish processing market is too big to fail – and big enough to succeed! Getting a piece of that pie requires taking the right steps.

Simply put, the right steps seem to be as follows:

- To take your top sellers and make a competitive comparison based on functionality, quality and price. The Russian market is becoming more and more price sensitive. Arguments based on 'lifecycle cost of ownership' do not always convince Russian buyers, who have increasingly tighter capex budgets.
- To start networking, networking, networking. Don't spend too much time on studying the market from behind your desk. Simply come to Russia to learn about the market and meet with potential clients, distributors and colleagues. Although it

is harder to get access to decision makers in Russia than it usually is in Europe, you will open all the doors you need to open when you have a good product or solution that stands out in the market. Networking may demand more time than in Europe because 'networking in the Russian context' means building and maintaining relationships.

- To define your value proposition. We often observe European companies wasting time on offering solutions in Russia that are not in demand. Your value proposition is where your strengths overlap with your customer's needs, but do not overlap with your competitor's strengths.
- To learn about Russian business practices, rules, regulations and culture.
- To prepare documentation in Russian.
- To prepare certification.
- To start business development and lead generation.
- To be ready to localise step by step. The Russian localisation policy is 'here to stay.' Although it is obvious to Russian companies that the market will continue to need foreign equipment, technology and expertise, it is a reality that any Western company wanting to be active in Russia needs to show some degree of localisation. This does not mean that you immediately need to establish an office or production site in Russia, but you need to have a localisation strategy. Steps in such a localisation strategy can be: a Russian language website, a Russian subcontractor, a Russian distributor or representative, your own legal entity, a single-person office, a full local office, or a partnership.
- To be regularly present in Russia. You cannot manage your Russian business development at an arm's length. In Russia you need to stay in the driver's seat of your business! ■



# For notes



## AEB MEMBERSHIP APPLICATION FORM / ЗАЯВЛЕНИЕ НА ЧЛЕНСТВО В АЕБ

Please, email a scan of completed and signed application form to: [membership.application@aebrus.ru](mailto:membership.application@aebrus.ru), and send the original document by post / Пожалуйста, вышлите скан заполненного и подписанного заявления на адрес: [membership.application@aebrus.ru](mailto:membership.application@aebrus.ru), а оригинал направьте почтой.

Calendar year/Календарный год: 2020

Name of your AEB Contact / Ваше контактное лицо в АЕБ:

### 1. COMPANY / СВЕДЕНИЯ О КОМПАНИИ

Company name in full, according to company charter in English & Russian. (Individual applicants: please indicate your business activities or the employer / Название компании в соответствии с уставом на русском и английском языках. (Для индивидуальных участников – описание предпринимательской деятельности или работодателя):

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INN/KPP / ИНН/КПП:

Phone Number / Номер:

Fax number / Номер факса:

Website address / Страница в Интернете:

### 2. CATEGORY: THE CATEGORY IS DETERMINED ACCORDING TO THE GLOBAL TURNOVER OF THE COMPANY / КАТЕГОРИЯ: КАТЕГОРИЯ ОПРЕДЕЛЯЕТСЯ ГЛОБАЛЬНЫМ ОБОРОТОМ КОМПАНИИ

Please attach the signed letter on the company activities and its global annual turnover on the company letterhead / Просьба приложить официальное письмо на бланке организации с описанием деятельности компании и указанием ее глобального оборота, заверенное подписью.

Please indicate the corresponding AEB Category / Отметьте, пожалуйста, соответствующую категорию:	Company's global annual turnover (EUR) / Глобальный оборот компании (евро)	AEB Membership Fee / Членский взнос АЕБ
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<input type="checkbox"/> CATEGORY C / Категория С	1-99 million/миллионов	2,500 EUR / евро
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Title, first name, surname / ФИО:

Position in company / Должность:

E-mail address / Адрес эл. почты:

### 4. COUNTRY OF ORIGIN / СТРАНА ПРОИСХОЖДЕНИЯ

**A. For a company / Компаниям:**  
**Please specify the country of origin /**  
Указать страну происхождения компании<sup>1</sup>

**or B. For an individual applicant /**  
**Индивидуальным заявителям:**  
**Please specify the country of which you**  
**hold CITIZENSHIP /** Указать гражданство

Please fill in either A or B above / Заполните только графу А или В.

### 5. COMPANY DETAILS / ИНФОРМАЦИЯ О КОМПАНИИ

Company present in Russia since: \_\_\_\_\_ / Компания присутствует на российском рынке с: \_\_\_\_\_ г.

**Company activities /**  
Деятельность компании

**Primary /** Основная:

**Secondary /** Второстепенная:

**Company turnover (euro) /**  
Оборот компании (в Евро)

**In Russia /** в России:

**Worldwide /** в мире:

**Please do not include this in**  
**the AEB Member Database /** Не  
включайте это в справочник АЕБ

**Number of employees /** Количество  
сотрудников

**In Russia /** в России:

**Worldwide /** в мире:

**Please do not include this in**  
**the AEB Member Database /** Не  
включайте это в справочник АЕБ

**Please briefly describe your company's activities (for inclusion in the AEB Database and in the AEB Newsletter) /**  
Краткое описание деятельности Вашей компании (для включения в базу данных АЕБ и публикаций АЕБ)

### 6. HOW DID YOU LEARN ABOUT THE AEB / КАК ВЫ УЗНАЛИ ОБ АЕБ?

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**Internet /** Интернет

**Event /** Мероприятие

**Media /** СМИ

**Advertising Source /** Реклама

**Other /** Другой

**Signature of Authorised Representative of**  
**Applicant Company /**

Подпись уполномоченного лица заявителя:

\_\_\_\_\_

Date / Дата:

**Signature of Authorised Representative of**  
**the AEB /**

Подпись Руководителя АЕБ

\_\_\_\_\_

Date / Дата:

<sup>1</sup> In accordance with the country of registration and citizenship of the major owner / В соответствии со страной регистрации и гражданством мажоритарного собственника.

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