

Russia

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Foreign pursuit of the local market

- 1 If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before taking such a step?**

Should a foreign designer or contractor wish to set up an operation to pursue the local market, the key concerns they should consider before taking such a step are outlined below.

Legal regulation of construction in Russia

The Town-Building Code is the main document that provides a procedure for the realisation of construction projects in Russia. The relations of the parties regarding the conclusion and execution of construction agreements are also subject to the Civil Code, while state and municipal construction contracts are regulated by the Procurement Law. Issues in relation to the provision of land plots for construction are stipulated in the Land Code.

Further, there are a number of government decisions which cover the contents of the sections of the project documentation, the confidence audit of estimate documents of the construction procedure (for projects financed by state funds) and the procedure for handling the state review of the project documents of engineering surveys.

In addition to the federal regulation, each region has local legal acts stating the details for obtaining permits for various types of works. Taking into consideration the complicated multilevel regulation, we recommend being advised by local lawyers when signing and executing a construction contract.

Requirements for project documentation

Contents and requirements for project documentation sections are specified in the Government Decision of 16 February 2008 No. 87.

Project documentation for construction of especially dangerous, technically difficult and unique projects, as well as projects for storage or deactivation of class I-V dangerous waste and some other projects, including construction of those financed by the governmental or municipal budget, are subject to obligatory state review.

Execution of delivery and acceptance of works between the customer and the contractor

Actions regarding acceptance of works and allocation of interrelated risks of accidental loss or damage of the object of construction are regulated by the construction agreement. Certificates KS-2 and KS-3, which formalised delivery and acceptance of works, are not obligatory at present. Thus, the parties are entitled to decide themselves on proper forms of delivery and acceptance.

Peculiarities of regulations relating to the signing and execution of state and municipal contracts

The signing and execution of such contracts is regulated by Federal Law of 5 April 2013 No. 44-FZ 'On contractual system of central and local government procurements of goods, works and services'. The execution of works financed by the state or municipal budget is not allowed without a signed contract; claims on recovery of payment for execution in court practice are considered as abuse of rights and are not to be submitted. The terms of the agreement can be changed only in exceptional cases.

Licensing procedures

- 2 Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences of working without a licence?**

Licensing of construction activities has been cancelled in Russia. To perform any activities in the area of construction (ie, geotechnical investigation, architectural design, building, re-building and overhaul) that may affect the safety of buildings, both Russian and foreign legal entities shall officially become members of an appropriate self-regulating organisation (SRO).

After joining an SRO, a foreign designer or contractor shall obtain a permit to perform a certain type or types of work from the list approved by the Ministry of Regional Development Order No. 624 of 30 December 2009. An applicant for such a permit shall meet certain requirements concerning qualification of their personnel, workforce numbers and possession of necessary physical infrastructure.

If the type of work is not related to civil engineering (such as renovation of premises without interference with the building framework), the contractor needs no special permit.

Building of capital construction facilities starts with the development design documents that shall correspond to the land plot development plan, which describes all the necessary information about the land plot, in particular the permitted use purpose.

To start construction, the developer shall obtain a construction permit and pass it on to the builder complete with the geotechnical investigation and other design documents.

Competition

- 3 Do local laws provide any advantage to domestic contractors in competition with foreign contractors?**

Russian legislation in general doesn't provide any preference for local contractors as opposed to foreign ones: foreign contractors could join an SRO and get all the necessary permits and execute construction works. The only exception is the works for the provision of military defence and Russian security: such works are allowed to be done by foreign contractors only if local contractors were unable to take them on. Also the retaliatory sanctions of Russia should be considered when looking at a contract's conditions with the state or municipal body; currently there are a number of prohibitions and restrictions on performance of such contracts when it comes to certain kinds of medical production and equipment, and production of light and machinery industry. The lists of such production are decided by the government.

Bribery

- 4 If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?**

Russian law does not provide for a direct legal dependency between contract validity and an established fact of bribery or corrupt payment when concluding a contract. By that virtue, finding the fact of bribery does not automatically terminate a contract. The validity of such a contract will depend on why its conclusion was illegal. When litigating, the validity of

the contract will depend on specific circumstances and the court discretion. If the contractor met all the requirements for being awarded the contract and provided trustworthy documents in relation to its activities, the contract may be enforceable even though some violations may have taken place.

A contract may be challenged in court by the victim, eg, as a transaction made under the impact of a fraud (the Civil Code, article 179). The party that has committed the fraud shall then return all that it has received (money or property) to the victim, and also repair the losses. Russian law does not provide for any simplification of established formalities or requirements for a fee. Both the giving and taking of bribes is prosecuted in Russia.

Political contributions

5 Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?

There are no laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties.

Other international legal considerations

6 Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

Russian law cannot treat foreign legal entities and their use of profits less favourably than Russian ones. Exclusions may be provided for in the federal laws or international agreements. No additional requirements or limitations are applied to foreign contractors, though certain formalities related to consular legalisation of foreign documents exist.

Construction contracts

7 What standard-contract forms are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

There are no standard-contract forms which are established by law and should be used for construction and design. Usually the parties develop their own contract, sometimes on the basis of FIDIC forms, which should be adjusted in accordance with Russian law requirements. If the result of designing or construction is created in Russia, the contract as a rule is governed by Russian law and should be executed in Russian language; however, it is possible to select another jurisdiction and have a bilingual contract.

Payment methods

8 How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

Russian law establishes freedom of contract. Contract provisions are at the parties' discretion. The parties have the right to choose any payment system that does not contradict the law.

According to the law, the customer shall pay the contractor the budgeted amount within the time and under the procedure established in the contract. Unless the contract provides for an advance payment for the work in whole or for its parts, the customer shall pay the contractor the full price established in the contract in a lump sum once the work is finally accepted.

In practice the payment is usually made in installments and an advance payment is made to the contractor. The advance payment is proportionately offset against future payments for the work to be done by the contractor.

In construction business, the customer usually pays by a bank transfer to the contractor's account. Bank cheques are rarely used.

Payments in the Russian territory are usually made in Russian roubles or in foreign currency following the procedure and rules set in the currency law.

Contractual matrix of international projects

9 What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

There is no typical contractual matrix for international projects in Russia: the contract conditions as well as the number and content of members in every project team depend on the complexity of the project and the ability of the customer to manage the project by himself or with certain assistance. In the majority of cases the contractor signing the agreement with the customer has the right to hire subcontractors and bears the responsibility before the customer for their actions.

The customer can either sign the agreement or delegate the signing of the agreement and control over the construction to the technical employer with due knowledge and experience in construction control. As a rule, agreements for construction include not only the execution of construction works but a purchase of necessary equipment and materials by the contractor.

In some cases, especially when a FIDIC form is used, the parties appoint an independent engineer who promptly solves the complex and conflicting issues during construction.

PPP and PFI

10 Is there a formal statutory and regulatory framework for PPP and PFI contracts?

The law on PPP and PFI is poorly developed.

PPP is considered one of the forms of state support of entrepreneurship. It is based on provision of legal guarantees both to private partners and to public entities.

The main law on PPP is the Federal Law of 21 July 2005 No. 115-FZ 'On Concession Agreements'.

In a concession agreement, a concessionaire (eg, a foreign legal entity) agrees to build or reconstruct at its own cost a property described in the contract. Subsequently, the ownership of the property will belong to the concessor (the RF or its constituent subjects). The concessor, however, agrees to grant to the concessionaire the right to own and use the property for a period and for the purpose established in the agreement.

The essence of state support rendered to the concessionaire is the provision of the property to the concessionaire for the purpose of its business activities. Unless the agreement states otherwise, products generated and profits gained shall be owned by the concessionaire. As a rule, a concession agreement is awarded through a tender procedure.

The Law on Concession Agreements was amended in 2014 to regulate certain PPP issues (on interaction between different legal entities when forming a PPP and on PPP activities in the area of waste disposal). An innovation was made, making it possible for private capital to initiate a PPP, not only public entities.

Certain PPP relationships are regulated by regional laws.

Joint ventures

11 Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

In the case where a group of persons acts as the Contractor, due to common rule each of them bears joint liability to the customer (item 2, article 322 of the Civil Code). In theory obligations and liabilities of each member of the consortium can be preconditioned in the construction contract. In this case there will not be the plurality of persons acting as a contractor, but plurality of separate liabilities. In practice, however, this method of liability allocation is not popular due to the obvious risks to the customer.

Tort claims and indemnity

12 Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

Russian law does not allow the exemption from liability of any party to a contract and negates the application of liquidated damages. No agreement on exemption from liability caused by future wrongful acts shall have legal force.

A contract may limit the contractor's liability to certain grounds (eg, fault only) or to an amount (eg, to the amount of real damage only).

As for the contractor's liability to third parties, general conditions for indemnity will be used: fact of harm, cause-result connection between the harm and the wrongdoer's actions, wrongfulness of the actions and guilt. Tort liability is a non-contractual obligation and damage is redeemed by loss compensation or in kind of the same quality.

An obligation to indemnify may be imposed on a person that is not the wrongdoer. Based on that, the harm done by the contractor to third parties may be repaired by the compensation fund of an SRO whose member the contractor is.

Liability to third parties

13 Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

If a contractor and a buyer or future leaser of the object under construction are not bound by contractual relations, then this third person has no right to suit a claim to the contractor for improper quality of the built object: the claim should be addressed to the customer who was a seller or a lessor in relation to this third person. In addition, the customer has the right of regressive claim against the contractor for the drawbacks not exposed during acceptance (latent drawbacks) and other drawbacks covered by warranty liability of the contractor due to the agreement with the customer. Regarding the liability of the contractor for injury to third persons as a result of the construction works (as construction works are of heightened danger for surrenders), the contractor and the customer or owner of the object under construction are jointly and severally liable and should compensate third persons for the injury damage during construction works in every case, with the exception of the damage caused by the claimant deliberately or due to force majeure (article 1079, 1080 of the Civil Code). If the construction agreement stipulates that the contractor bears the liability for injury damages to third persons, then if the customer bears the solitary responsibility on the claim of the defendant, the customer has the right of regressive claim to the contractor. The amount of compensation may be reduced, or the compensation claim may be reduced, if the damage arises from gross negligence of the aggrieved.

Insurance

14 To what extent do available insurance products afford a contractor coverage for: damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards. Does the local law limit contractors' liability for damages?

Insuring the risk of liability for breach of contract is only allowed in cases directly provided for in Russian law. For instance, it is possible to insure against liability risk under a concession agreement. Risk of liability for breach of a construction agreement cannot be insured.

A loss incurred as a result of a delay in commissioning of a building may be insured as a 'business risk'. Loss, destruction or damage of a building as a result of events that are incidental or haphazard by nature may be considered an insurable risk. Such events shall not be excluded from a list of insurable risks in the insurance agreement or by the insurer's rules. For instance, loss incurred where a building is damaged or destroyed as a result of third parties' actions may be insured.

Liabilities arising from inflicting harm to life, health or property of other persons may be insured as the liability risk of the insured or any other person who may be liable.

Labour requirements

15 Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

There are no laws requiring a minimum amount of local labour to be employed on a particular construction project.

Local labour law

16 If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

A permanent employment agreement cannot be terminated because the construction is over. After the end of construction, the employment relations shall continue, that is, the employer must continue to pay salaries on time. Because of that, it is recommended in construction to use fixed-time employment agreements with one's personnel, as their termination stops any relations with one's former employees.

However, getting an SRO permit to perform a certain type of work requires that the company has a certain number of workers who have a certain length of employment and a certain qualification. Therefore, a contractor will always need to have a number of permanent employees.

Close of operations

17 If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

Due to common rule the agreement can be dissolved with mutual consent of the parties. A court decision can dissolve the contract only in case of substantial breach of the agreement by a party, substantial change of circumstances or in other cases provided by law. Also in a number of cases the law or the agreement provide a possibility to dissolve the agreement unilaterally out of court on the initiative of one of the parties.

Should the construction agreement be terminated as a result of circumstances provided either by law or agreement, before the customer accepts the results of the works done by the contractor, the customer is entitled to demand to deliver him the results of the work not finished compensating to the contractor incurred expenditures (article 729 of the Civil Code). The construction or dissolution agreements may provide additional legal consequences of the anticipatory termination of obligations, including non-payment to the contractor of the retainage usually retained from the installments and paid after the guarantee period is over.

Payment rights

18 How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

Penalty, liens and earnest money are the common guarantees in a construction contract. A bank guarantee and a suretyship (similar to a corporate guarantee widely used abroad) are also used. Pledge is also possible, but rare in practice.

A construction contract may provide for a penalty in the form of a set amount (usually for failing to transfer property or to insure equipment) or as interest (as a percentage of an amount to be paid for every day overdue). Apart from the penalty, the victim may demand that the wrongdoer compensates all the losses not covered by the penalty.

The customer's obligation to pay for the construction work is often guaranteed by earnest money. The earnest money performs two functions, that of a payment, and that of a guarantee (should the contractor fail to fulfil its obligations, it must return the earnest money as doubled).

The customer's obligation to pay the contractor for the work may be guaranteed by a mortgage agreement for the land plot belonging to the customer and the building to be constructed thereupon.

Suretyship also substantially increases the constructor's guarantees, because if the customer fails to pay for the work the customer has the right to recover the debt from both the customer and the surety provider (in the amount of suretyship).

If the customer has provided a bank guarantee, then in the event that the customer fails to pay for the work performed by the contractor, the latter has the right to demand that the bank should pay the whole amount of the bank guarantee rather than the part that corresponds to the debt. The bank guarantee conditions may provide for the amount demanded by the contractor be reduced proportionately to a ratio between the amount of obligation that the contractor failed to meet and the overall amount of the contract.

The contractor's right for liens is imperatively set in the law. Should the customer fail to pay the agreed price, the contractor has the right to withhold the result of his work as well as other property belonging to the

customer (equipment, materials, etc) until the customer pays the appropriate amounts.

Contracting with government entities

19 Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

Foreign persons and persons without citizenship exercise rights and bear the same responsibility as Russian citizens except in the cases stipulated in the Russian federal law or international agreements (article 62 of the Constitution). The provision covers foreign legal persons too. There are no special limitations for foreign contractors in the actual Russian legislation. Peculiarities of responsibility of Russia and its constituents in relations under the civil law, with participation of foreign legal persons and individuals, citizens and states are regulated by the law regarding state immunity and its property. The law is still not adopted. Thus as ECHR notices, the courts are to decide on the issue on the basis of the applicable procedural codes with reference to the provisions of different bilateral and multilateral agreements (Decision of the ECHR of 14 March 2013 in *Oleynikov v the Russian Federation*, petition No. 36703/04). While analysing the legal status of a foreign contractor and defence of his or her rights, you should also pay attention to the fact that a foreign contractor is a subject of investment relations in accordance with the provisions of the Federal Law of 25 February 1999 No. 39-FZ 'On Investment Activity in the Russian Federation in Form of Capital Investments' and is granted equal rights and a right to appeal the actions of state and municipal bodies infringing his or her rights.

Taking into consideration the above-mentioned, theoretically in the absence of a special provision regarding immunity, the possibility that the state authorities reject the payment on the ground of immunity can't be totally excluded.

However, existing regulation and law enforcement practice show a minimum probability of such a scenario in practice. The contractor also possesses a wide legal instrument in order to defend his rights.

Statutory payment protection

20 Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

The customer may withdraw from the agreement at any time before the final acceptance of work by paying the contractor for the work already done and repairing the losses caused by the contract termination by paying part of the difference between the price of the contract and the amount paid for the work completed. Use of this rule may be excluded by contract.

The law imperatively provides that the customer has the right, in the case of a premature termination of a contract, to demand that the contractor transfers to it the uncompleted work results and must compensate for the contractor's costs. In judicial practice, the customer shall also pay to the contractor part of the remuneration proportionate to the work done.

If construction work is suspended for reasons beyond the parties' control and the construction is stopped, the customer must pay the contractor in full for the work done before the stopping and to compensate the contractor for all the costs caused by the necessity to stop construction, set off against the profit that the contractor has got or might get because of such stopped construction.

Force majeure and acts of God

21 Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

Unless otherwise provided by law or contract, the person who has not performed, or who improperly performed an obligation during the implementation of business activities, is responsible, unless he proves that proper performance was impossible due to force majeure, ie, circumstances which were extraordinary and unavoidable under the given conditions. Extraordinary nature of force majeure does not allow the qualification as such any fact of life, it has objective, not subjective inevitability. Such circumstances should be confirmed by a document issued by the Chamber of Commerce or another authorised body. Parties to a contract may provide a different procedure for the allocation of responsibility in the event of force majeure.

Courts and tribunals

22 Are there any specialised tribunals that are dedicated to resolving construction disputes?

The Russian judicial system does not provide for specialised courts to consider construction disputes. Such disputes are usually considered economic disputes and are resolved in state arbitration courts.

However, should this be provided for in the agreement between the parties, they may bring the dispute to an independent arbitration tribunal, eg, the Arbitration Court at the Russian Chamber of Commerce.

Russia also has specialised international arbitration courts that consider disputes arising in foreign trade relations and other international economic relations.

A warrant of execution of a third party arbitration court judgment is issued by a state arbitration court.

Dispute review boards

23 Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

Dispute review boards are not used in Russia.

Mediation

24 Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?

Mediation in Russia is regulated by Federal Law of 27 July 2010 No.193-FZ 'On Alternative Procedure for Dispute Resolution (Mediation)'.

Mediation is allowed before the case is brought to an arbitration court and at any stage of the court proceedings before a court judgment is delivered.

Mediation shall be based upon a written agreement between the parties on mediation procedure. For this purpose, the parties shall agree to appoint one or several mediators.

Following the mediation procedure, the parties shall enter into a written mediation agreement, which shall contain information about the parties, the subject of dispute, the mediation procedure, mediators and also the obligations agreed upon and their due dates.

Mediators may be either professional or non-professional.

Confidentiality in mediation

25 Are statements made in mediation confidential?

The law expressly prohibits demanding information relating to the mediation procedure from the mediator or from the organisation arranging the mediation procedure, except for the cases envisaged by federal laws, and cases when the parties have agreed otherwise.

Moreover, the parties and the organisers of the mediation, the mediator and also any other persons involved in a mediation, cannot refer to confessions made in the course of the mediation or even to a party's willingness to take part in mediation.

Arbitration of private disputes

26 What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

Litigation in the state courts is considerably less expensive and certainly prevails over arbitration proceedings.

Arbitration is chosen for large construction projects, particularly PPP projects, concession agreements and some EPC and EPC(M) contracts.

Governing law and arbitration providers

27 If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

The parties are free to choose the governing law except when the dispute pertains to the rights of real estate. Russian law is usually chosen for construction agreements.

Construction disputes hearings outside Russia are rather uncommon due to additional costs, though there is no particular resistance thereto.

The International Commercial Arbitration Court at the Chamber of Commerce and Industry is one of the most popular independent arbitration venues, though other ones can be used as well.

Dispute resolution with government entities

28 May government agencies participate in private arbitration and be bound by the arbitrators' award?

Government agencies may participate in private arbitration.

Arbitral award

29 Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

Russia is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. The grounds for rejection of an arbitral award provided by the Convention are implemented in Law of 7 July 1993 No. 5338-1 'On International Commercial Arbitration'.

A foreign court or international tribunal decision may be presented for mandatory execution within three years as from the day of its entry into legal force. The term may be reinstated by the court in case there were good reasons for omission.

Limitation periods

30 Are there any statutory limitation periods within which law suits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

The limitation period for the defects pertaining to buildings and structures built under the construction agreement is three years. This term also applies to the works for project and technical documentation for the construction. The period begins from the date of acceptance of the works on the whole, even if the customer accepted parts of works in course of the construction. However, in case there is a warranty period provided by legislation or an agreement and the claim on the defects is raised within the period, the limitation period starts at that moment.

As a precondition for the claims on the defects the Civil Code provides the terms for the defects to be revealed. The claim may be raised within a reasonable term but no later than two years (five years for construction works) from the handover of works or within the warranty period in case the law or an agreement provide such. If a warranty period is less than two (or five) years, to raise a claim after the expiration of the period but before two (or five) years have expired the customer will have to prove that the defects arose before the handover or for reasons that had taken place before the handover.

International environmental law

31 Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

Russia is a party to the Declaration of the United Nations Conference on the Human Environment of 1972. The main federal laws regarding the preservation of the environment include the Forest Code of 4 December 2006 No. 200-FZ, Water Code of 3 June 2006 No. 74-FZ, Federal Law of 10 January 2002 No. 7-FZ 'On Environment Protection', Federal Law of 4 May 1999 No. 96-FZ 'On Atmosphere Protection'.

Local environmental responsibility

32 What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?

Firstly, the project documentation for the construction shall include a separate chapter with the list of environment protection measures (water, air, pollution, etc). This documentation is subject to expertise by authorised (state or private) organisation. Moreover, for some construction projects a separate ecological analysis shall be performed, eg, for construction at a specially protected natural territory. Depending on the configuration of

Update and trends

In March 2015 comprehensive amendments to the Land Code entered into force. The amendments substantially changed and detailed the procedure in relation to public land plots granted for construction and seized for state needs. Though the law resolved many problems, there is no court practice interpreting the new law, and it makes its application somewhat complicated.

Along with ongoing restrictions on the acquisition of state and municipal property without a tender procedure, legislation stimulating private initiative is being developed. Besides the amendments to concession legislation mentioned above, a comprehensive PPP federal law is being elaborated in the State Duma.

Another trend is the elimination of administrative obstacles for construction and registration of rights to real estate. Particularly, the number of documents to be presented to respective authorities and the number of authorities involved itself is being gradually reduced. Many online services for administrative procedures have come into use.

the building, some permits (apart from the construction permit itself) are required (for instance, a permit for water discharge on the neighbouring land or river). Another requirement developers face during the construction is the necessity to arrange sanitary and protection zones and to comply with sanitary intervals. These requirements may exclude the possibility of construction in some areas, for instance near residential buildings. During and after the construction is complete some payments are imposed, particularly the payment for negative influence on the environment.

All the environmental requirements are secured by a system of administrative offences provided by the Administrative Offences Code. The code imposes mostly monetary fines which may amount to considerable sums, especially taking into account they may be applied several times for a continuing offence. Some offences may lead to suspension of activities for a period up to 90 days. Moreover, breach of environmental rules may lead to criminal liability provided by the Criminal Code applied; however, it only applies to individuals.

International treaties

33 Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

Russia is a party to agreements on the promotion and reciprocal protection of investments with more than 70 countries. A model agreement on the promotion and reciprocal protection of investments was approved by the Russian Government Decree of 9 June 2001 No. 456 and defines investments as all kinds of property assets invested by investors of the state of one country in the territory of the state of the other country in accordance with the legislation of the latter, and in particular:

- movable and immovable property;
- shares, stocks etc;
- rights to intellectual property; and
- rights conferred by the legislation or under contract, eg, exploration, development, extraction and exploitation of natural resources.

According to the Federal Law of 9 July 1999 No. 160-FZ 'On Foreign Investment in Russian Federation', as a rule foreign investors enjoy a regime that cannot be less favorable than the one for Russian investors, with exceptions provided by some federal laws. For instance, foreign investors cannot have ownership right to land plots in the borderline regions.

Tax treaties

34 Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Russia is a party to approximately 80 double taxation treaties. For the most part, these treaties include the rule that the contractor shall be taxed by the state wherein the construction site is located if the construction lasts for more than 12 to 18 months (the exact period differs).

Currency controls**35 Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?**

As provided by the Federal Law of 10 December 2003 No. 173-FZ 'On Currency Regulation and Currency Control', currency exchange operations shall be performed through authorised banks. No other substantial restrictions are imposed.

Removal of profits and investment**36 Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?**

No substantial restrictions on the removal of profits are provided for by the Russian legislation. However, residents are obliged to secure receipt of funds from non-residents for goods, work and services provided in authorised bank accounts. In addition, they are responsible for recollection of funds paid to non-residents in case the latter failed to perform their obligations.



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