

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 that 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 Government Decision No. 87 of 16 February 2008.

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 the proper forms of delivery and acceptance themselves.

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 No. 44-FZ of 5 April 2013 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 the 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 type of the permitted use.

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 are 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's 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, for example, 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.

Reporting bribery

5 Under local law must employees of the project team members report suspicion or knowledge of bribery of government employees and, if so, what are the penalties for failure to report?

Russian legislation does not provide such regulation. However, in case a person guilty of bribery (or assisting the bribery) voluntarily reports the bribery to authorities it may be exempt from criminal liability.

Political contributions

6 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

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

Generally 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, although certain formalities related to consular legalisation of foreign documents exist. Besides, some limitations may be imposed by special economic measures taken by the president of Russia according to Federal Law No. 281-FZ of 30 December 2006 on special economic measures, for example, under the President's Decree No. 583 of 28 November 2015, it is prohibited, after 31 December 2015, to hire new Turkish citizens with the aim to perform works or render services in Russia (with the exclusion of some companies from a special list approved by the Russian government).

Construction contracts

8 What standard form contracts 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 that are established by law and should be used for construction and design. Usually the parties develop their own contract, sometimes on the basis of the International Federation of Consulting Engineers (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 the Russian language; however, it is possible to select another jurisdiction and have a bilingual contract.

It is worth paying particular attention to the fairness of contractual terms and availability of equal negotiating powers of the parties, otherwise courts may either alter or rescind the contract upon request of the weaker party (article 428, item 3 of the Russian Federation (RF) Civil Code) or dismiss or reject an action by the abusing party (article 10, item 2 of the RF Civil Code).

Payment methods

9 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 instalments 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 the 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

10 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 him or herself 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 that arise during construction.

PPP and PFI

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

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

The main laws on PPP are the Federal Law No. 115-FZ of 21 July 2005 on concession agreements and the Federal Law of 13 July 2015 on state-private partnership, municipal-private partnership in Russian Federation and amendment of some legislation acts of the Russian Federation.

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 conessor (the RF or its constituent subjects). The conessor, 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.

State/municipal-private partnership agreements

Recently adopted state/municipal-private partnership regulation provides the possibility of agreements when a real estate constructed by public and private partners may be acquired by the private partner into private ownership. This is the main difference of the state/municipal-private partnership agreement from the concession agreement mentioned above. The list of

the types of real estate that may be constructed under a state/municipal-private partnership agreement is clearly provided by the law. Besides, unlike the concessionaire in a concession agreement, only a Russian legal entity may be a private partner to the state/municipal-private partnership agreement.

Both concession and state/municipal-private partnership regulations provide that not only public entities but also private capital are allowed to initiate a PPP.

Certain PPP relationships are also regulated by regional laws.

Joint ventures

12 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 a common rule each of them bears joint liability to the customer (article 322, item 2 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

13 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. No agreement on exemption from liability caused by future deliberate 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, including 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 who the contractor is a member of.

Liability to third parties

14 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 lessee of the object under construction are not bound by contractual relations, then this third person has no right to pursue a claim on 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 risk of 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 deliberately by the claimant or due to force majeure (articles 1079 and 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

15 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 or agreement on a PPP. 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

16 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

17 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 just 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, acquiring 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.

Labour and human rights

18 What laws apply to the treatment of foreign construction workers and what rights do they have? What are the local law consequences for failure to follow those laws?

Generally, the treatment of foreign construction workers in Russia is governed by the same legislation as the citizen's labour relationship, and foreign construction workers have the same rights. The main difference is that as a general rule, to work under a labour agreement a foreign worker shall have a work permit or patent, or shall have a residence (or temporary residence) permit.

To involve a foreign worker, an employer shall receive a permit for involving foreign workers issued by federal migration authorities, and in case of absence of such a permit considerable fines and even administrative suspension of activity may be imposed.

Close of operations

19 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 cases 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 to him or her the results of the work not finished and 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 instalments and paid after the guarantee period is over.

Payment rights

20 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, a party 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.

However, taking into account that, typically, construction works are prepaid by an advance, it is the contractor who usually provides security (bank guarantee, suretyship, etc) that the prepayment is returned in case of contractor's failure.

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 or her work as well as other property belonging to the customer (equipment, materials, etc) until the customer pays the appropriate amounts.

Contracting with government entities

21 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 the European Convention on Human Rights (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 (eg, the decision of the ECHR of 14 March 2013 in *Oleynikov v the Russian Federation*, petition No. 36,703/04). While analysing the legal status of a foreign contractor and defence of his or her rights, one should also pay attention to the fact that a foreign contractor is a subject of investment

relations in accordance with the provisions of Federal Law No. 39-FZ of 25 February 1999 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 the above-mentioned into consideration, 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 or her rights.

Statutory payment protection

22 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 work stopped 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 received or might receive because of such stopped construction.

Force majeure and acts of God

23 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 or she proves that proper performance was impossible due to force majeure (ie, circumstances that were extraordinary and unavoidable under the given conditions). The extraordinary nature of force majeure does not allow the qualification as such of 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

24 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

25 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

26 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 No.193-FZ of 27 July 2010 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, the mediators and also the obligations agreed upon and their due dates.

Mediators may be either professional or amateur.

Compared to state courts, mediation is relatively unpopular, probably due to the fact that state courts' litigation is not as expensive as in some other countries where the mediation as an institute came from.

Confidentiality in mediation

27 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 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

28 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 engineering, procurement and construction (EPC) and EPC management contracts.

Governing law and arbitration providers

29 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 dispute hearings outside Russia are rather uncommon due to additional costs, although 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, although other ones can also be used.

Dispute resolution with government entities

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

Government agencies may participate in private arbitration.

Arbitral award

31 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 party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. The grounds for rejection of an arbitral

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. Although the law resolved many problems, there is no court practice interpreting the new law, and it makes its application somewhat complicated.

Adopting the Federal Law of 13 July 2015 on state-private partnership, municipal-private partnership in the Russian Federation and amendment of some legislation acts of the Russian Federation will definitely breathe new life to PPP in Russia.

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 is being gradually reduced. Many online services for administrative procedures have come into use. In 2017 a new Federal law of 13 July 2015 on real estate state registration will enter into force, and a new Unified State Real Estate Register (unifying two existing now cadastral and rights registers) will start functioning.

award provided by the Convention are implemented in Law No. 5338-1 of 7 July 1993 on international commercial arbitration.

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

Limitation periods

32 Are there any statutory limitation periods within which lawsuits 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 defects pertaining to buildings and structures built under a 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 the course of the construction. However, in cases where 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 cases where the law or an agreement provides such. If a warranty period is less than two (or five) years, to raise a claim after the expiry 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

33 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 party to the Declaration of the UN Conference on the Human Environment of 1972. The main federal laws regarding the preservation of the environment include Forest Code No. 200-FZ of 4 December 2006, Water Code No. 74-FZ of 3 June 2006, Federal Law No. 7-FZ of 10 January 2002 on environment protection and Federal Law No. 96-FZ of 4 May 1999 on atmosphere protection.

Local environmental responsibility

34 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?

First, 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 an 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 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 construction, and after it is complete, some payments are imposed, particularly the payment for any 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 the fact that 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, a breach of environmental rules may lead to criminal liability provided by the Criminal Code being applied; however, it only applies to individuals.

International treaties

35 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 party to agreements on the promotion and reciprocal protection of investments with more than 80 countries. A model agreement on the promotion and reciprocal protection of investments was approved by Russian Government Decree No. 456 of 9 June 2001 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 include, in particular:

- moveable 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 Federal Law No. 160-FZ of 9 July 1999 on foreign investment in the Russian Federation, as a rule foreign investors enjoy a regime that cannot be less favourable than the one for Russian investors, with exceptions provided by some federal laws. For instance, foreign investors cannot have ownership rights to land plots in the borderline regions.

Tax treaties

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

Russia is 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

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

As provided by Federal Law No. 173-FZ of 10 December 2003 on currency regulation and currency control, currency exchange operations shall be performed through authorised banks. No other substantial restrictions are imposed.

Removal of revenues, profits and investment

38 Are there any controls or laws that restrict removal of revenues, profits and investments from your jurisdiction?

No substantial restrictions on the removal of revenues and profits are provided for by 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 the event that the latter failed to perform their obligations.



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