



Construction

in 31 jurisdictions worldwide

2015

Contributing editor: Robert S Peckar



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Peckar & Abramson, PC

Getting the Deal Through is delighted to publish the fully revised and updated eighth edition of *Construction*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 31 jurisdictions featured. New jurisdictions this year include Indonesia, Italy, Norway and South Africa.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. **Getting the Deal Through** publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at www.gettingthedealthrough.com.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise.

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Publisher

Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions

Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers

George Ingledew
george.ingledew@lbresearch.com

Alan Lee
alan.lee@lbresearch.com

Dan White
dan.white@lbresearch.com

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Severijn Hulshof advocaten

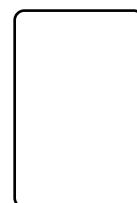


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Russia

Vladimir Lipavsky

Ost Legal

1 Foreign pursuit of the local market

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?

The Russian construction industry is significantly different from the Western construction industry, and foreign contractors who enter the market for the first time must be prepared for a different environment. The key concerns are:

Licensing

In most cases it is mandatory to have a permit from a self-regulating organisation in order to enter into and perform construction contracts.

Design

The scope, contents and structure of design in Russia differs substantially from that in Western countries. Design consists of two major parts: 'project documentation' and 'working documentation'. These are often translated as 'basic design' and 'detailed design', but they differ from what is understood by those terms in Europe or the United States. The structure and content of project documentation is established by Government Resolution No. 87 of 16 February 2008 on the structure of project documentation and requirements regarding its contents. After having been developed by the contractor, the project documentation must be approved by the customer and then filed for the review of the state expert authority. Only when a positive expert review is granted may the customer apply for a construction permit. It is highly advisable that a foreign contractor entering the market for the first time liaise with the Russian design institute for a better understanding of the scope of design work and its requirements.

Budget estimates, unitary rates and acceptance

The mechanism of price calculation and acceptance has its origins in the Soviet era and has not changed much since then. When a construction project is financed by state funds it is mandatory that all the pricing be based upon unitary rates that are published by the authorities. Those unitary rates have a base year (for example 2001, 2004, 2007) and in order to be used in a certain project they have to be multiplied by a coefficient, which could be either a published one or one agreed by the parties. Based on unitary rates and quantities provided by the design documentation, a budget estimate must be composed. Acceptance of works is formalised by specific forms of acceptance certificates (KS-2 and KS-3), which were designed to be used together with unitary rates. These pricing and acceptance mechanisms do not work well when lump sum prices are negotiated and in the case of EPC contracts (ie, when the price is agreed before the design is developed). Also, the levels of established unitary rates are usually quite low and often do not reflect the labour costs of foreign contractors. Although from a legal standpoint using unitary

rates and budget estimates is only mandatory when the project is financed by the state, many customers require them even in private projects.

Permits

It should be noted that in Russia more permits have to be obtained for the construction of a certain project than would be required for the same project in Europe or the United States. Many different types of permits are required to commence and proceed with the works, transport, deliver, install and commission technological equipment, and put the facility into operation. Permit issues cause delays and disputes during project implementation. A contract should provide for an explicit distribution of responsibilities in respect of obtaining permits.

Communication with Russian customers, subcontractors and authorities

Our experience shows that foreign contractors who enter the Russian market for the first time face serious difficulties, starting from the contract negotiation phase, due to the fact that the Russian approach to construction is very specific and unusual in many aspects. It could be helpful to have local specialists in the team who have experience of implementing projects in Russia.

2 Licensing procedures

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

Starting from 1 January 2010, state-issued licences were replaced by the mechanism of self-regulating organisations (SROs). According to section 55.5 of the Town-Building Code of Russia, in order to conduct their professional activities, designers, civil engineers and builders have to obtain membership of their respective SROs.

Obtaining SRO membership requires having a certain number of qualified workers and a certain amount of construction equipment (for builders) in place. Becoming and being a member of an SRO entails expenses: an admission fee, regular membership fee and contribution to the compensation fund of the SRO, which is founded to cover the liability of SRO members.

In order to perform works that influence the safety of capital construction, being a member of an SRO is not enough – a certain permit needs to be obtained from the SRO, which confirms that a company is competent to perform the respective works. Certain requirements have to be observed by an applicant when applying for such a permit – a set of minimum requirements is established by the Town-Building Code (section 55.5) but SROs can set stricter requirements. A list of works subject to a permit issued by an SRO is set out by Order No. 624 of the Ministry for Regional Development of the Russian Federation, 30 December 2009 (in force from 26 of May 2011).

Working without a permit from an SRO, when such a permit is required, is regarded as an administrative offence under the Code of Administrative Offences (section 9.5.1). The offender will be charged a fine ranging from 40,000 to 50,000 roubles. Failure to comply with the requirements to be met when obtaining the permit constitutes a separate offence, which could attract a fine ranging from 30,000 to 40,000 roubles. Repeated violation (within a year) may entail administrative suspension of the company activities for a period of up to 90 days.

3 Competition

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

Russian laws do not provide any specific advantages to local contractors. However, in order to conduct business activities, to become a member of an SRO and to obtain permits, a foreign contractor has to establish a legal presence in Russia, which could be either a subsidiary company, a branch or a representative office.

4 Bribery

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?

A contract that has been awarded through bribery can be declared void under section 179 of the Civil Code. In such a case the violating party must return to an injured party all the monies and property received from the injured party. Also, the injured party is entitled to reimbursement of damages. The property received by the injured party from the violating party is confiscated by the state. If it is impossible to deliver such property, the monetary funds equal to the price of such property are collected from the violating party.

It should be noted that, before section 179 of the Civil Code can be applied, bribery must be established in criminal proceedings. Both bribe-givers and bribe-takers can be prosecuted in accordance with the Criminal Code of Russia. No facilitation payments to any officials are allowed by law.

5 Political contributions

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 formal legal restrictions in this regard.

6 Other international legal considerations

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

The considerable number of permits and approvals required is certainly a surprise for a newcomer to the market. Another big issue is misunderstandings with Russian customers as to the scope, structure and formalisation of design. Pricing, payments and acceptance procedure are also points that need attention. We would recommend using international arbitration as a dispute resolution venue rather than state economic (*arbitrazh*) courts. Although customers often insist on economic courts, we believe they are not well enough prepared for issues as specific as construction disputes.

7 Construction contracts

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?

At present, there are no legal requirements as to the forms of the contracts. We are also not aware of any industry standards in this regard.

For smaller and medium-sized projects executed by and between Russian companies, very simple (10 to 20 pages) contract forms are usually used. For bigger projects, FIDIC forms are sometimes used. However, it should be noted that each FIDIC form has to be revised substantially in order to be adapted to Russian law and the peculiarities of the Russian construction process. Therefore, a better alternative would be to develop a 'custom-made' contract for a certain project.

The rules for choice of law and dispute resolution are relatively standard in Russian law and do not differ much from other jurisdictions. When a contract is entered into with a foreign contractor, a neutral applicable law and international arbitration are usually selected.

8 Payment methods

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

A typical payments structure in a construction contract in Russia differs from the one used in Western countries. In Europe or the United States, one would expect to see a 'milestone payment' or 'payment schedule structure' in a construction contract – a system where a portion of the contract price is allocated to the achievement of a milestone or calendar date. Russian customers and contractors are more used to the 'progress payment system', which is a combination of one or several advance payments and 'progress' payments for the physical quantities or packages of work actually completed. There are two types of progress payments. If a contract price is based upon unit rates and not a fixed sum, the customer may pay a contractor a monthly payment based upon a bill of quantities (KS-2), which reflects the actual quantities completed during the reported month. When a price is a fixed sum it can be broken down into work packages (each of the work packages should represent at least a complete unit. It cannot be 3 metres of a pipe or 5 cubic metres of soil) indicating the price of each work package. The contractor is paid a price of a work package when such a work package is complete. If advance payment has been paid it is usually deducted on a pro-rata basis from either monthly payments or work package payments. The reasons for such a structure are that, according to Russian accountancy rules, all the amounts that are paid prior to actual acceptance of work or complete package of work are deemed to be advance payments. Consequently, due to the internal treasury policies of most large Russian companies, all advance payments must be backed up with an advance payment bond. No contractor is willing to provide an advance payment bond equal to 100 per cent of the contract price.

The contract price is usually paid by electronic payment (through wire transfer or by means of a letter of credit).

9 Contractual matrix of international projects

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?

Although it is difficult to outline a single typical contractual matrix, most major projects are implemented on an EPC or EPC(M) basis, when a general contractor is employed by the customer and subcontractors are employed by the general contractor on its own behalf. The construction manager's own engineers are usually employed

for consultancy services. However, in some of the large projects that we know of, the design, main equipment, construction and installation works were procured separately by the customer directly. This approach involves more risks and can be handled only when a customer has a good project management team in place. In some of the projects that consisted of many facilities (for example, a power plant that included a main building and infrastructure around it), a foreign EPC contractor was responsible for the main building and other contractors were hired by the customer for infrastructure objects.

10 PPP and PFI

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

There are very few laws for PPP, which makes it difficult to structure such projects. The cornerstone act is Federal Law No. 115-FZ of 21 July 2005 on Concession Agreements. A concession is an agreement between federal, regional or local authorities and a private party, according to which the private party undertakes to erect or refurbish, maintain and operate an immovable object that is or shall become state, regional or local property and the other party grants to such private party a right of use. It should be noted that such law does not provide for enough flexibility – it establishes the forms of concession agreements, which are mandatory – thus, it is very difficult to adjust them to the needs of the particular project.

The term private finance initiative (PFI), being a predecessor to the concept of a PPP, has no separate legal or regulatory framework in Russia.

11 Joint ventures

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

Unless otherwise provided for in the contract, all members of consortia are jointly and severally liable to the customer. However, it is allowed by law for a construction contract to provide for the allocation of liability between consortia members (ie, each member is liable only for his or her own share of obligations). It is also possible to allocate the responsibilities, describing exactly which works are to be performed by each consortia member, but at the same time having them jointly and severally liable for breach of the contract.

12 Tort claims and indemnity

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 recognise the mechanism of indemnities. Provisions on indemnities often appear in contracts that are concluded with foreign contractors, but Russian courts can either claim such provisions are null and void or construe them as a reimbursement-of-damages clause. Court practice has not settled on this issue and judgments of different courts can vary. If the damages were caused by negligence of the first party, it is unlikely that the first party would be indemnified in full, and the amount of damages awarded by the court can be reduced.

13 Liability to third parties

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?

The contractor does bear responsibility to the third parties under a general tort concept, which is established by chapter 59 of the Civil Code of Russia. Such liability has to be insured; a requirement of

SROs. Third parties are entitled to raise and pursue a direct claim against the contractor.

14 Insurance

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?

According to section 932 of the Civil Code of Russia, contractual liability can be insured in cases specifically set out by the law. Russian laws contain no provision on the insurance of contractual liability in construction, which means that such insurance is not allowed. Delay damages potentially could be insured as 'entrepreneurial risk' under section 933 of the Civil Code; however, to our knowledge there is no such insurance product available on the market. All types of third-party liability, both injury and damage to the property (including adjacent buildings), and environmental hazards can be insured. The law limits neither contractual nor extra-contractual liability of the contractors.

15 Labour requirements

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

There is no legally established requirement to have a minimum amount of local labour on a particular construction project.

16 Local labour law

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?

Russian labour law and court practice are employee-biased. Employment can be terminated only in accordance with the grounds set out by the Labour Code of Russia. Completion of a construction project is not provided as one of the grounds for termination of employment. However, the Labour Code allows for a fixed-term employment agreement, which terminates upon its expiration. Contractors are advised to take advantage of such fixed-term employment agreements.

17 Close of operations

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

The parties to the construction contract are free to establish the grounds and consequences of termination. Normally, construction contracts do not allow the contractor to terminate the contract for convenience. If a contract does allow the contractor to terminate for convenience, it usually provides that the consequences of such termination are equal to the consequences of termination for cause by the customer, which may include, among other things, payment of termination fees.

18 Payment rights

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?

The usual means to secure the payment obligations are: commercial and stand-by letters of credit, bank guarantees and corporate guarantees (in Russia, corporate guarantees are effected through the mechanism of surety). Also, foreign contractors usually ask for larger advance payments from the customers in order to have positive cash flow and fewer payment risks. Contractors may have liens on the property unless excluded by the contract.

19 Contracting with government entities

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

According to section 127 of the Civil Code, the Act on the Immunity of the State and of its Property is supposed to be adopted, which would regulate the specifics of the liability to be borne by Russia or by the subjects of Russia in relations regulated by civil legislation in which foreign legal entities, citizens and states are involved. No such law has been adopted so far, which means that Russia enjoys full sovereign immunity. It is a complicated question as to whether Russia could waive its sovereign immunity in a particular contract entered into by Russia with a foreign contractor. We are of the opinion that, until the adoption of the above-mentioned law, and without a specific law that would clearly state that the waiver is allowed (eg, an Act on Product Sharing Agreements allows for the waiver of sovereign immunity in product sharing agreements), a contract provision on the waiver of sovereign immunity could potentially be declared null and void.

20 Statutory payment protection

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

When projects are interrupted or cancelled, an unpaid contractor who has performed work is entitled to a standard set of claims:

- exercising lien rights on the building under construction as well as on the customer's equipment, materials and other property located at the construction site. However, the courts' practice is quite controversial, some courts say that lien rights can be effected only if the construction contract is terminated;
- exercising rights under a financial security if there was one (bank guarantee, stand-by letter of credit);
- making a general claim on the payment of the contract price and damages against the customer. When the project is terminated by the customer for convenience, the contractor is entitled to a share of the contract price, proportional to the work completed and damages, which, however, cannot exceed the difference between the total contract price and the share of the contract price that has been paid to the contractor (section 717 of the Civil Code); or
- initiating insolvency proceedings against the customer. This remedy is not often exercised.

21 Force majeure and acts of God

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

According to section 401(3) of the Civil Code, a party can be excused from liability if it proves that proper performance was impossible due to an act of God. Failure to perform obligations caused by the failure of subcontractors or by a lack of funds or any goods on the market cannot be regarded as an excusable event. The parties can negotiate in a particular contract a specific list of force majeure and excusable events that would spare one or both parties from liability.

22 Courts and tribunals

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

To our knowledge there are no such tribunals at the moment. There have been some attempts to create specialised tribunals by some SROs, but they have never been popular with the rest of the market. Many construction disputes between Russian companies go to the Arbitration Court for Economic Disputes at the Chamber of Commerce and Industry of the Russian Federation.

23 Dispute review boards

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

Dispute review boards are not used in Russia.

24 Mediation

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 has not gained wide acceptance in Russia, although a positive trend of the state to encourage the parties to use mediation can be acknowledged. Particularly, the Act on alternative procedure for settling disputes with the participation of an intermediary (mediation procedure) was adopted on 27 July 2010. Article 135 of the Arbitrazh Procedural Code (the law that contains procedural rules for state economic courts) provides that a court, when preparing the case for hearing, has to explain to the parties their rights to appeal for the assistance of a mediator. Should the parties decide to turn to a mediator, the court can delay judicial proceedings upon the motion of both parties.

25 Confidentiality in mediation

Are statements made in mediation confidential?

According to section 5 of the Act on alternative procedure for settling disputes with the participation of an intermediary (mediation procedure), confidentiality of mediation proceedings is presumed, which means that:

- the mediator cannot disclose the information relating to the procedure of mediation or such information that he or she became aware of during mediation, without the prior consent of the parties; and
- the parties, mediator and other parties that were involved in mediation proceedings cannot, unless the parties agreed otherwise, refer during court and arbitration proceedings to:
 - a proposal of one of the parties to use mediation as a means of dispute resolution as well as the readiness of a party to accept mediation;
 - opinions or proposals raised in the course of mediation proceedings;
 - submissions made by a party during mediation proceedings; or
 - the readiness of a party to accept the proposal made by the other party or mediator.

26 Arbitration of private disputes

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

In terms of the number of disputes, litigation in the economic courts is far more common than arbitration. However, most of the contracts to which foreign contractors are party provide for international arbitration (ICC, LCIA or Stockholm Arbitration Institute Rules, which are quite popular) as a venue. Also, in some bigger contracts (especially EPC and EPC(M) contracts) between Russian companies, the parties sometimes prefer arbitration to litigation. One of the popular arbitration institutions for local (Russian-to-Russian) disputes is the Arbitration Court for Economic Disputes at the Chamber of Commerce and Industry of Russia. It should be noted that Russian state courts for economic disputes are called 'arbitrazh courts', sometimes incorrectly translated into English as 'arbitration courts'.

27 Governing law and arbitration providers

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?

When construction contracts are entered into with foreign contractors, a neutral jurisdiction is most often chosen by the parties as a governing law, for example, English, Swiss or Swedish law. The parties cannot choose a law that would apply to the title of real property located in Russia, but otherwise the parties to a construction contract are free to choose the governing law.

The Arbitration Institute of the Stockholm Chamber of Commerce is preferred over other international arbitration providers. This institution is used to resolve disputes with many of the Soviet companies. They have the rules and all the appropriate documentation in Russian and it is cheaper than the ICC or LCIA. However, the ICC and LCIA are also used. There is no specific resistance to hearings being held in a particular jurisdiction.

28 Dispute resolution with government entities

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

Russian government agencies can participate in private arbitration but they remain subject to sovereign immunity.

29 Arbitral award

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 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention) and foreign arbitral awards are recognised and enforced in Russia in accordance with the procedure set out by chapter 31 of the Arbitrazh Procedural Code (APC). The procedure of recognition and enforcement lies within the competence of state economic (arbitrazh) courts. The list of grounds under which recognition and enforcement of foreign courts' decisions and foreign arbitral awards can be denied is established by section 244 of the APC. However, with regard to foreign arbitral awards, section 244 of the APC merely contains a reference to international treaties of Russia and to the Act on international commercial arbitration. This list of grounds for rejection is set out in section 36 of this Act. These grounds are fully in line with those provided for in article V of the New York Convention.

Further, it should be noted that, according to section 246(2) of the APC, a foreign arbitral award can be enforced only within three years of its being awarded. Effectively, this means an introduction of additional grounds for the rejection of a foreign arbitral award, which is not provided for by the New York Convention. However, according to the Constitution of Russia, international treaties that Russia is a party to form part of the Russian legal system, and have a direct effect on and prevail over national laws. This means that an interested party could potentially claim that the respective provision of the APC contradicts the New York Convention and, thus, should not be applied.

30 Limitation periods

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?

There are separate limitations for raising a claim (ie, informing the contractor of a claim) and commencing a lawsuit.

Update and trends

Some of the mega-projects in Russia are already complete, such as the Sochi 2014 Winter Olympics and the APEC summit in Vladivostok. Most of the largest power plant projects are also at the point of completion. However, new major projects have been announced, such as the infrastructure for the football World Cup in 2018 (which will take place in several Russian cities), and Novatek and Total's Yamal LNG project – the construction of a gas pipeline to China worth several billion US dollars. The public transportation infrastructure sector also looks very promising – the government is considering various PPP models, such as life-cycle contracts, for launching certain projects. Although only a few projects have been officially awarded and started, we expect this industry to be a driver of growth over the next 10 to 15 years.

International contractors are becoming more active in the Russian market and their share of projects is gradually increasing. They are particularly successful against Russian contractors in large-scale projects. However, given the fact that Russian construction laws and industry practices differ in many important aspects from Western ones, international contractors still have a lot of work to do in order to succeed during the implementation phase.

Raising a claim

According to section 724 of the Civil Code, if the contract does not stipulate the warranty period, the claim can be raised within two years of handover of work, unless the contract provides otherwise. If the warranty period is shorter than two years then the claim can still be raised within two years of handover of work. However, if a claim is raised during the gap between the end of the warranty period and the expiration of two years, the customer must prove that the defects arose before the handover of works or due to reasons that took place before such a handover. For capital construction objects, the above-mentioned two-year limitation period is extended to five years, otherwise the rules are the same.

Commencing a lawsuit

According to section 725 of the Civil Code, the limitation period for a lawsuit arising from a construction contract constitutes one year. However, for buildings and capital construction objects, a limitation period of three years applies. The limitation period starts at the moment of full (final) acceptance of the result of works (even if the contract provides for partial acceptances). However, if a claim is raised during a warranty period, the limitation period starts at the moment of raising such claim. It should be noted that expiration of the limitation period does not prevent the filing of a lawsuit or a court from hearing the matter, it applies only if the defendant makes a statement after the expiration of the warranty period. In such a case, the claim will be denied by the court.

31 International environmental law

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 Stockholm Declaration of 1972. Provisions of this Declaration were implemented into national law by means of the Constitution of Russia and a considerable number of laws and by-laws, including the Act on Environmental Protection No. 7-FZ of 10 January 2002, the Act on Protection of Atmospheric Air, and the Land Code, Water Code and Forest Code.

32 Local environmental responsibility

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?

Russian environmental legislation is fairly strict, and liability for violation thereof may include civil, administrative or criminal liability, depending on the type of violation and its consequences. The requirements of environmental and ecological laws need to be considered in the whole course of the development and construction of a project, beginning from the planning and reservation of a land plot. A design that is subject to the approval of a state expert must contain a section devoted to environmental protection. In some cases, special ecological expertise has to be sought.

33 International treaties

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 investment agreements for the protection of investments with many countries; however, they are all of a generic nature and none of them is devoted specifically to construction or infrastructure. A model agreement for the protection of foreign investments was adopted by Government Resolution No. 456 of 9 June 2001. According to this model agreement, an 'investment' is all property that is invested by the investor of one contracting party on the territory of the other contracting party in accordance with the laws of the latter, and may include:

- moveable and real property;
- shares, participation interest and other forms of participation in the capital of business entities;
- a right of claim on the money invested for the creation of economic merits, or under contracts having economic merits and related to capital investments;

- exclusive rights for intellectual property (copyright, patents, industrial designs, models, trademarks or service marks, technology, information of commercial value and know-how); and
- the rights to perform business activities given on the basis of the laws or a contract, including, in particular, the rights related to the survey, development, mining and operation of natural resources.

34 Tax treaties

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 double taxation treaties with most countries. The conditions of these double taxation treaties may vary, but in most cases they include provisions that are applicable to contractors.

35 Currency controls

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

Russian currency control legislation since the adoption of the Act on currency transactions and currency control of 10 December 2003 is quite liberal and does not impose any significant restrictions on exchange operations or the repatriation of profits.

36 Removal of profits and investment

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

See question 35.



Vladimir Lipavsky

lipavsky@ostlegal.ru

Office B-108
1 Varshavskoe Avenue
117105 Moscow
Russia

Tel: +7 495 269 44 91
www.ostlegal.ru

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